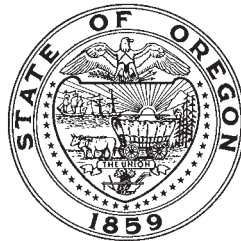


# OREGON BULLETIN

Supplements the 2011 *Oregon Administrative Rules Compilation*

**Volume 50, No. 8**  
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For June 16, 2011–July 15, 2011



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**KATE BROWN**  
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

## 2010–2011 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, 2010	January 1, 2011
January 14, 2011	February 1, 2011
February 15, 2011	March 1, 2011
March 15, 2011	April 1, 2011
April 15, 2011	May 1, 2011
May 13, 2011	June 1, 2011
June 15, 2011	July 1, 2011
July 15, 2011	August 1, 2011
August 15, 2011	September 1, 2011
September 15, 2011	October 1, 2011
October 14, 2011	November 1, 2011
November 15, 2011	December 1, 2011

## 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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# EXECUTIVE ORDERS

## EXECUTIVE ORDER NO. 11 - 05

### CONTINUING OREGON COMMISSION ON AUTISM SPECTRUM DISORDER

Oregon, like many states across the nation, has experienced a rapid increase in the number of individuals being diagnosed with Autism Spectrum Disorder (ASD) and both the public and private systems have had difficulty responding. Services are often fragmented and inconsistent around the state. Oregon is not taking full advantage of the wealth of knowledge, best practices and skill currently available in the state and elsewhere. Oregon lacks a means to provide accurate, up-to-date information to families and professionals regarding interventions, services, supports and expected outcomes. There is currently no consistent approach to increasing the capacity of agencies and communities to support individuals with ASD.

The rapid increase in the numbers of individuals being identified with ASD, the complexity and diversity of their needs, limited resources, and the consequent pressure on families, communities, existing education and social service systems, requires a more thoughtful, coordinated approach to funding, service development and delivery. Executive Order 09-07 established the Oregon Commission on Autism Spectrum Disorder and charged it with creating a 10 Year Strategic Plan on Autism Spectrum Disorder to address the issues confronting Oregon. This Plan was submitted to the Governor in December 2010. Executive Order 09-07 provides that the Oregon Commission on Autism Spectrum Disorder expires on July 1, 2011.

There exists an ongoing need to guide the implementation of the 10 Year Strategic Plan on Autism Spectrum Disorder. Therefore, this Order continues the Oregon Commission on Autism Spectrum Disorder to implement the 10 Year Strategic Plan.

### NOW THEREFORE, IT IS HEREBY DIRECTED AND ORDERED:

1. The Oregon Commission on Autism Spectrum Disorder ("Commission") previously established in Executive Order 09-07 shall continue its work as modified by this Executive Order.

2. The purpose of the Commission shall be to:

- a. Guide implementation of the 10 Year Strategic Plan and identify biennial goals for the state of Oregon by providing leadership, establishing priorities, creating key performance measures, facilitating collaboration, ensuring support and monitoring outcomes;
- b. Expand and strengthen formal and informal partnerships among systems serving individuals with ASD, including any ASD related expert panels;
- c. Identify and incorporate any needed revisions to the 10 Year Strategic Plan to address gaps, barriers, and solutions for individuals with ASD;
- d. Convene, facilitate, and lead key stakeholders in developing, promoting, and implementing recommendations from the 10 Year Strategic Plan; and
- e. Provide regular updates on the status of plan implementation and outcomes to the Governor, Legislative Assembly, and the public.

3. The Commission shall consist of 15 members, who are knowledgeable about Autism Spectrum Disorder or about systems that serve people with Autism Spectrum Disorder or both. The Governor shall appoint all members but will receive recommendations from the Senate President and Speaker(s) of the House in regard to Legislative members of the Commission. The members shall include:

- a. One member who is an individual with autism who shall be considered a self-advocate, appointed by the Governor;
- b. One member who is the parent of a child with autism below the age of 18 at the time of appointment, appointed by the Governor;
- c. One member who is a parent of an adult child with autism, appointed by the Governor;
- d. One member who represents autism or disability advocacy organizations, appointed by the Governor;
- e. One member who represents the medical community in Oregon, appointed by the Governor;
- f. One member who represents the Oregon Health Authority, recommended by the Director of the Authority and appointed by the Governor;
- g. One member who represents the Department of Human Services, recommended by the Director of the Department and appointed by the Governor;
- h. One member who represents the mental health community, appointed by the Governor;
- i. One member who represents healthcare systems/insurance, appointed by the Governor;
- j. One member who represents the Department of Education, recommended by the Superintendent of Public Instruction and appointed by the Governor;
- k. One member who represents Higher Education, appointed by the Governor;
- l. One member representing a local education entity, appointed by the Governor;
- m. One member from the Oregon House of Representatives, appointed by the Governor;
- n. One member from the Oregon Senate, appointed by the Governor; and
- o. One public member at large, appointed by the Governor.

4. All appointments to the Commission shall be made on or before July 1, 2011. New appointments will typically be for two years, but reappointments of members from the existing Oregon Commission on Autism Spectrum Disorder in 2011 shall be for 1 year in order to establish staggered terms. Any subsequent reappointments shall be for two year terms. A minimum of 1/3 of the members of the existing Oregon Commission on Autism Spectrum Disorder whose terms expire in July, 2011 will be retained for a period of at least one year to assist in the transition of the new Commission.

5. All members serve at the pleasure of their appointing authority. If a vacancy should occur for any reason it shall be the responsibility of the appointing authority to make an appointment effective immediately that meets the requirements of section 3.

6. The Governor shall select a chair and vice-chair from the Commission's membership.

7. The Commission may create as many subcommittees as it deems necessary to carry out the scope and mission of the Commission. Each subcommittee shall include a Commission member and may be composed of members outside of the Commission. Subcommittees should strive for geographic diversity in membership.



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8. The Commission shall meet at least quarterly and more often as the Commission determines is necessary and as funding allows. A quorum for meetings shall consist of a majority of the appointed members. The Commission shall strive to operate by consensus.

9. To facilitate meaningful participation by parents of individuals with ASD and self-advocates, those members may be paid a per diem pursuant to ORS 292.495(1) and reimbursed for expenses incurred in attending Commission meetings, pursuant to ORS 292.495(2), and subject to availability of funds. No other members shall be eligible for a per diem or reimbursement of expenses.

10. The Director of the Department of Human Services, the Director of the Oregon Health Authority and the Superintendent of Public Instruction shall provide staff and support necessary to support the activities of the Commission and its subcommittees, subject to availability of funds. All other agencies of state government are ordered to assist the Commission in the performance of its duties and to the extent possible, provide the Commission with representatives as outlined in Commission membership as well as the information and advice considered necessary by members of the Commission to meet their responsibilities.

11. The Oregon Council on Developmental Disabilities may accept, on behalf of the Commission, contributions of moneys and assistance from the United States Government or its agencies, or from any other source, public or private and agree to conditions upon the monies, not inconsistent with the duties of this Commission and as otherwise allowed by state and federal law.

12. The Commission shall use the 10 Year Strategic Plan to develop goals, outcomes, and implementation strategies to ensure effective services to individuals experiencing Autism Spectrum Disorder and their families. The Commission shall continue to monitor implementation and amend the Strategic Plan designed to:

- a. Clarify the array and structure of necessary services and supports that enable persons with Autism Spectrum Disorder to function to their individual potentials across their lifespan;
- b. Ensure effectively coordinated service systems for persons with Autism Spectrum Disorder in Oregon through strategies that might include interagency agreements, braiding of funding, and other processes necessary to assure collaboration and coordination;
- c. Define and recommend strategies for accessing and promoting best practices and research-based information to the professional community and the public;
- d. Identify and recommend strategies to increase the capacity of agencies and the community to appropriately support individuals experiencing Autism Spectrum Disorder; and
- e. Estimate and make recommendations regarding the long-term funding and the sources of funding needed to provide the necessary services and supports described in the 10 Year Strategic Plan.

13. The Commission shall submit a report to the Governor and the appropriate Legislative Committee each year, no later than the fall prior to the annual legislative session. The report shall include but need not be limited to:

- a. An update on implementation and outcome priorities identified in the 10 Year Strategic Plan;
- b. Biennial goals for providing services and supports to persons with Autism Spectrum Disorder in Oregon as outlined in section 12;

c. Proposals for legislation is necessary for implementation of the goals; and

d. Recommendations to applicable principal departments of the state concerning policies, procedures, and to improve services that benefit people with Autism Spectrum Disorder or to improve coordination among state agencies that provide services that benefit people with Autism Spectrum Disorder.

14. The Commission shall continue its work as set forth in this Executive Order until the Executive Order is revoked.

Done at Salem, Oregon, this 24th day of June, 2011.

/s/ John A. Kitzhaber  
John A. Kitzhaber, M.D.  
GOVERNOR

ATTEST

/s/ Kate Brown  
Kate Brown  
SECRETARY OF STATE

### EXECUTIVE ORDER NO. 11 - 06

#### GOVERNOR'S COMMISSION ON PUBLIC SAFETY (CPS)

Executive Order No. 09-13 created the Governor's Reset Cabinet and charged it with studying the core functions of state government and with recommending strategies to increase its efficiencies and improve outcomes in order to better serve the interests and needs of Oregonians. In June 2010, the Reset Cabinet issued its findings on the fiscal crisis facing Oregon and provided a set of strategies to ensure that state government can continue to meet Oregonians' critical public safety, human services, and education needs. With respect to public safety, the Reset Cabinet identified the need to transform Oregon's current sentencing policy.

This Order convenes the leaders of the three branches of state government and one public member as part of the Commission on Public Safety. The Commission shall collect, review, and evaluate arrest, conviction, sentencing, and recidivism data in order to develop recommendations for comprehensive sentencing reform for consideration by the state legislature and by the people of Oregon. In addition, the Commission shall collect, review, and evaluate data related to the costs of Oregon's current sentencing policy. The Commission is an opportunity for the heads of the three branches of government, as well as the citizens of Oregon, to take stock of our current public safety system with its successes and challenges and to chart a path for the future.

In addressing public safety policy, the Commission must focus on four core outcomes: the safety of our citizens in their homes and communities, accountability for criminal offenses, an efficient system that controls costs, and a system that is also smart and fair. Any concepts developed must put the safety of our citizens as the top priority and also ensure that individuals who commit crimes are held accountable for their conduct. At the same time, we must focus on building a smart and efficient system that maximizes our public safety dollars in light of the current economic environment.

In the 2011–13 biennium, Oregon faces a multi-billion dollar deficit and substantial general fund cuts. In the midst of this economic crisis, we must take a strategic look at our sentencing policies. With limited dollars, we must ensure the public's safety by making smart investments across our adult and juvenile justice system, including law enforcement, courts, local jails, state prisons, community corrections and other critical public safety partners.

## EXECUTIVE ORDERS

Since the last comprehensive review of sentencing policy in 1989, our current sentencing structure has been developed by separate legislative actions and ballot measures. These two processes have created policies that are independent, and in some cases, inconsistent with each other and with little uniformity between the two.

Further, as a result of the incarceration costs of our current sentencing policies, Oregon faces the untenable choice of having to fund its prisons or educate our children. Although Oregon is recognized nationwide for its efforts to reduce recidivism and for its support of evidence-based practices, hard economic realities compel us to be more strategic and to take a broad look at our current public safety system. The Commission will study the costs of incarceration and design specific concepts to implement the best use of our limited public safety dollars that will most effectively keep our citizens safe and further justice in an efficient manner.

### **NOW THEREFORE, IT IS HEREBY DIRECTED AND ORDERED:**

1. The Governor's Commission on Public Safety ("Commission") is hereby established.
2. The Commission shall consist of no more than seven (7) members, who shall be appointed as follows:
  - a. The Chief Justice of the Oregon Supreme Court or his designee, appointed by the Chief Justice;
  - b. The Governor of Oregon or his designee, appointed by the Governor;
  - c. Each Co-Speaker of the Oregon House of Representatives, or their respective designee, appointed by each Co-Speaker;
  - d. The President of the Oregon Senate, or the President's designee, appointed by the Senate President;
  - e. A member of the Oregon Senate who is also not a member of the same political party as the President, appointed by the President;
  - f. A member of the public to be appointed by a majority vote of the Commission members.
3. The Chair of the Oregon Criminal Justice Commission shall be the Executive Secretary of the Commission.
4. All members shall serve at the pleasure of their appointing authorities. The chair of the Commission will be appointed by the Governor and will serve at the pleasure of the Governor. The chair shall develop a work plan, set the agenda, and provide leadership and direction for the Commission.
5. A quorum for Commission meetings shall consist of a majority of the appointed members. The Commission shall approve measures on an affirmative vote of a majority of voting members appointed to the Commission.
6. The Commission shall lead and coordinate a process to collect, review and evaluate criminal-justice and cost data, to determine a public safety policy that both protects the public's safety and is cost-effective. This is to be a long-term effort to both develop public safety policy as well as evaluate its effectiveness. Before developing the specific policy concepts called for in the next paragraph, the Commission shall develop a consistent set of definitions for terms for which there have been competing meanings. In this manner, the Commission's definition of terms will serve as a common baseline from which policy makers and the public can make informed decisions on sentencing policy. Additionally, the Commission shall also develop an outreach strategy to educate Oregonians about the public safety system and impacts of our current policies. The Commission, at a minimum, shall work with state and local governments, Oregon colleges and universities, the Criminal Justice Commission, the State Department of Justice, and businesses to implement the data collection, review, evaluation and outreach strategy.
7. The Commission shall develop specific concepts on comprehensive public safety policy for consideration of the public and policy makers that are informed by the recommendations of the Reset Cabinet.
8. In developing its proposals for the three branches of government and the public, the Commission shall form workgroups as deemed necessary by the Chair. Workgroups may include members of the public, interested parties, and public safety stakeholders who are not members of the Commission. Any workgroup created will be given a specific charge by the chair. The Commission will consider proposals and opinions of any workgroups it establishes but it is the Commission that shall be ultimately responsible for making final recommendations consistent with its charge and scope.
9. The Commission shall produce a written report no later than December 15, 2011. The report will include conceptual proposals for the consideration of the public and policy-makers.
10. The Oregon Criminal Justice Commission and the Oregon Department of Corrections shall provide staff support for the Commission. If the Commission requires assistance of any other State agency, then such agency shall provide assistance to the Commission upon request.
11. The members of the Commission shall not receive per diem for their activities as members of the Commission, but may be reimbursed for expenses incurred in attending Commission business pursuant to ORS 292.495(2), subject to availability of funds.
12. This Order expires on December 31, 2011.

Done at Salem, Oregon, this 15th day of July, 2011.

/s/ John A. Kitzhaber  
John A. Kitzhaber, M.D.  
GOVERNOR

ATTEST

/s/ Kate Brown  
Kate Brown  
SECRETARY OF STATE

## OTHER NOTICES

### OPPORTUNITY FOR PUBLIC COMMENT RECORD OF DECISION, AMTRAK DEPOT/FORMER STIMSON LUMBER MILL ECSI # 2288

**COMMENT DUE:** August 31, 2011

**PROJECT LOCATION:** 1757 Washington Street, Oregon City, Oregon 97405

**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 Amtrak Depot/Former Stimson Lumber Mill, Parcel 1, located in Oregon City, Oregon.

The Amtrak Depot ROD describes relevant information related to site investigations and interprets this information for the purpose of eligibility for a **No Further Action** for the facility. The DEQ's Bend, Oregon office is the repository for the draft ROD and it is also available for review on the DEQ's website at: <http://www.deq.state.or.us/lq/ECSI/ecsidetail.asp?seqnbr=2288>

The administrative file for this facility can be reviewed by contacting Mr. Cliff Walkey, DEQ's project manager located in Bend, Oregon at (541) 633-2003.

**HOW TO COMMENT:** A public comment period will extend from August 1 through August 31, 2011. Please address all comments and/or inquiries to Mr. Cliff Walkey at the following address:

Cliff Walkey  
Department of Environmental Quality  
475 NE Bellevue, Ste. 110  
Bend, Oregon 97701  
(541) 633-2003  
[walkey.cliff@deq.state.or.us](mailto: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 "No Further Action" determination.

### OPPORTUNITY TO COMMENT PROPOSED NO FURTHER ACTION, TEXACO BULK PLANT (FORMER), ENTERPRISE, OREGON

**COMMENT DUE:** August 31, 2011

**PROJECT LOCATION:** 103 Fish Hatchery Lane, Enterprise

**PROPOSAL:** Pursuant to Oregon Revised Statute (ORS) 465.315, the Oregon Department of Environmental Quality (DEQ) is proposing to issue a No Further Action (NFA) determination for the former Texaco Bulk Plant located at 103 Fish Hatchery Lane in Enterprise, Oregon.

The Voluntary Cleanup Program has reviewed assessment activities performed at the site. The former petroleum bulk plant operated from approximately 1924 through the early to mid-1980s. Low levels of petroleum contamination were documented in soil and groundwater and the site is proposed for a risk-based closure and issuance of a No Further Action determination.

Additional information concerning site-specific investigations and remedial actions is available in DEQ's Environmental Cleanup Site Information (ECSI) database located on the web at <http://www.deq.state.or.us/lq/ecsi/ecsi.htm> under Site ID 3881.

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, 2011. Please address all comments and/or inquiries to project manager at 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](mailto: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 No Further Action determination. DEQ will provide written responses to all received public comments.

### REQUEST FOR COMMENTS PROPOSED NO FURTHER ACTION FOR EAST HIGHWAY 26, BRIGHTWOOD GASOLINE TANKER SPILL

**COMMENTS DUE:** by 5 p.m. on August 30, 2011

**PROJECT LOCATION:** 65420 East Highway 26, Welches, Oregon 97067.

**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 to issue a no further action (NFA) determination for the 65420 East Highway 26, Welches, Oregon (site). The DEQ has reviewed the site investigation and remediation activities performed by the responsible party, Cascade Petroleum Transportation Company, and determined that no further cleanup actions are necessary.

**HIGHLIGHTS:** On May 19, 2008, a petroleum tanker truck operated by Cascade Petroleum Transportation overturned on Highway 26 at Mile Post 39 on the eastbound lanes spilling approximately 750 gallons of unleaded gasoline to the shoulder of the Oregon Department of Transportation highway right-of-way. An emergency response cleanup took place which removed close to 2000 tons of petroleum contaminated soil. All of the impacted soil could not be removed because the spill extended beneath essential utilities in the right-of-way and Highway 26, leading to a longer-term cleanup at the site. This involved injecting 10,000 pounds of oxygen-releasing compound to biodegrade remaining soil and groundwater contamination. Eight monitoring wells were installed to monitor the groundwater plume and track the effectiveness of the treatment. Confirmation soil samples indicated that cleanup was successfully achieved in 19 of 20 locations sampled. An additional 2,200 gallons of treatment solution was applied to the excavation to this location at depths close to the water table.

Since May 2008, 16 groundwater sampling events from a network of eight monitoring were performed at the Site. Initial monitoring showed contamination in half of the sampling locations at levels exceeding DEQ risk based concentrations for drinking water use. Petroleum contaminants have been has not been detected during nine monitoring well sampling events since January 2009. Additional evaluations were completed to assess whether any possible contamination remaining under Hwy 26 could impact current well users. The evaluation concluded that well users would not be impacted since the nearest well is located 1500 feet of the spill area.

The proposed NFA is documented in the "File Memorandum" for the site dated July 13, 2011. DEQ will consider all public comments received by the close of the comment period before issuing the NFA determination.

**HOW TO COMMENT:** Send written comments on the proposed remedial action to the DEQ project manager, Ray Hoy at Oregon DEQ, Head Quarters Office, 811 SW 6th Ave., Portland, Oregon 97201, or e-mail to [hoy.ray@deq.state.or.us](mailto:hoy.ray@deq.state.or.us) by 5 p.m., August 30, 2010. To view the project files please call Dawn Weinberger, File Review Specialist, at (503) 229-6729 to schedule an appointment. If you have any questions, please contact the project manager at 503-229-6712.

**THE NEXT STEP:** DEQ will consider all public comments received by the deadline. In the absence of comments, DEQ will issue a NFA for the site.

**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)



## OTHER NOTICES

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](mailto:deqinfo@deq.state.or.us).

People with hearing impairments may call 711.

### REQUEST FOR COMMENTS PROPOSED APPROVAL OF CLEANUP FOR FORMER EUDALY BROTHERS PROPERTY

**COMMENTS DUE:** 5 p.m., Wednesday, August 31, 2011

**PROJECT LOCATION:** 6920 NE 42nd Avenue, Portland, OR 97211

**PROPOSAL:** The Department of Environmental Quality proposes to issue a conditional no further action determination for the former Eudaly Brothers property located at 6920 NE 42nd Avenue in Portland, Oregon. Eudaly Brothers formerly operated an excavation company at the property involving the storage and maintenance of heavy equipment. DEQ based the determination on the results of site investigation and cleanup activities performed at the property. DEQ has determined that further action is not required because the site does not pose an unacceptable level of risk.

**HIGHLIGHTS:** In March 2009, GRI observed petroleum staining on a sidewalk adjacent to the vehicle fueling area at the property. Subsequent investigation revealed petroleum hydrocarbon-stained soil in the area of a utility corridor adjacent to and beneath the sidewalk. GRI removed approximately 4.2 tons of contaminated soil from the utility corridor to depths ranging from two to four feet below ground surface. Subsequent confirmation sampling revealed diesel-range hydrocarbons in soil at a maximum concentration of 9,730 milligrams per kilogram.

Test pit investigations completed at the property between April 2009 and July 2010 showed that soil and groundwater contamination was primarily from diesel fuel. Laboratory analysis of soil samples from the test pits further showed minor amounts of gasoline and heavy oil contamination. Contaminated soil and groundwater were found to be restricted to the vicinity of the above-ground storage tank enclosure and vehicle fueling area.

The property is zoned for industrial/commercial use and future use for residential purposes is unlikely. Shallow groundwater at the property has no current or likely future use as drinking water.

Investigations did not detect petroleum hydrocarbons and associated constituents in soil or groundwater at concentrations exceeding Risk-Based Concentration standards for applicable exposure pathways. As a result, residual soil and groundwater contamination does not pose significant risks to current and likely future occupational workers.

**HOW TO COMMENT:** Send comments by 5 p.m. on Wednesday, August 31, 2011 to DEQ Project Manager Jeff Schatz, at [schatz.jeff@deq.state.or.us](mailto:schatz.jeff@deq.state.or.us); DEQ Northwest Region, 2020 SW 4th Avenue, Suite 400, Portland, Oregon 97201; or fax to 503-229-6945. For summary information in DEQ Environmental Cleanup Site Information database go to <http://www.deq.state.or.us/lq/ECSI/ecsiquery.asp>, then enter 4495 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled 4495 in the Site ID/Info column.

To review the project file, please contact Dawn Weinberger at 503-229-6729 to schedule a file review appointment.

**THE NEXT STEP:** DEQ will consider all public comments received by the close of the comment period before making a final decision regarding the Conditional NFA determination. If DEQ receives a written request by ten or more persons or by a group with a membership of ten or more, a public meeting will be held to receive verbal 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 at 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](mailto:deqinfo@deq.state.or.us).

People with hearing impairments may call 711.

### CHANCE TO COMMENT ON... PROPOSED CONDITIONAL NO FURTHER ACTION FORMER PORTLAND CLEANING WORKS SITE (ECSI #3529)

**COMMENTS DUE:** Sept. 1, 2011

**PROJECT LOCATION:** 3954 N. Williams Avenue, Portland, Oregon

**PROPOSAL:** The Department of Environmental Quality invites public comment on its proposal to issue a conditional no further action determination for the former Portland Cleaning Works site.

**HIGHLIGHTS:** Dry cleaning operations were conducted at the property from 1920s to about 1993. Solvents used in the dry cleaning included Stoddard Solvent, a midrange petroleum product, and perchloroethene (PCE), also known as tetrachloroethene.

A series of environmental investigations found high concentrations of Stoddard Solvent and PCE in shallow soil at levels exceeding DEQ risk-based concentrations.

In January 2009, DEQ finalized a Prospective Purchaser Agreement with Saving Grace-Williams, LLC. The tasks completed under the agreement included installation of controls for the building and other cleanup actions to protect air quality in the building and remove the solvent from beneath the building.

Air samples collected from the building interior following installation of the vapor controls and cleanup show that indoor air quality within the building is protective for occupational workers, but not under a residential exposure setting. Soil gas sampling in the adjacent residential yards showed the significant reductions in solvent concentrations in soil gas indicating remedial action has successfully mitigated the PCE soil gas source at the former Portland Cleaning Works site. DEQ has determined that the cleanup has restored off-site areas to protective levels.

DEQ reviewed the existing environmental information for the site and concludes that the site conditions are protective to human health or the environment under current site uses. DEQ proposes a conditional no further action determination for the site, provided the vapor controls for the site building are maintained and on-site residential use of the property is restricted. Restrictions on residential use would continue until DEQ approved such use based on re-evaluation of subsurface conditions or expanded vapor controls were implemented to reduce indoor air levels to protective levels for residential use. These requirements and restrictions will be memorialized in an Easement and Equitable Servitudes with the property owner to be filed with Multnomah County.

**HOW TO COMMENT:** To access additional detail on the site, please view the DEQ Staff Report in DEQ's Environmental Cleanup Site Information (ECSI) database at <http://www.deq.state.or.us/lq/ECSI/ecsiquery.asp>. Enter 3529 in the "Site ID" box and click "Submit" at the bottom of the page. Next, click the link labeled 3529 in the Site ID/Info column. Next, click on the staff report under Site Documents. You can review the administrative record for the proposed conditional no further action at DEQ's Northwest Region office located at 2020 SW 4th Avenue, Suite 400, Portland, Oregon. For an appointment to review the files call (503)229-6729; toll free at (800)452-4011. People with hearing impairments may call 711. Please send written comments to Anna Coates, Project Manager, DEQ Northwest Region, 2020 S.W. Fourth Ave., Suite 400, Portland, Oregon, 97201 or via email at: [coates.anna@deq.state.or.us](mailto:coates.anna@deq.state.or.us). **DEQ must receive written comments by 5 p.m. Sept. 1, 2011.**

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 another format. To make these arrangements, contact DEQ Communications and Outreach at (503) 229-5696 or toll free in Oregon



## OTHER NOTICES

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 a conditional No Further Action for the site.

### CHANCE TO COMMENT ON... PROPOSED REMEDIAL ACTION LAKESIDE RECLAMATION LANDFILL (ECSI #4413)

**COMMENTS DUE:** September 23, 2011

**PROJECT LOCATION:** 14930 SW Vandermost Road, Beaverton, Oregon

**INFORMATION MEETING/HEARING:** DEQ will hold a public information meeting and hearing beginning at 6 p.m. on Tuesday, August 23, 2011 at the Beaverton City Hall, City Council Chambers located at 4755 Griffith Dr. Beaverton, OR 97076.

**PROPOSAL:** DEQ is opening a 45-day public comment period beginning August 10, 2011 on a proposed cleanup remedy to address groundwater contamination at the former Lakeside Reclamation Landfill. Grabhorn Incorporated, owner of the landfill, evaluated a range of technologies and strategies to address groundwater contamination from the Landfill and contamination seeping into the Tualatin River. The primary objectives of the cleanup remedy are to: 1) prevent leachate contaminated groundwater from seeping into the Tualatin River and, 2) improve the effectiveness of the Landfill's cover to minimize or eliminate further groundwater contamination.

**HIGHLIGHTS:** Lakeside Reclamation Landfill is a 37 acre former construction debris landfill that operated since the early 1950's until closure in 2009. Beginning in the late 1990's, levels of various landfill related contaminants began rising in groundwater sampled from monitoring wells located between the landfill and the Tualatin River. The landfill was referred to DEQ's Cleanup Program in 2005 to evaluate the need for corrective action for contaminants in groundwater in excess of their DEQ landfill permit concentration limits. Based on investigations completed by Grabhorn, DEQ determined that contaminated groundwater seepage to the river poses a potentially significant adverse affect on beneficial uses of the river for aquatic organisms but posed no significant human health risks. Grabhorn completed a feasibility study to identify a remedy to address the causes of the groundwater contamination and to prevent further discharge

of contaminated groundwater to the Tualatin River until contaminant levels decline to protective levels. The proposed remedy uses groundwater extraction wells to contain the plume of groundwater contamination and improvements to the landfill cover to minimize leaching of landfill wastes.

DEQ prepared a report titled: *STAFF REPORT: RECOMMENDED REMEDIAL ACTION for Lakeside Reclamation Landfill, Beaverton, Oregon*, dated August 2011 (to be published August 10, 2011) that provides an overview of the site's history and operations, the results of environmental investigations completed by Grabhorn, and DEQ's recommended remedy to address groundwater contamination.

**HOW TO COMMENT:** The project file may be reviewed by appointment at DEQ's Northwest Region Office at 2020 SW 4th Avenue, Portland, OR 97212. The August 2011 DEQ staff report will be available for review beginning August 10, 2011. To make an appointment please contact Dawn Weinberger at (503)229-6729.

To access site summary information and the August 2011 staff report in DEQ's Environmental Cleanup Site Information (ECSI) database on the Internet, go to [www.deq.state.or.us/lq/ECSI/ecsiquery.asp](http://www.deq.state.or.us/lq/ECSI/ecsiquery.asp), then enter ECSI#4413 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled ECSI #4413 in the Site ID/Info column.

Written comments on the proposal should be submitted to Henning Larsen at 2020 SW 4th Avenue, Portland, OR 97212, or by electronic mail by sending to: [Larsen.henning@deq.state.or.us](mailto:Larsen.henning@deq.state.or.us). Comments must be received by 4:30 PM on the due date in order to be considered in DEQ's decision.

**THE NEXT STEP:** Once the comment period has ended, DEQ will review all written comments and public hearing testimony then issue a Record of Decision, DEQ's final decision regarding selection of a cleanup remedy.

**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](mailto:deqinfo@deq.state.or.us)

People with hearing impairments may call DEQ's TTY number (503) 229-6993.

# 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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### Department of Agriculture Chapter 603

**Rule Caption:** Diesel additive ("winterizing") sunset clause; Biodiesel production verification; Renewable diesel; and Dispenser labeling.

Date:	Time:	Location:
8-23-11	10-11 a.m.	ODA Bldg. 635 Capitol St. NE Salem, OR 97301

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 646.925 & 646.430

**Stats. Implemented:** ORS 646.922

**Proposed Amendments:** 603-027-0420, 603-027-0430

**Last Date for Comment:** 8-31-11

**Summary:** Proposed rule would, if adopted: (1) Implement HB 2827 of the 2011 Legislative Assembly to repeal the sunset clause of provisions permitting sales of biodiesel blended diesel fuel containing additives to prevent gelling; (2) Bring other renewable diesel into administrative rule as currently establishes in ORS 646.922; (3) Removes the biodiesel production facility verification process as it is no longer deemed necessary; and (4) Amend dispenser labeling requirements if a seller chooses to label 5% biodiesel blend dispensers.

**Rules Coordinator:** Sue Gooch

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

**Telephone:** (503) 986-4583

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**Rule Caption:** Approved invertebrates for pet trade, biological control, education and permit process for non-approved species.

Date:	Time:	Location:
8-23-11	11 a.m.	Oregon Dept. of Agriculture 635 Capitol St. NE, Hearings Rm. Salem, OR

**Hearing Officer:** Ron Pence

**Stat. Auth.:** ORS 570.205, 570.210 & 570.215

**Other Auth.:** ORS 570.305 & 561.190

**Stats. Implemented:** ORS 570.215

**Proposed Adoptions:** 603-052-1300, 603-052-1310, 603-052-1320, 603-052-1330, 603-052-1340, 603-052-1350, 603-052-1360, 603-052-1370

**Last Date for Comment:** 8-31-11

**Summary:** This proposed rule would create an approved list of invertebrate species that could be imported, transported, sold, or released in Oregon. Two hundred and twenty-five species are proposed for non-regulated status. Including biological control agents, pets, pollinators and species used for educational purposes, importing species not on the approved list would require a permit. Plant pests moved in violation of the rules would be considered a public nuisance. Violations could result in civil penalties.

**Rules Coordinator:** Sue Gooch

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

**Telephone:** (503) 986-4583

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**Rule Caption:** Lists Downy Brome as prohibited contaminate in grass seed certified for Oregon Sod Quality.

**Stat. Auth.:** ORS 561.190 & 633.520

**Stats. Implemented:** ORS 633.680

**Proposed Amendments:** 603-045-0145

**Last Date for Comment:** 9-1-11

**Summary:** Oregon's Sod Quality Seed certification program is used as a tool for marketing premium Oregon grass seed. Annually, more than 110,000 tags are issued to certify that grass seed meets Oregon Sod quality standards. In February 2011, however, a change was made to the nationally recognized "All States noxious Weed List". In this list Downy Brome — *Bromus tectorum*, was changed from a prohibited noxious weed to a restricted weed seed. Because of this change, Downy Brome is now allowed as a restricted weed in seed lots certified as Oregon Sod Quality. The allowance of this contaminate diminishes the value of certification under Oregon Sod Quality, as such, the Oregon Seed Trade and Oregon Seed Council has requested a change in rule to prohibit Downy Brome.

**Rules Coordinator:** Sue Gooch

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

**Telephone:** (503) 986-4583

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

**Rule Caption:** Correction of Self-Insured Reporting Rules to Add Definition of Qualified Actuary for Health Insurance.

Date:	Time:	Location:
8-22-11	1:30 p.m.*	Labor & Industries Bldg., Conference Rm. F 350 Winter St. NE Salem, OR

**Hearing Officer:** Jeannette Holman

**Stat. Auth.:** ORS 731.244

**Stats. Implemented:** ORS 30.382 & 731.036

**Proposed Amendments:** 836-011-0255

**Last Date for Comment:** 8-29-11

**Summary:** \*Note: The hearing will begin at 1:30 p.m. and end when all present who wish to testify have done so.

This rulemaking corrects an oversight in this rule as the rule was adopted on February 4, 2011 in a rulemaking to address annual financial statements required for self-insured groups established by three or more public bodies. The rules apply to self-insurance programs that are exempt from the Insurance Code under ORS 30.282 and 731.036.

In order to be exempt, the self-insurance program must meet certain financial requirements related to reserve adequacy provisions. To demonstrate compliance with those requirements, a qualified

## NOTICES OF PROPOSED RULEMAKING

actuary must submit a written actuarial report. Under the rules as currently written, "qualified actuary" defines the qualifications for an actuary submitting a report for property or casualty self-insurance exempt under ORS 30.282(6)(d) and 731.036(4) and (5). However, the rules fail to define "qualified actuary" for purposes of self-insured health coverage exempt under ORS 731.036 (6). This is in error as it would be inappropriate for a property or casualty actuary to submit the report for health insurance.

**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, Oregon Occupational Safety and Health Division Chapter 437

**Rule Caption:** Proposed changes to Division 1, General Administrative Rules.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
9-12-11	10 a.m.	Labor & Industries Bldg. Basement - Conference Rm. F 350 Winter St. NE Salem, OR 97301

**Hearing Officer:** Sue Joye

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

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

**Proposed Amendments:** 437-001-0057, 437-001-0706

**Last Date for Comment:** 9-16-11

**Summary:** This rulemaking is proposed to make relatively minor adjustments to the scheduling rule changes adopted in September of 2009. First, the existing rule establishes the size of each tier based on outdated data from the workers compensation system. The department can now develop more reliable estimates of size for most industries using data from the Employment Department. Second, the proposed rule improves the ranking of industries by employing a more sophisticated statistical technique. Additionally, the rule replaces the industry tiers with the criteria that will be used to develop those tiers now and in the future.

This proposed rulemaking also amends OAR 437-001-0706 Recordkeeping for Health Care Assaults, to remove the reporting requirement. This requirement has been satisfied and no longer needs to be included in the rule.

Please visit our website: [www.oro-sha.org](http://www.oro-sha.org)

Click 'Rules/Compliance' in the left vertical column and view our proposed, adopted, and final rules.

**Rules Coordinator:** Sue C. Joye

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

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

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**Rule Caption:** Propose to adopt federal amendments to maritime activities and three standards in general industry.

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

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

**Proposed Amendments:** 437-002-0140, 437-002-0220, 437-005-0001

**Last Date for Comment:** 9-16-11

**Summary:** This rulemaking is to keep Oregon OSHA in harmony with recent changes to Federal OSHA's standards.

Federal OSHA revised its standards in 29 CFR 1915 on general working conditions in shipyard employment. These revisions update existing requirements to reflect advances in industry practices and technology, consolidate some general safety and health requirements into a single subpart, and provide protection from hazards not addressed by existing standards, including the control of hazardous energy.

Oregon OSHA proposes to adopt the changes in general industry (1910.145, 1910.147, 1910.177) and maritime activities (1915) as published in the May 2, 2011 Federal Register.

Except, in 1910.147 The Control of Hazardous Energy (lockout/tagout), Oregon OSHA did not adopt paragraph (a)(1)(ii)(A) of that rule which exempts construction and agriculture. Oregon OSHA's Division 4, Agriculture has its own Oregon-initiated OAR 437-004-1275 lockout/tagout rule, and in Division 3, Construction there are lockout/tagout rules for specific applications (1926.417, 1926.702) with an Oregon-initiated rule 437-003-0005 which allows moving to other Divisions of OAR 437 when applicable.

Also, Oregon OSHA did not adopt 1910.177 Servicing Multi-piece and Single Piece Rim Wheels, paragraph (a)(2) which exempts construction, agriculture, and longshoring. Oregon OSHA's Division 4, Agriculture has its own Oregon-initiated OAR 437-004-3550 rule on this procedure.

Please visit our website: [www.oro-sha.org](http://www.oro-sha.org)

Click 'Rules/Compliance' in the left vertical column and view our proposed, adopted, and final rules.

**Rules Coordinator:** Sue C. Joye

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

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

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### Department of Corrections Chapter 291

**Rule Caption:** Agency Certification of Employees to Provide Mental Health Services to Inmates in DOC Facilities.

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

**Other Auth.:** SB 423 (2011)

**Stats. Implemented:** ORS 179.040, 423.020, 423.030, 423.075, & SB 423 (2011)

**Proposed Adoptions:** 291-124-1000, 291-124-1010, 291-124-1020, 291-124-1030, 291-124-1040, 291-124-1050

**Last Date for Comment:** 9-16-11, Close of Business

**Summary:** These rules are necessary to establish the Department of Corrections' standards for certifying DOC employees (mental health specialists) that provide mental health services to inmates as qualified mental health professionals or qualified mental health associates. Mental health specialists must be certified under these rules to provide mental health services to inmates in DOC institutions. These rules implements SB 423 (2011).

**Rules Coordinator:** Janet R. Worley

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

**Telephone:** (503) 945-0933

\*\*\*\*\*

**Rule Caption:** Controlled Feeding Status for Inmates.

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

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

**Proposed Amendments:** 291-083-0005 - 291-083-0015

**Last Date for Comment:** 9-16-11, Close of Business

**Summary:** These proposed revisions provide further clarification on the procedure for placing an inmate on controlled feeding status. Other modifications align the rules with organizational changes within the department.

**Rules Coordinator:** Janet R. Worley

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

**Telephone:** (503) 945-0933

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### Department of Energy Chapter 330

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



# NOTICES OF PROPOSED RULEMAKING

**Date:** 8-16-11  
**Time:** 9 a.m.  
**Location:** Oregon State Library  
250 Winter St. NE  
Salem, OR 97301

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 315.141, 315.144 & 469.790

**Stats. Implemented:** ORS 315.141, 315.144 & 469.790

**Proposed Amendments:** 330-170-0010, 330-170-0020, 330-170-0030, 330-170-0040, 330-170-0050, 330-170-0060, 330-170-0070

**Last Date for Comment:** 8-25-11

**Summary:** The current biomass producer or collector tax credit rules implement the process and provide criteria for certifying Biomass Producer or Collector Tax Credits, and establish the minimum discount value for transferred credits. The Oregon Department of Energy (ODOE) has identified improvements to these rules that will provide more clarity to applicants and ensure consistency for the certification process. The rules will also allow implementation of legislation from the 2011 session that made changes to the tax credit. This rulemaking will provide more clarity on the type of woody biomass that is eligible for a tax credit, ensure consistency in the way manure is measured for this tax credit, improve existing rule language, allow ODOE to conduct inspections as part of the review process, lower the application fee, adjust the supplemental information required with an application and adjust the minimum discount value for the transfer of these 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:** Procedures for consumer-owned utility power purchases to comply with the greenhouse gas emissions standard.

**Date:** 8-24-11  
**Time:** 9 a.m.  
**Location:** 625 Marion St. NE  
Salem, OR 97310

**Hearing Officer:** Jo Morgan

**Stat. Auth.:** ORS 757.522–757.538 & 469.040

**Stats. Implemented:** ORS 757.522–757.538

**Proposed Adoptions:** 330-180-0010, 330-180-0020, 330-180-0030, 330-180-0040, 330-180-0050, 330-180-0060, 330-180-0070, 330-180-0080

**Last Date for Comment:** 8-26-11

**Summary:** The purpose of the ODOE rules is to provide procedures for consumer-owned utilities to implement Oregon's greenhouse gas emissions standard of ORS 757.528 AND 757.533 for power purchases. The proposed rules provide guidance for:

- An output-based methodology for calculating greenhouse gases;
- How electricity with no identified generation source will be addressed; and
- A process for determining how facilities would be designated as a "low-carbon resource" in the future and be eligible for meeting the greenhouse gas standards.

**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:** Small and mid-size boiler rule amendments.

**Date:** 8-18-11  
**Time:** 6 p.m.  
**Location:** DEQ HQ, Rm. EQC-A  
811 SW Sixth Ave.  
Portland, OR

**Hearing Officer:** Carrie Ann Capp

**Stat. Auth.:** ORS 468, 468A, 468.020, 468A.025, 468A.035, 468A.050, 468A.055, 468A.070, 468A.460–468A.515 & 468A.310

**Stats. Implemented:** ORS 468, 468A, 468.020, 468A.025, 468A.035, 468A.050, 468A.055, 468A.070 & 468A.460–468A.515  
**Proposed Amendments:** 340-200-0020, 340-200-0040, 340-210-0100, 340-210-0110, 340-210-0120, 340-210-0250, 340-212-0140, 340-228-0020, 340-228-0200, 340-228-0210, 340-262-0450, 340-262-0600

**Last Date for Comment:** 8-25-11

**Summary:** Current Heat Smart rules under OAR chapter 340 division 262 prohibit uncertified small biomass boilers and other solid fuel boilers with heat output less than one million British thermal units per hour from being sold in Oregon. For small-scale and mid-size commercial, industrial and institutional boilers already subject to federal National Emission Standards for Hazardous Air Pollutants, the proposed rule would:

- Provide an exemption from Heat Smart regulations if the owner or operator obtains construction approval under OAR chapter 340 division 210.
- Require registration of boilers that are either exempt from Heat Smart certification requirements or that are above the Heat Smart threshold but below the air quality permitting thresholds. The registration would include confirmation that the boiler complies with other existing state and federal air quality regulations.

Creating the proposed exemption from Heat Smart regulations would allow small-scale commercial, industrial and institutional biomass boilers already subject to federal National Emission Standards for Hazardous Air Pollutants to be sold in Oregon. The proposed registration rules would enable DEQ to track compliance for small-scale and mid-sized commercial, industrial and institutional boilers. Registration of a boiler does not authorize its operation like an air quality permit; however, it does provide DEQ with information about the location and compliance status of boilers that are not required to obtain permits.

These amendments, if adopted, will be submitted to the U.S. Environmental Protection Agency (EPA) as a revision to the Oregon State Implementation Plan, which implements a number of air pollution programs of the federal Clean Air Act in Oregon.

**Rules Coordinator:** Maggie Vandehey

**Address:** Department of Environmental Quality, 811 SW Sixth Ave., Portland, OR 97204-1390

**Telephone:** (503) 229-6878

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**Rule Caption:** Underground Storage Tank Soil Matrix Cleanup Service Provider and Supervisor Licensing Categories — repeal.

**Stat. Auth.:** ORS 468.020, 465.200–465.320 & 466.706–466.995

**Stats. Implemented:** ORS 466.750

**Proposed Repeals:** 340-162-0005, 340-162-0010, 340-162-0020, 340-162-0025, 340-162-0030, 340-162-0035, 340-162-0040, 340-162-0150

**Last Date for Comment:** 7-29-11, 5 p.m.

**Summary:** This proposed rule would repeal the Underground Storage Tank (UST) Soil Matrix Cleanup Service Provider License and the UST Soil Matrix Supervisor License.

- The UST Soil Matrix Cleanup Service Provider License is for businesses performing soil matrix cleanup services at regulated tank sites. The two-year license fee is \$600.
- The UST Soil Matrix Cleanup Supervisor License is for individuals performing soil matrix cleanups. Supervisors must demonstrate their knowledge of the rules by passing a qualifying examination given by the International Code Council through a professional testing company. The examination cost is \$70 and the two-year license fee is \$150.

**Rules Coordinator:** Maggie Vandehey

**Address:** Department of Environmental Quality, 811 SW Sixth Ave., Portland, OR 97204-1390

**Telephone:** (503) 229-6878



# NOTICES OF PROPOSED RULEMAKING

## Department of Fish and Wildlife Chapter 635

**Rule Caption:** Adopt new rules for license refunds and exchanges.

**Date:** 9-1-11  
**Time:** 8 a.m.  
**Location:** 414 North Prom  
Seaside, OR 97138

**Hearing Officer:** Fish & Wildlife Commission

**Stat. Auth.:** ORS 293.445, 496.138 & 497

**Stats. Implemented:** ORS 293.445

**Proposed Amendments:** Rules in 635-001

**Last Date for Comment:** 8-31-11

**Summary:** Amend rules to provide a consistent method for addressing license refunds and exchanges.

**Rules Coordinator:** Therese Kucera

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

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

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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:** 8-23-11  
**Time:** 8:30 a.m.  
**Location:** 500 Summer St. NE, Rm. 255  
Salem, OR

**Hearing Officer:** Annette Tesch

**Stat. Auth.:** ORS 409.194, 409.225 & 418.005

**Stats. Implemented:** ORS 409.194, 409.225 & 418.005

**Proposed Amendments:** 413-010-0000, 413-010-0010, 413-010-0030, 413-010-0035, 413-010-0045, 413-010-0055, 413-010-0065, 413-010-0068, 413-010-0075

**Last Date for Comment:** 8-26-11, 5 p.m.

**Summary:** OAR 413-010-0000, 413-010-0010, 413-010-0030, 413-010-0035, 413-010-0045, 413-010-0055, 413-010-0065, 413-010-0068, and 413-010-0075 about the disclosure of client information without a court order in child welfare programs are being amended to update references to program names.

OAR 413-010-0010 defining certain terms used in rules about the disclosure of client information without a court order in child welfare programs is also being amended to add definitions related to program names.

OAR 413-010-0035 is also being amended to clarify its description of prohibited disclosures for child welfare programs.

OAR 413-010-0055 is also being amended to revise its requirements about when the Director must submit a written report of the findings and conclusions of the sensitive review committee to the President of the Senate and the Speaker of the House of Representatives.

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 April 26, 2011 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

## 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:** 8-23-11  
**Time:** 10 a.m.  
**Location:** 500 Summer St. NE, Rm. 137D  
Salem, OR

**Hearing Officer:** Annette Tesch

**Stat. Auth.:** ORS 183.341, 409.050, 411.060, 411.070, 411.116, 411.400, 411.402, 411.404, 411.408, 411.660, 411.706, 411.710, 411.816, 411.892, 412.006, 412.009, 412.014, 412.016, 412.064, 412.049, 412.124, 414.025, 414.231, HB 2049 (2011)

**Other Auth.:** Food and Nutrition Act of 2008; American Recovery and Reinvestment Act of 2009; 7 USC 2014; 42 USC 602(a); 42 USC 1315; 42 USC 1396r-5(d)(3); 7 CFR 273.5(11)(iv); 7 CFR 273.9(d)(6)(iii); 45 CFR 400; ORS 291.261

**Stats. Implemented:** ORS 183.341, 409.010, 409.050, 411.060, 411.070, 411.081, 411.083, 411.085, 411.087, 411.095, 411.116, 411.117, 411.400, 411.402, 411.404, 411.408, 411.620, 411.630, 411.635, 411.640, 411.660, 411.690, 411.704, 411.706, 411.710, 411.816, 411.825, 411.892, 412.001, 412.006, 412.009, 412.014, 412.016, 412.017, 412.049, 412.064, 412.069, 412.124, 414.025, 414.231, 2009 OL Laws 827, HB 2049 (2011)

**Proposed Adoptions:** 461-115-0232, 461-190-0212

**Proposed Amendments:** 461-001-0000, 461-025-0310, 461-025-0371, 461-110-0370, 461-115-0071, 461-115-0140, 461-115-0450, 461-120-0510, 461-125-0170, 461-130-0310, 461-135-0070, 461-135-0570, 461-135-1110, 461-155-0190, 461-155-0610, 461-155-0660, 461-155-0680, 461-160-0420, 461-160-0430, 461-160-0620, 461-190-0199, 461-190-0211, 461-195-0521, 461-195-0541, 461-195-0621

**Proposed Repeals:** 461-125-0170(T), 461-130-0310(T), 461-135-0070(T), 461-135-1110(T), 461-160-0620(T), 461-190-0199(T), 461-190-0211(T), 461-190-0212(T), 461-193-1190

**Last Date for Comment:** 8-26-11

**Summary:** OAR 461-001-0000 about defined terms used in rules about public assistance, medical assistance, supplemental nutrition assistance programs and OAR 461-115-0140 about the authorized representative or alternate payee in the Supplemental Nutrition Assistance Program are being amended to update and revise references to administrators and program managers.

OAR 461-025-0310 about hearing requests is being amended to clarify that a hearing request may be submitted for a claimant by an authorized representative or an attorney.

OAR 461-025-0371 about orders issued by the Office of Administrative Hearings (OAH) and the Department in contested cases is being amended to streamline the process the rule requires for varying the type of order the Department requests. This rule is also being amended to add the option of a proposed and final order as described in OAR 137-003-0645(4), to lengthen and clarify the timeline for submitting written exceptions to the Department, and to conform to current practices.

OAR 461-110-0370 about filing groups, 461-155-0190 about income and payment standards, and 461-160-0430 about income deductions are being amended to implement the annual increase in the standards for the SNAP Program. OAR 461-160-0420 is being amended to reflect the annual change in the Standard Utility Allowances. Each year Oregon surveys utility companies and the general public about increases in utility costs. The utility allowances are derived from these surveys and approved by the Food and Nutrition Service in the SNAP Program State Plan. There are four utility allowances. The full utility allowance (FUA) is for those households that have heating and cooling costs. The limited utility allowance (LUA) is for those households with more than one non-heating/cooling utility cost. The individual utility allowance (IUA) is for

## NOTICES OF PROPOSED RULEMAKING

those households with a single non-heat cost. The single utility allowance (TUA) is for those households with only a telephone cost. These rules are also being amended to clarify when amounts listed are monthly amounts.

OAR 461-115-0071 related to the General Assistance (GA) and General Assistance Medical (GAM) Programs (currently not funded), Oregon Supplemental Income Program Medical (OSIPM, medical assistance for seniors and persons with disabilities) and Qualified Medicare Beneficiary (QMB) programs is being amended to no longer require that both adults must sign the application for benefits when married spouses live together. This rule is also being amended to remove references to the Oregon Supplemental Income Program (OSIP, cash assistance to seniors and persons with disabilities).

OAR 461-115-0232 is being adopted to allow the Department to close cases that do not comply with required interview during month 12 of their 24 month certification. This rule will only affect households that have been approved for 24 months.

OAR 461-115-0450 is being amended to allow households with all adult members who are elderly or have disability, and in which there is no earned income to be certified for 24 months for the Supplemental Nutrition Assistance Program (SNAP), as permitted by The Food and Nutrition Act of 2008.

OAR 461-120-0510 about age requirements for clients to receive benefits in various programs is being amended for the Oregon Supplemental Income Program-Aid to the Disabled program (OSIP-AD, cash assistance for persons with disabilities) to change the age requirement — from 18 years or older and under the age of 65 — to under the age of 65. This rule is also being amended to add cross-references to defined terms.

OAR 461-125-0170 about when deprivation exists based on the unemployment or underemployment of a primary wage earner in the Temporary Assistance for Needy Families (TANF) and Medical Assistance Assumed programs, in response to recent legislation (House Bill 2049, 2011), is being amended to revise the criteria for determining deprivation for a primary wage earner separated from his or her most recent employment. This rule is also being amended to make permanent temporary rule changes adopted on July 1, 2011.

OAR 461-130-0310 about how the Department assigns clients to one or more participation classifications in the Post-Temporary Assistance for Needy Families (Post-TANF), Pre-Temporary Assistance for Needy Families (Pre-TANF), Refugee (REF), Supplemental Nutrition Assistance Program (SNAP), and Temporary Assistance for Needy Families (TANF) programs is being amended to expand the list of which Post-TANF, Pre-TANF, or TANF program clients are exempt from employment program participation and potential disqualification from program benefits. This rule is also being amended to make permanent the temporary rule changes adopted on July 1, 2011.

OAR 461-135-0070 about the specific eligibility requirements in the Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF) and Temporary Assistance for Needy Families (TANF) programs is being amended in response to recent legislation (House Bill 2049 (2011)) to revise the definition of “most recent employment”. This rule also is being amended to restate when a need group (the individuals whose basic and special needs are used in determining eligibility and benefit level) is not eligible for TANF program benefits due to a caretaker relative in the need group being separated from his or her most recent employment. This rule is also being amended to make permanent the temporary rule changes adopted on July 1, 2011.

OAR 461-135-0570 is being amended to allow individuals awarded state or federal work-study to be considered eligible students in the SNAP program when it is found the school they are attending does not have any work-study jobs available. This rule is also being amended to allow individuals receiving Unemployment Compensation through the Employment Department or participating in any of the following to be considered to meet the student criteria: The Trade

Readjustment Allowance (TRA) program serving displaced workers under the Trade Act; The Training Unemployment Insurance (TUI) program; The Self-Employment Assistance (SEA) program; The Apprenticeship Program (APT); regular UC benefits through the Employment Department (ED).

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” and update the school years that apply. This rule also needs to be amended to make permanent the temporary rule amendment adopted on July 1, 2011.

OAR 461-155-0610 about special needs payments for moving costs made to certain General Assistance (GA is currently not funded), Oregon Supplemental Income Program (OSIP, assistance to seniors and people with disabilities) and Oregon Supplemental Income Program Medical (OSIPM) program clients is being amended to clarify that the client must be the age of 18 or older.

OAR 461-155-0660 about shelter payments made to certain Oregon Supplemental Income Program (OSIP, assistance to seniors and people with disabilities) and Oregon Supplemental Income Program Medical (OSIPM) program clients is being amended to clarify that the client must be the age of 18 or older.

OAR 461-155-0680 about telephone allowance payments made to certain Oregon Supplemental Income Program Medical (OSIPM, assistance to seniors and people with disabilities) program clients is being amended to clarify that the client must be the age of 18 or older.

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 reflect the federal changes effective July 1, 2011 in the amounts used when calculating the maintenance needs allowance and the dependent income allowance deducted from the income of an institutionalized spouse. This rule is also being amended to make permanent a temporary rule change adopted July 1, 2011.

OAR 461-190-0199 about the operation of and the eligibility, selection, and participation requirements for the Parents as Scholars (PAS) component of the Job Opportunity and Basic Skills (JOBS) program, in response to recent legislation (House Bill 2049, 2011), is being amended to state which clients, effective July 1, 2011, may participate in PAS and how the Department manages applications for PAS received after June 30, 2011. This rule is also being amended to make permanent the temporary rule amendment adopted on July 1, 2011.

OAR 461-190-0211 about case plan activities and standards for support service payments in the JOBS, Post-TANF, Pre-TANF, REF, SFPSS, TA-DVS, and TANF programs is being amended to set limits to who can participate in a case plan activity, identify available activities and support services for those activities, describe how the Department determines employability in order to place participants into appropriate activities and support services, describe the activities that qualify for support services and the amount of support services available. This rule sets up a more limited JOBS program, consistent with budget constraints, following earlier Department actions that closed most activities and support services set up under earlier eligibility criteria. This rule is also being amended to make permanent the changes adopted by temporary rule on July 1, 2011.

OAR 461-190-0212 is being adopted to indicate which Job Opportunity and Basic Skills (JOBS) program activities and services ended June 30, 2011. This rule is also being adopted to state that JOBS program support service payments received by the client to assist in participation in one or more of the identified activities or services ended June 30, 2011. This program reduction affected clients who are participating in the JOBS program while receiving Pre-TANF, TANF,

# NOTICES OF PROPOSED RULEMAKING

Post-TANF, Refugee, SFPSS, or TA-DVS program benefits. Without this new rule, the Department would fully deplete resources available for the JOBS program, and be unable to set up a more limited program consistent with restricted funding. This rule is also being adopted to make permanent the temporary rule adopted on June 2, 2011 and subsequently amended on June 27, 2011.

OAR 461-193-1190 about refugee project noncooperation is being repealed. The Refugee Case Service Project (RCSP) has both Refugee Program (REF) and Temporary Assistance for Need Families (TANF) participants. REF and TANF noncooperation and job discharge provisions are currently found in OAR Chapter 461 Division 130.

OAR 461-195-0521 is being amended to correctly state in the Temporary Assistance to Needy Families (TANF) program the Department of Justice (DOJ) retains support. The current rule states this is done in the Department of Human Services (DHS). The amendment is needed to correctly state the support is retained by DOJ for TANF programs. This rule is also being amended to specify the overpayment calculation when the client was not eligible for Breast and Cervical Cancer Medical (BCCM), Continuous Eligibility for OHP-CHP (CEC), Continuous Eligibility for Medicaid (CEM), Extended Medical Assistance (EXT), Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), Oregon Health Plan (OHP-CHP, OPC, OPP, OPU, OP6), Oregon Supplemental Income Program Medical (OSIPM), Qualified Medical Beneficiaries (QMB), Refugee Assistance Medical (REFM) or Medical Assistance to Children in Substitute or Adoptive Care (SAC) programs, but during the period in question was eligible for another program. The current rule does not specify the medical programs to which the calculation applies. The amendment is needed to clarify the calculation applies to the BCCM, CEC, CEM, EXT, MAA, MAF, OHP (CHP, OPC, OPP, OPU, OP6), OSIPM, QMB, REFM and SAC programs only.

OAR 461-195-0541 is being amended to conform to federal regulations at 7 CFR 273.18 which eliminated a sponsor of a non-citizen household member from liability to repay a Supplemental Nutrition Assistance Program (SNAP) overpayment. This amendment is needed to remove a sponsor of a non-citizen household member from the list of persons liable for repayment of a SNAP overpayment. The rule is also being amended to clarify that when the Department determines there is a client overpayment in the child care program, any other adult required to be in the filing group is also liable to repay the overpayment. This amendment is needed to state any other adult required to be in the filing group is liable for repayment of a client overpayment in the child care program.

OAR 461-195-0621 is being amended to clarify when an intentional program violation (IPV) is established against a person in the Temporary Assistance for Domestic Violence Survivors (TA-DVS) program. The current rule states an IPV is established against a person through a contested case hearing or a waiver of the right to hearing. The amendment is needed to state that an IPV is also established against a person in the TA-DVS program by a state or federal court.

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, 2011 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 Justice Chapter 137

**Rule Caption:** Amends Attorney General's Model Rules of Procedure for the Office of Administrative Hearings.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
9-6-11	1:30 p.m.	Department of Justice 1515 SW 5th, Suite 410 Marquam Rm. Portland, OR

9-8-11	10 a.m.	Department of Justice 1215 State St. NE, Redwood Rm. Salem, OR
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**Hearing Officer:** Amy Alpaugh

**Stat. Auth.:** ORS 183.341

**Stats. Implemented:** ORS 9.320, 183.341, 183.413, 183.415, 183.417, 183.425, 183.430, 183.450, 183.452, 183.457, 183.458, 183.460, 183.464, 183.470, 183.482, 183.630, 183.650, 183.675, 183.685, 183.695 & 2009 OL Ch. 866

**Proposed Amendments:** 137-003-0501, 137-003-0505, 137-003-0510, 137-003-0520, 137-003-0525, 137-003-0528, 137-003-0530, 137-003-0545, 137-003-0550, 137-003-0555, 137-003-0560, 137-003-0575, 137-003-0580, 137-003-0600, 137-003-0605, 137-003-0625, 137-003-0635, 137-003-0640, 137-003-0645, 137-003-0650, 137-003-0655, 137-003-0665, 137-003-0670, 137-003-0672, 137-003-0690

**Proposed Ren. & Amends:** 137-003-0570 to 137-003-0566, 137-003-0570 to 137-003-0567, 137-003-0570 to 137-003-0568, 137-003-0570 to 137-003-0569

**Last Date for Comment:** 9-8-11

**Summary: General rules for Office of Administrative Hearings, 137-003-0501:** (1) Reorganized to be more user-friendly; (2) clarifies that the Attorney General must consult with the Chief Administrative Law Judge before exempting agencies or categories of cases from the OAH model rules as required by statute; (3) adds "reasonable reliance on the statement of a party or agency relating to procedural requirements" to the definition of "good cause" that is applicable to the model rules for the OAH; and (4) clarifies that OAR 471-060-005 (establishing procedures to request a change of ALJ) applies to contested case hearings conducted by the OAH.

**Contested case notice:** (1) Adds requirements that notice include: (a) proposed sanction and; (b) statement that non-corporeal parties must be represented by Oregon attorney; (2) limits time to amend notice and establishes criteria to amend during hearing; and, (3) requires continuance, upon request of party, when agency amends notice, but exempts implied consent proceedings.

**Hearing requests:** (1) Specifies that request for hearing serves as a general denial of the facts alleged in the notice, provides exceptions; (2) provides that agencies may not reject hearing requests because not signed by Oregon attorney where representation required, but requires attorney ratification within specified time; (3) requires agencies to accept late hearing requests that are postmarked within the time specified for timely filing, if specified criteria are met; (4) changes standard to accept other late hearing requests from "beyond the reasonable control of the party" to "good cause"; and (5) clarifies rule regarding hearings on disputes over untimely hearing requests.

**Discovery:** (1) Divides the current discovery rule, OAR 137-003-0570, into four separate rules to make it more user-friendly; (2) requires certain discovery to be provided upon request, provides exceptions; (3) provides exception from duty to confer before seeking discovery order when the effort would be futile or potentially harmful; (4) removes redundant language from discovery standard; (5) eliminates the agency's authority to immediately review ALJ or CALJ discovery orders; (6) requires ALJ to grant a continuance (including in telephone hearings) to allow the agency or party to respond to evidence that was not disclosed as ordered or requested, specifies exceptions; and (7) eliminates agency discretion to delegate their subpoena power to ALJs.



## NOTICES OF PROPOSED RULEMAKING

**Immediate review of ALJ decisions:** Eliminates authority of agencies, at the request of a party or on their own motion, to immediately review specified ALJ decisions, such as an order to quash a subpoena or to apply privileges.

**Prehearing Conferences:** (1) Allows parties to request additional matters to be considered at prehearing conferences; and (2) allows ALJ to set timeframes for exchange of witness lists and exhibits at prehearing conference; specifies that agency may set timeframes by rule for cases with no prehearing conferences.

**Lay Representatives:** Requires lay representatives to read and be familiar with a Code of Conduct for Non-Attorney Representatives at Administrative Hearings.

**Filing and providing documents:** (1) Amended to be more user-friendly; (2) tolls deadline for filing documents for scheduled office closures, which would include furlough days; and (3) specifies methods to accomplish filing.

**Emergency license suspensions:** (1) Specifies time limits for all phases of the emergency license suspension process, but allows licensee to waive or agree to an extension of those time limits; and (2) prohibits consolidation of emergency license suspension hearing with the underlying licensing proceeding unless agreed to by the licensee.

**Ex parte communications with ALJ:** To conform to 2009 statutory amendment, deletes language that exempted from the ex parte rules communications made to the ALJ by an AAG if the communication was made in response to a request from the ALJ and the AAG is not advising the agency about matters at issue in the contested case.

**Transmittal of questions to the Agency:** (1) Reorganizes rule to make it more user-friendly; and (2) requires someone with authority to speak on the question to answer a transmitted question.

**Standard for ALJ to postpone or continue a hearing:** Changes standard from “good cause” to “where warranted in the circumstances.”

**Motions for summary determination:** Clarifies that OAH has authority to accept a stipulation when the parties stipulate that the case be decided on a record limited to documents.

**Default when proposed action does not become final without a hearing or default:** (1) Changes standard for excusing the failure to appear for hearing from “caused by circumstances beyond the party’s reasonable control” to “good cause”; and (2) provides a right to hearing on reasons for party’s failure to appear if in dispute.

**Default when order may become final without request for hearing:** (1) Authorizes ALJ to provide a hearing if, before dismissing hearing request, the ALJ finds that the party had good cause for not appearing; and (2) provides a right to hearing if reasons for failure to appear are in dispute.

**Changes to ALJ’s proposed order:** (1) Requires agency case presenters – whether agency staff or counsel – to file written exceptions when suggesting a change to a finding of fact in the ALJ’s proposed order; and (2) to reflect 2009 statutory amendment, changes standard for agency to change a finding of fact in a proposed order from “not supported by a preponderance of the evidence: to “clear and convincing evidence in the record that the finding made by the administrative law judge was wrong.”

**Time for issuing an amended proposed order or final order:** States that an agency normally should issue an amended proposed order or final order within 90 days of the date that the proposed order was issued or, if not, give notice to the ALJ and all of the parties of the date that the agency expects to issue the amended proposed or final order, provides exceptions.

**Requests for stay:** Rewritten to more closely align with the language of ORS 183.482(3)(a).

**Rules Coordinator:** Carol Riches

**Address:** Department of Justice, 1162 Court St. NE, Salem, OR 97301

**Telephone:** (503) 378-5555

**Rule Caption:** Filing administrative support orders and exceptions to income withholding for support.

**Stat. Auth.:** ORS 25.287, 25.396, 25.427, 180.345, 416.422 & 416.455

**Stats. Implemented:** ORS 25.287, 25.378, 25.396, 108.110, 109.100, 109.103, 416.415, 416.422, 416.425, 416.440, 416.470, 419B.400 & 419C.590

**Proposed Amendments:** 137-055-3200, 137-055-3360, 137-055-4080

**Last Date for Comment:** 9-16-11, 5 p.m.

**Summary:** OAR 137-055-3200 and 137-055-3360 are being amended to clarify processes for filing administrative support orders.

OAR 137-055-4080 is being amended to clarify processes for exceptions to income withholding for child support.

**Rules Coordinator:** Vicki Tungate

**Address:** Department of Justice, Division of Child Support, 494 State St., Suite 300, Salem, OR 97301

**Telephone:** (503) 946-6086

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### Department of Oregon State Police Chapter 257

**Rule Caption:** Suspension or revocation of the right to apply or reapply for a letter of appointment.

Date:	Time:	Location:
8-16-11	10 a.m.	255 Capitol St. NE, Conference Rm. B Salem, OR 97301

**Hearing Officer:** Lt. James Rentz

**Stat. Auth.:** ORS 181.440

**Stats. Implemented:** ORS 181.440

**Proposed Amendments:** 257-050-0050, 257-050-0155, 257-050-0157

**Last Date for Comment:** 8-16-11

**Summary:** 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. On July 14, 2010, the department temporarily adopted these rules because it had administrative proceedings pending that involved the revocation or suspension of qualified tow businesses from its non-preference tow program. These rules gave the department continuing 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. Due to inadvertence by the department, the department’s temporary rules expired on January 10, 2011 without permanent rules being adopted. These administrative rules are intended to the tem-



## NOTICES OF PROPOSED RULEMAKING

porary rule changes permanent. The rule changes contained in these permanent rules are made retroactive to January 1, 2009.

**Rules Coordinator:** Cort Dokken

**Address:** Department of Oregon State Police, 255 Capitol St. NE, 4th Floor, Salem, OR 97310

**Telephone:** (503) 934-0228

.....  
**Landscape Contractors Board**  
**Chapter 808**

**Rule Caption:** Adds fee to convert license status at a time other than at renewal for \$50; increases fee to reinstate a suspended license to \$50.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
8-25-11	10 a.m.	2111 Front St., Suite 2-101 Salem, OR

**Hearing Officer:** Shelley Hanson

**Stat. Auth.:** ORS 670.310 & 671.670

**Stats. Implemented:** ORS 671.650

**Proposed Amendments:** 808-003-0130

**Last Date for Comment:** 8-25-11, Close of Hearing

**Summary:** 808-003-0130 — Adds fee to convert license status at a time other than at renewal for \$50; increases fee to reinstate a suspended license to \$50.

**Rules Coordinator:** Kim Gladwill-Rowley

**Address:** Landscape Contractors Board, 2111 Front Street NE, Suite 2-101, Salem, OR 97301

**Telephone:** (503) 967-6291, ext. 223

.....  
**Oregon Business Development Department**  
**Chapter 123**

**Rule Caption:** Amend rules related to the Oregon Investment Advantage.

**Stat. Auth.:** ORS 285C.075

**Stats. Implemented:** ORS 285C.495, 285C.500–285C.506, 316.778 & 317.391

**Proposed Amendments:** 123-635-0000, 123-635-0100, 123-635-0175, 123-635-0200, 123-635-0400

**Last Date for Comment:** 8-22-11

**Summary:** Basic housekeeping changes have been made throughout the division to ensure rule consistency.

**Rules Coordinator:** Minda Sublette

**Address:** Oregon Business Development Department, 775 Summer St. NE, Suite 200, Salem, OR 97301

**Telephone:** (503) 986-0036

.....  
**Oregon Department of Education**  
**Chapter 581**

**Rule Caption:** Changes term mental retardation to intellectual disabilities in education rules.

**Stat. Auth.:** ORS 326.051 & 343.041

**Other Auth.:** SB 3 (2011)

**Stats. Implemented:** ORS 343

**Proposed Amendments:** 581-015-2000, 581-015-2155, 581-015-2170, 581-015-2390, 581-016-0536, 581-016-0740, 581-019-0005, 581-023-0100

**Last Date for Comment:** 9-1-11, 5 p.m.

**Summary:** Changes term from mental retardation to intellectual disabilities in education rules.

**Rules Coordinator:** Diane Roth

**Address:** Oregon Department of Education, 255 Capitol St. NE, Salem, OR 97310

**Telephone:** (503) 947-5791

.....  
**Oregon Health Authority**  
**Chapter 943**

**Rule Caption:** Informed Consent Requirements for Health Care Providers Participating in Electronic Health Information Exchange.

**Date:**  
8-22-11

**Time:**  
2–3 p.m.

**Location:**  
Human Services Bldg.,  
Rms. 137 B, C, D  
500 Summer St. NE  
Salem, OR

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 413.300–413.308 & 413.042

**Other Auth.:** Health Information Technology for Economic and Clinical Health (HITECH) Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (ARRA), Pub. L. No. 111-5 (Feb. 17, 2009)

**Stats. Implemented:** ORS 413.300–413.308

**Proposed Adoptions:** 943-015-0000, 943-015-0010, 943-015-0015

**Last Date for Comment:** 8-24-11

**Summary:** These rules ensure that standardized information is provided to patients about electronic health information exchange (HIE), and that all providers participating in HIE offer a standardized choice to provide patients an informed opportunity to decide whether to participate in HIE.

**Rules Coordinator:** Suzanne Hoffman

**Address:** Oregon Health Authority, 500 Summer St. NE, Salem, OR 97301

**Telephone:** (503) 881-6897

.....  
**Rule Caption:** Establish policy of non-discrimination against individuals with disabilities.

**Stat. Auth.:** ORS 413.042

**Other Auth.:** HB 2009, 2009 OL Ch. 595 Sec. 19-25 and Americans with Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973

**Stats. Implemented:** ORS 413.042

**Proposed Adoptions:** 943-005-0000, 943-005-0005, 943-005-0010, 943-005-0015, 943-005-0020, 943-005-0025, 943-005-0030

**Proposed Repeals:** 943-005-0000(T), 943-005-0005(T), 943-005-0010(T), 943-005-0015(T), 943-005-0020(T), 943-005-0025(T), 943-005-0030(T)

**Last Date for Comment:** 8-24-11

**Summary:** These rules establish the Authority policy of non-discrimination on the basis of disability in accordance with the Americans with Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973. The rules establish Authority policy for communication and accessibility for clients, client applicants and the public. The intent and content of the rules is to mirror existing Federal civil rights laws and to strengthen the Authority practice of these laws.

**Rules Coordinator:** Suzanne Hoffman

**Address:** Oregon Health Authority, 500 Summer St. NE, Salem, OR 97301

**Telephone:** (503) 881-6897

.....  
**Rule Caption:** Establishment of process for restricting an individual's access to Authority premises, employees, and visitors.

**Stat. Auth.:** ORS 413.042

**Other Auth.:** HB 2009, 2009 OL Ch. 595 Sec. 19-25

**Stats. Implemented:** ORS 413.042 & 654.010

**Proposed Adoptions:** 943-012-0005, 943-012-0010, 943-012-0015, 943-012-0020, 943-012-0025

**Last Date for Comment:** 8-24-11

**Summary:** Allows the Authority to protect Authority employees, visitors, and its premises from threats or acts of violence. Defines prohibited conduct and establishes criteria for restricting an individual's access to Authority employees, visitors, and its premises when an individual has engaged in prohibited conduct.

**Rules Coordinator:** Suzanne Hoffman

**Address:** Oregon Health Authority, 500 Summer St. NE, Salem, OR 97301

**Telephone:** (503) 881-6897

# NOTICES OF PROPOSED RULEMAKING

**Rule Caption:** Privacy OARs setting forth general procedures governing the collection, use and disclosure of protected information.

**Stat. Auth.:** ORS 413.042

**Other Auth.:** HB 2009, 2009 OL Ch. 595 Sec. 19-25

**Stats. Implemented:** ORS 179.505, 192.518-192.529, 411.010, 413.032 & 414.065

**Proposed Adoptions:** 943-014-0000, 943-014-0010, 943-014-0015, 943-014-0020, 943-014-0030, 943-014-0040, 943-014-0050, 943-014-0060, 943-014-0070

**Proposed Repeals:** 943-014-0000(T), 943-014-0010(T), 943-014-0015(T), 943-014-0020(T), 943-014-0030(T), 943-014-0040(T), 943-014-0050(T), 943-014-0060(T), 943-014-0070(T)

**Last Date for Comment:** 8-24-11

**Summary:** These rules govern the collection, use, and disclosure of protected information by the Authority about individuals and to explain the rights and specific actions that individuals may take or request to be taken regarding the uses and disclosures of their protected information. These rules also set forth Authority requirements governing the use and disclosure of protected health information for purposes of HIPAA, 42 USC 1320-d through 1320d-8, Pub L 104-191, sec. 262 and 264, and the implementing HIPAA privacy rules, 45 CFR parts 160 and 164.

**Rules Coordinator:** Suzanne Hoffman

**Address:** Oregon Health Authority, 500 Summer St. NE, Salem, OR 97301

**Telephone:** (503) 881-6897

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**Rule Caption:** Provider Enrollment and Claiming using Medicaid Management Information System.

**Stat. Auth.:** ORS 413.042

**Other Auth.:** HB 2009, 2009 OL Ch. 595 Sec. 19-25

**Stats. Implemented:** ORS 414.115, 414.125, 414.135, 414.145

**Proposed Adoptions:** 943-120-0300, 943-120-0310, 943-120-0320, 943-120-0325, 943-120-0330, 943-120-0340, 943-120-0350, 943-120-0360, 943-120-0370, 943-120-0380, 943-120-0400

**Proposed Repeals:** 943-120-0300(T), 943-120-0310(T), 943-120-0320(T), 943-120-0325(T), 943-120-0330(T), 943-120-0340(T), 943-120-0350(T), 943-120-0360(T), 943-120-0370(T), 943-120-0380(T), 943-120-0400(T)

**Last Date for Comment:** 8-24-11

**Summary:** The Authority is adopting Authority-wide provider rules (OAR 943-120-0300 to 943-120-0380) which govern provider enrollment and claiming using the Medicaid Management Information System (MMIS). The Authority is proposing to ensure that Oregon Medicaid clients will be able to receive consistent and uninterrupted service and that providers are assured their correct and appropriate reimbursement at times that necessitate exceptions to normal, on-going communications.

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

For hardcopy requests, call: (503) 945-6302

**Rules Coordinator:** Suzanne Hoffman

**Address:** Oregon Health Authority, 500 Summer St. NE, Salem, OR 97301

**Telephone:** (503) 881-6897

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**Rule Caption:** Audits and Overpayment Recovery for Providers and Contractors receiving payments from or through the Authority.

**Stat. Auth.:** ORS 413.042

**Other Auth.:** HB 2009, 2009 OL Ch. 595 Sec. 19-25 & 42 CFR 455-456

**Stats. Implemented:** ORS 413.065

**Proposed Adoptions:** 943-120-1505

**Proposed Repeals:** 943-120-1505(T)

**Last Date for Comment:** 8-24-11

**Summary:** These rules adopt and incorporate by reference the Department of Human Services' Audits and Overpayment Recovery rule: chapter 407-120-1505. Providers or contractors receiving pay-

ments from or through the Oregon Health Authority are subject to audit or other post payment review procedures for all payments applicable to items or services furnished or supplied by the provider or contractor to or on behalf of the Authority or to its clients.

HB 2009 created the Oregon Health Authority and transferred to the Authority the Department of Human Services' Divisions with respect to health and health care. Effective July 1, 2011 the Authority will no longer be able to rely on the Department of Human Services' general rules found in OAR chapter 407. The Authority is adopting and incorporating by reference the Department's rule which provide the Authority with the legal authority to conduct audits and overpayment recovery with respect to providers or contractors receiving payments from the Authority.

**Rules Coordinator:** Suzanne Hoffman

**Address:** Oregon Health Authority, 500 Summer St. NE, Salem, OR 97301

**Telephone:** (503) 881-6897

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

**Rule Caption:** Prior authorization; usual and customary definitions and billing guidelines

Date:	Time:	Location:
8-16-11	10:30 a.m.	Human Services Bldg., Rm. 137A 500 Summer St. NE Salem, OR

**Hearing Officer:** Darlene Nelson

**Stat. Auth.:** ORS 409.025, 409.040, 409.110, 413.042, & 414.065

**Stats. Implemented:** ORS 414.065

**Proposed Amendments:** 410-121-0000, 410-121-0040, 410-121-0150

**Last Date for Comment:** 8-18-11, 5 p.m.

**Summary:** The Pharmaceutical Services program rules (division 121) govern the Division of Medical Assistance Programs' (Division) payments for services provided to certain clients. The Division will amend as follows:

410-121-0000: Revise definition of usual and customary charges.

410-121-0040: Updated Prior Authorization (PA) requirements for the Serotonin Norepinephrine Reuptake Inhibitors (SNRI) criteria.

410-121-0150: Revised billing guidelines for usual and customary costs.

**Rules Coordinator:** Darlene Nelson

**Address:** Oregon Health Authority, Division of Medical Assistance Programs, 500 Summer St. NE, E-35, Salem, OR 97301

**Telephone:** (503) 945-6927

.....

## Oregon Health Authority, Office for Oregon Health Policy and Research Chapter 409

**Rule Caption:** Amendments to Health Care Acquired Infection Reporting and Public Disclosure Rules.

Date:	Time:	Location:
8-16-11	10 a.m.	1225 Ferry St. SE Mt. Jefferson Rm. (Basement) Salem, OR

**Hearing Officer:** Zarie Haverkate

**Stat. Auth.:** ORS 442.420 & OL 2007, Ch. 838 § 1-6 & 12

**Stats. Implemented:** ORS 179.505, 192.410, 192.496, 192.502, 441.015, 442.011, 442.400, 442.405, & OL 2007, Ch. 838 § 1-6 & 12

**Proposed Amendments:** 409-023-0000, 409-023-0010, 409-023-0012, 409-023-0015

**Last Date for Comment:** 8-18-11, 5 p.m.

**Summary:** The Oregon Health Authority, Office for Oregon Health Policy and Research is implementing amendments to the health care acquired infection (HAI) reporting. The rules implement the health care acquired infection (HAI) reporting, public disclosure, and other

# NOTICES OF PROPOSED RULEMAKING

applicable mandates of ORS 442.420 and Ch. 838 § 1–6 and 12, 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

**Address:** Oregon Health Authority, Office for Oregon Health Policy and Research, 1225 Ferry St. SE, Salem, OR 97301

**Telephone:** (503) 373-1574

\*\*\*\*\*

## Oregon Health Licensing Agency, Board of Direct Entry Midwifery Chapter 332

**Rule Caption:** Amend requirements related to third-degree lacerations, peer review, breech births, post-date protocols and increase fees.

**Stat. Auth.:** ORS 676.606, 676.607 & 687.485

**Stats. Implemented:** ORS 676.615, 687.420, 687.425, 687.435, 687.480, 687.485 & 687.493

**Proposed Amendments:** 332-015-0000, 332-015-0070, 332-020-0000, 332-020-0017, 332-020-0020, 332-025-0020, 332-025-0021, 332-025-0022

**Proposed Renumberings:** 332-025-0050 to 332-026-0020, 332-025-0060 to 332-026-0030

**Proposed Ren. & Amends:** 332-025-0030 to 332-026-0000, 332-025-0040 to 332-026-0010, 332-025-0070 to 332-025-0110, 332-025-0080 to 332-025-0120, 332-025-0100 to 332-025-0130

**Last Date for Comment:** 8-28-11

**Summary:** Rule changes are necessary to allow for general amendments to align with current industry, agency and statewide rule-making standards and principles, as well as changes to administrative rule references.

Amend administrative rules to prohibit licensed direct entry midwives (LDMs) from repairing third-and-fourth degree lacerations. Currently the practice of repairing third-and-fourth degree lacerations is not universally taught during initial education and training for a LDM.

Amend reporting requirements to reflect correct statutory authority. The agency and board will collect data as part of renewal requirements under ORS 687.425.

Increase cost for initial licensure and renewal as well as repeal the \$500 discount for initial licensure applicants, due to high legal costs directly charged to the board.

Amend general practice standards to address LDMs who do not attend any births during the renewal period from having to report peer review as part of renewal requirements.

Amend intrapartum absolute risk criteria to clarify the type of breech birth that is restricted and requires the transport and transfer of the client by the LDM.

Amend mother and baby practice standards to provide options and clearer fetal surveillance requirements related to post-date protocol including auscultated acceleration testing when certain criteria are met. Requires documentation in the clients record if the mother denies testing or if the LDM is denied access to fetal surveillance testing.

Amend approved legend drugs for maternal use to add more forms of procaine HCI, including Novocaine and benzocaine.

**Rules Coordinator:** Samantha Patnode

**Address:** Oregon Health Licensing Agency, Board of Direct Entry Midwifery, 700 Summer St. NE, Salem, OR 97301-1287

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

\*\*\*\*\*

## Oregon Liquor Control Commission Chapter 845

**Rule Caption:** Amendments expanding age verification equipment operating standards and removing every point of sale location requirement.

**Date:**  
8-23-11

**Time:**  
10 a.m.

**Location:**  
9079 SE McLoughlin Blvd.  
Portland, OR 97222

**Hearing Officer:** Jennifer Huntsman

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

**Stats. Implemented:** ORS 471.342

**Proposed Amendments:** 845-009-0140

**Last Date for Comment:** 9-6-11, 5 p.m.

**Summary:** This rule describes the Commission's standards and requirements for licensees who choose to purchase age verification equipment (AVE) to offset (or in lieu of) a civil penalty in the case of sale of alcohol to a minor, or failure to properly verify the age of a minor purchaser. In the new section (2), staff recommends amending this rule to expand the requirements that AVE must fulfill in order to meet the Commission's minimum operating standards. Additional equipment requirements would include being able to produce at least 7 days of transaction records (whether stored in memory or via hard copy printout), the ability to process ID from all U.S. states, and the capacity for equipment updates or upgrades. Staff also recommends replacing the current section (5) with the new section (6) in order to reflect more flexibility in the timeline requirements for electing and implementing the AVE credit option. Staff further recommends deletion of the current section (6) and its replacement with the new section (7). Because some acceptable AVE can be portable, rather than proscribing the number of pieces of age verification that a licensee must purchase and where they must be located, the licensee would be responsible for ensuring that all sellers have access to and use AVE when selling alcohol.

**Rules Coordinator:** Jennifer Huntsman

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

**Telephone:** (503) 872-5004

\*\*\*\*\*

**Rule Caption:** Amendment removing "knowingly" standard from allowing a visibly intoxicated person to consume alcoholic beverages.

**Date:**  
8-25-11

**Time:**  
10 a.m.

**Location:**  
9079 SE McLoughlin Blvd.  
Portland, OR 97222

**Hearing Officer:** Jennifer Huntsman

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

**Stats. Implemented:** ORS 471.030, 471.040, 471.175, 471.178, 471.200, 471.315(1)(a)(H), 471.405(1), 471.408, 471.412, 471.675 & 471.730

**Proposed Amendments:** 845-006-0345

**Last Date for Comment:** 9-8-11, 5 p.m.

**Summary:** This rule describes a variety of acts which both licensees (including their employees or agents) and service permittees are prohibited from engaging in. Currently, section (9) specifies that no licensee or permittee will "knowingly" allow a visibly intoxicated person (VIP) to drink alcoholic beverages, but that if they make a "good faith effort" to remove the alcohol they will not be in violation of allowing a VIP to consume. This rule section also defines what "good faith effort" means. The 2011 legislature has passed House Bill (HB) 2361, effective January 1, 2012. HB 2361 amends ORS 471.315 and ORS 471.412, removing the "knowingly" standard from the violation of allowing a VIP to consume. Amending OAR 845-006-0345, section (9), will bring our rule into compliance with this new statutory language.

**Rules Coordinator:** Jennifer Huntsman

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

**Telephone:** (503) 872-5004

\*\*\*\*\*

**Rule Caption:** Amend rule to allow suppliers to exchange adulterated alcohol products.

**Date:**  
8-30-11

**Time:**  
10 a.m.

**Location:**  
9079 SE McLoughlin Blvd.  
Portland, Oregon 97222



# NOTICES OF PROPOSED RULEMAKING

**Hearing Officer:** Jennifer Huntsman  
**Stat. Auth.:** ORS 471, 471.030, 471.040 & 471.730(1) & (5)  
**Stats. Implemented:** ORS 471.398(5) & 471.446(2)  
**Proposed Amendments:** 845-013-0070  
**Last Date for Comment:** 9-13-11, 5 p.m.

**Summary:** Certain alcohol energy drinks were determined to be adulterated products by the U.S. Food and Drug Administration (FDA) on November 17, 2010. Based on the warnings issued to the manufacturers of these alcohol products by the FDA, as well as the Federal Trade Commission (FTC) and the Alcohol and Tobacco Tax and Trade Bureau (TTB), the Commission found that these products contain an adulterated ingredient. While these specific products no longer pose a threat, there may be other adulterated alcohol products in the future that find their way into the consumer market. Current Oregon rules do not allow wholesalers and manufacturers to exchange products containing adulterated ingredients that were previously delivered to retailers for other equivalent products. This means that a substantial amount of these adulterated products would remain in the state where they might be available to the public rather than being safely returned to the wholesalers or manufacturers. The proposed amendments would allow wholesalers to exchange products containing adulterated ingredients for comparable saleable products and this is necessary to ensure that all of the adulterated products are promptly removed from retail premises in the state, thereby significantly reducing the risk that the products will be sold or otherwise made available to be consumed.

**Rules Coordinator:** Jennifer Huntsman  
**Address:** Oregon Liquor Control Commission, 9079 SE McLoughlin Blvd., Portland, OR 97222  
**Telephone:** (503) 872-5004

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

**Rule Caption:** Fee changes as approved.  
**Stat. Auth.:** ORS 677.265  
**Stats. Implemented:** ORS 677.265  
**Proposed Amendments:** 847-005-0005  
**Last Date for Comment:** 8-21-11

**Summary:** The fee amendments were approved as part of the budget proposal(s) that were presented to the Oregon Legislature.

The proposed rule change amends fees for physicians, podiatric physicians, physician assistants, and acupuncturists when licenses are renewed each biennium. Licensees with Active, Inactive, Locum Tenens, Teleradiology, and Telemedicine, and Military/Public Health statuses are included in the fee amendments.

**Rules Coordinator:** Malar Ratnathicam  
**Address:** Oregon Medical Board, 1500 SW 1st Ave., Suite 620, Portland, OR 97201  
**Telephone:** (971) 673-2713

.....  
**Rule Caption:** Fines on use of non legal practice name; house-keeping language changes.  
**Stat. Auth.:** ORS 677.265  
**Stats. Implemented:** ORS 677.265  
**Proposed Amendments:** 847-008-0065  
**Last Date for Comment:** 8-21-11

**Summary:** The proposed rule clarifies licensees practice under their legal name, imposes a fine if the rule is violated. Additional language was added that further disciplinary action may be taken by the Board for violations. The rule also addresses some housekeeping language changes.

**Rules Coordinator:** Malar Ratnathicam  
**Address:** Oregon Medical Board, 1500 SW 1st Ave., Suite 620, Portland, OR 97201  
**Telephone:** (971) 673-2713

**Rule Caption:** Notify patients and Board if leaving active status, imposes fine for violation.  
**Stat. Auth.:** ORS 677.265 & 192.521  
**Stats. Implemented:** ORS 677.265 & 192.521  
**Proposed Amendments:** 847-012-0000  
**Last Date for Comment:** 8-21-11

**Summary:** The proposed rule amendment adds language requiring licensees leaving active practice to notify patients and the Board of their status and method to obtain patient records; clarifies fine amount and possible disciplinary action by the Board. Housekeeping changes in language and grammar.  
**Rules Coordinator:** Malar Ratnathicam  
**Address:** Oregon Medical Board, 1500 SW 1st Ave., Suite 620, Portland, OR 97201  
**Telephone:** (971) 673-2713

.....  
**Rule Caption:** Correct fine for failure to register as a dispensing physician or podiatric physician; housekeeping language changes.  
**Stat. Auth.:** ORS 677.265  
**Stats. Implemented:** ORS 677.010 & 677.089  
**Proposed Amendments:** 847-015-0025  
**Last Date for Comment:** 8-21-11

**Summary:** The proposed rule amendment reflects the correct fine for failure to register as a dispensing physician or podiatric physician and contains housekeeping in general language and grammar.  
**Rules Coordinator:** Malar Ratnathicam  
**Address:** Oregon Medical Board, 1500 SW 1st Ave., Suite 620, Portland, OR 97201  
**Telephone:** (971) 673-2713

.....  
**Rule Caption:** Clarifies that office based invasive procedures include cosmetic procedures.  
**Stat. Auth.:** ORS 677.265 & 679.255  
**Stats. Implemented:** ORS 677.085, 677.097, 677.265, 677.060 & 677.255  
**Proposed Amendments:** 847-017-0000, 847-017-0005, 847-017-0010, 847-017-0015, 847-017-0020, 847-017-0025, 847-017-0030, 847-017-0035, 847-017-0040  
**Last Date for Comment:** 8-21-11

**Summary:** The proposed rule amendment clarifies that office based invasive procedures include cosmetic procedures.  
**Rules Coordinator:** Malar Ratnathicam  
**Address:** Oregon Medical Board, 1500 SW 1st Ave., Suite 620, Portland, OR 97201  
**Telephone:** (971) 673-2713

.....  
**Rule Caption:** New Osteopathic school opening in Oregon and clarifies the standards for re-entry to practice.  
**Stat. Auth.:** ORS 677.175 & 677.265  
**Stats. Implemented:** ORS 677.010, 677.175, 677.265  
**Proposed Amendments:** 847-020-0183  
**Last Date for Comment:** 8-21-11

**Summary:** The proposed rule adds language to include the new Osteopathic school which is opening in Oregon and clarifies the standards for re-entry to practice.  
**Rules Coordinator:** Malar Ratnathicam  
**Address:** Oregon Medical Board, 1500 SW 1st Ave., Suite 620, Portland, OR 97201  
**Telephone:** (971) 673-2713

.....  
**Rule Caption:** Language in the administration of medication, on-scene assist and minor housekeeping language changes.  
**Stat. Auth.:** ORS 682.245  
**Stats. Implemented:** ORS 682.245  
**Proposed Amendments:** 847-035-0030  
**Last Date for Comment:** 8-21-11



# NOTICES OF PROPOSED RULEMAKING

**Summary:** The proposed rule amendment clarifies language in the administration of medication; adds language for EMT Basics to assist Advanced EMT, EMT Intermediate, and EMT-Paramedic on scene, and includes other minor housekeeping changes in language.

**Rules Coordinator:** Malar Ratnathicam

**Address:** Oregon Medical Board, 1500 SW 1st Ave., Suite 620, Portland, OR 97201

**Telephone:** (971) 673-2713

\*\*\*\*\*

**Rule Caption:** Re-entry to practice; includes housekeeping in general language and grammar.

**Stat. Auth.:** ORS 677.265

**Stats. Implemented:** ORS 677.512

**Proposed Amendments:** 847-050-0043

**Last Date for Comment:** 8-21-11

**Summary:** Establishes requirements for physician assistants re-entry to practice after ceasing practice for more than one year, and includes housekeeping in language and grammar.

**Rules Coordinator:** Malar Ratnathicam

**Address:** Oregon Medical Board, 1500 SW 1st Ave., Suite 620, Portland, OR 97201

**Telephone:** (971) 673-2713

\*\*\*\*\*

**Rule Caption:** Requirements for re-entry to practice and includes housekeeping changes in language and grammar.

**Stat. Auth.:** ORS 677.265

**Stats. Implemented:** ORS 677.175 & 677.759

**Proposed Amendments:** 847-070-0045

**Last Date for Comment:** 8-21-11

**Summary:** The proposed rule amendment clarifies requirements on re-entry to practice for acupuncturists, if they have ceased practice for a period of 24 or more consecutive months immediately preceding the application for licensure or reactivation. The rule also includes general housekeeping changes in language and grammar.

**Rules Coordinator:** Malar Ratnathicam

**Address:** Oregon Medical Board, 1500 SW 1st Ave., Suite 620, Portland, OR 97201

**Telephone:** (971) 673-2713

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**Rule Caption:** Requirements for re-entry to practice; includes housekeeping in language and grammar.

**Stat. Auth.:** ORS 677.265

**Stats. Implemented:** ORS 677.825 & 677.830

**Proposed Amendments:** 847-080-0018

**Last Date for Comment:** 8-21-11

**Summary:** The proposed rule amendment clarifies requirements on re-entry to practice for podiatric physicians, by meeting requirements stated in the rule, such as obtaining Continuing Medical Education, (CME) preceding an application for licensure or reactivation. The rule also addresses some housekeeping language changes.

**Rules Coordinator:** Malar Ratnathicam

**Address:** Oregon Medical Board, 1500 SW 1st Ave., Suite 620, Portland, OR 97201

**Telephone:** (971) 673-2713

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## **Oregon State Lottery Chapter 177**

**Rule Caption:** Announcement of Draw game result; Purchase of Keno ticket for future drawings.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
8-16-11	2-2:30 p.m.	Oregon Lottery 500 Airport Rd. SE Salem, OR

**Hearing Officer:** Mark Hohlt

**Stat. Auth.:** ORS 461

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

**Stats. Implemented:** ORS 461.300 & 461.200

**Proposed Adoptions:** 177-070-0016, 177-099-0015

**Proposed Amendments:** 177-099-0000, 177-099-0020, 177-099-0030

**Last Date for Comment:** 8-16-11, 2:30 p.m.

**Summary:** The Oregon State Lottery has initiated permanent rule-making to adopt and amend the above referenced administrative rules to specify the conditions for publicizing Draw game results, and to authorize an option for the Keno game which allows the purchase of a ticket for a future drawing and future consecutive drawings.

**Rules Coordinator:** Mark W. Hohlt

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

**Telephone:** (503) 540-1417

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## **Oregon University System, Portland State University Chapter 577**

**Rule Caption:** Schedule of Fines and Fees for General Services and Other Charges.

**Stat. Auth.:** ORS 351.070

**Stats. Implemented:** ORS 352.360

**Proposed Amendments:** 577-060-0020

**Last Date for Comment:** 8-31-11

**Summary:** Portland State University hereby adopts by reference a list of fees and other charges for fiscal year 2011-2012. The list of fees and other charges is available at Portland State University's Office of Finance and Administration, Market Center Building, 1600 SW Fourth Ave., Suite 515, Portland, OR 97207 and online at [www.pdx.edu/fadm/rulemaking-portland-state](http://www.pdx.edu/fadm/rulemaking-portland-state) and is hereby incorporated by reference in the rule.

**Rules Coordinator:** Diane Kirk

**Address:** Oregon University System, Portland State University, PO Box 751, Portland, OR 97207

**Telephone:** (503) 725-2640

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## **Oregon Watershed Enhancement Board Chapter 695**

**Rule Caption:** Immediate rule updates necessary to implement SB 342 and administer ongoing grant programs.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
8-22-11	10 a.m.	State Lands Board Rm. 775 Summer St. NE, Suite 360 Salem, OR

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 541.396

**Stats. Implemented:** ORS 541.351-541.401 & SB 342 (2011)

**Proposed Amendments:** 695-010-0030, 695-010-0060, 695-015-0030, 695-030-0060, 695-035-0010, 695-035-0050, 695-035-0060

**Last Date for Comment:** 8-22-11, 5 p.m.

**Summary:** OWEB is proposing limited rule amendments to make immediate updates necessary to ensure a smooth transition for ongoing programs for the 2011-2013 biennium. OWEB is proposing amendments to seven rules to address statutory changes from Senate Bill 342 (SB 342), the implementing legislation for Ballot Measure 76, which was passed by voters in November 2010. OWEB is proposing to update rule references to the grant fund (five rules) resulting from the statutory creation of the Watershed Conservation Grant Fund. OWEB is also proposing to amend two Small Grant Program rules containing a statutory reference that was deleted by SB 342, and to update a Restoration Grant Program rule containing statutory language that was amended by SB 342. Public comment on the proposed amendments will be accepted from August 1, 2011 through 5:00 p.m. on Monday, August 22, 2011. The proposed amendments will be available online by August 1, 2011, at [www.oregon.gov/OWEB/admin\\_rules\\_statutes.shtml](http://www.oregon.gov/OWEB/admin_rules_statutes.shtml)

**Rules Coordinator:** Melissa Leoni

**Address:** Oregon Watershed Enhancement Board, 775 Summer St. NE, Suite 360, Salem, OR 97301

**Telephone:** (503) 986-0179

# NOTICES OF PROPOSED RULEMAKING

## Oregon Youth Authority Chapter 416

**Rule Caption:** Agency certification of employees to provide mental health services to offenders in OYA facilities.

**Date:** 8-23-11  
**Time:** 1:30 p.m.  
**Location:** Oregon Youth Authority  
Owyhee Conference Rm.  
530 Center St. NE, Suite. 200  
Salem, OR

**Hearing Officer:** Winifred Skinner

**Stat. Auth.:** ORS 420A.010 420A.025 & SB 423 (2011)

**Stats. Implemented:** SB 423 (2011)

**Proposed Adoptions:** 416-070-0010, 416-070-0020, 416-070-0030, 416-070-0040, 416-070-0050, 416-070-0060

**Last Date for Comment:** 9-6-11, 5 p.m.

**Summary:** These rules establish the Oregon Youth Authority's (OYA) standards for certifying OYA mental health treatment employees as Treatment Services Supervisors or Qualified Mental Health Professionals (QMHP). Mental health treatment employees must be certified under these rules to provide mental health services to offenders in OYA facilities. These rules allow OYA to comply with SB 423 (2011).

**Rules Coordinator:** Winifred Skinner

**Address:** Oregon Youth Authority, 530 Center St. NE, Suite 200, Salem, OR 97301-3765

**Telephone:** (503) 373-7570

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**Rule Caption:** Repealing OYA rules about HIV testing already established by law and Oregon Health Authority rules.

**Stat. Auth.:** ORS 420A.025

**Stats. Implemented:** ORS 420A.025

**Proposed Repeals:** 416-600-0000, 416-600-0010, 416-600-0020, 416-600-0030, 416-600-0040, 416-600-0050

**Last Date for Comment:** 9-6-11, 5 p.m.

**Summary:** These agency rules regarding offender HIV testing are being repealed as they simply reiterate Oregon laws and Oregon Health Authority rules regarding HIV testing. Agency policy and procedure direct agency staff on how to comply with Oregon law and Oregon Health Authority rules regarding HIV testing.

**Rules Coordinator:** Winifred Skinner

**Address:** Oregon Youth Authority, 530 Center St. NE, Suite 200, Salem, OR 97301-3765

**Telephone:** (503) 373-7570

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**Rule Caption:** Repealing outdated OYA rules regarding juvenile sex offender treatment and assessment.

**Stat. Auth.:** ORS 420A.025

**Stats. Implemented:** ORS 420A.025

**Proposed Repeals:** 416-460-0000, 416-460-0010, 416-460-0020, 416-460-0030, 416-460-0040

**Last Date for Comment:** 9-6-11, 5 p.m.

**Summary:** These agency rules regarding juvenile sex offender treatment and assessment are being repealed as they are very outdated and unnecessary. OYA treatment and assessment modalities follow current best practices for juvenile sex offenders as reflected in agency treatment curriculum and policy.

**Rules Coordinator:** Winifred Skinner

**Address:** Oregon Youth Authority, 530 Center St. NE, Suite 200, Salem, OR 97301-3765

**Telephone:** (503) 373-7570

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**Rule Caption:** Offender Welfare Accounts to benefit OYA facility offenders by enhancing offender activities and programs.

**Stat. Auth.:** ORS 420A.025, 420A.030, 420A.014 & 420A.100

**Stats. Implemented:** ORS 420A.030, 420A.014 & 420A.100

**Proposed Adoptions:** 416-260-0015

**Proposed Amendments:** 416-260-0010

**Last Date for Comment:** 9-6-11, 5 p.m.

**Summary:** These rules establish an Offender Welfare Account for each OYA close custody facility to provide funds that benefit the close custody offender population and enhance offender activities and programs.

**Rules Coordinator:** Winifred Skinner

**Address:** Oregon Youth Authority, 530 Center St. NE, Suite 200, Salem, OR 97301-3765

**Telephone:** (503) 373-7570

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**Rule Caption:** OYA adopts standards set by the ICJ for interstate transfer of offender supervision and services.

**Stat. Auth.:** ORS 420A.025

**Stats. Implemented:** ORS 417.010-417.080

**Proposed Adoptions:** 416-115-0025

**Proposed Amendments:** 416-115-0010, 416-115-0020, 416-115-0030

**Proposed Repeals:** 416-115-0000, 416-115-0040, 416-115-0050, 416-115-0060, 416-115-0070, 416-115-0080, 416-115-0090, 416-115-0100, 416-115-0110, 416-115-0120, 416-115-0130, 416-115-0140, 416-115-0150, 416-115-0160, 416-115-0170, 416-115-0180, 416-115-0190, 416-115-0200, 416-115-0210, 416-115-0220, 416-115-0230, 416-115-0240, 416-115-0250, 416-115-0260, 416-115-0270, 416-115-0280

**Last Date for Comment:** 9-6-11, 5 p.m.

**Summary:** The Oregon Youth Authority adopts by reference standards for the interstate transfer of youth offender supervision and services set in the official Interstate Compact for Juveniles (ICJ) rules, published annually by the Interstate Commission for Juveniles, as updated to reflect all amendments to the rules. OYA is repealing rules that were adopted prior to those set in the official ICJ rules.

**Rules Coordinator:** Winifred Skinner

**Address:** Oregon Youth Authority, 530 Center St. NE, Suite 200, Salem, OR 97301-3765

**Telephone:** (503) 373-7570

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**Rule Caption:** Amendments to OYA's rules on OYA facility entrance and visits with OYA facility offenders.

**Stat. Auth.:** ORS 420A.025 & 420A.100

**Stats. Implemented:** ORS 420.011, 420A.010, 420A.125, 162.135, 162.185 & 419C.478

**Proposed Amendments:** 416-420-0010, 416-420-0030

**Last Date for Comment:** 9-6-11, 5 p.m.

**Summary:** OYA proposes amendments to its facility visiting rules. OYA may subject persons who request entrance to an OYA facility to an electronic criminal records check as part of a safety and security assessment. OYA may deny visitation with an offender if the visiting requestor is on supervision in the community by any supervising authority or the requestor has an active warrant. A visitation denial appeal process is delineated.

**Rules Coordinator:** Winifred Skinner

**Address:** Oregon Youth Authority, 530 Center St. NE, Suite 200, Salem, OR 97301-3765

**Telephone:** (503) 373-7570

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## Psychiatric Security Review Board Chapter 859

**Rule Caption:** Establishes Exception for Petition Requirements for Persons Who Previously Received Judicial Relief for the Civil Commitment Firearm Bar.

**Date:** 9-22-11  
**Time:** 10 a.m.  
**Location:** 620 SW 5th Ave., Suite 907  
Portland, OR 97204

**Hearing Officer:** Juliet Follansbee

**Stat. Auth.:** 2009 OL Ch. 826 (HB 2853)

**Stats. Implemented:** 2009 OL Ch. 826 (HB 2853)

**Proposed Amendments:** 859-300-0050

**Last Date for Comment:** 9-22-11

## NOTICES OF PROPOSED RULEMAKING

**Summary:** Oregon Laws 2009, Ch. 826 requires the PSRB to administer a hearings process for persons who are disqualified from transporting, shipping, possessing, or receiving a firearm under federal and certain state laws. Prior to the passage of this legislation, persons previously civilly committed could seek judicial relief to have their state firearms privilege restored. However, this judicial relief never restored their *federal* firearm privileges. On August 3, 2009, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) certified Oregon's PSRB Gun Relief Program as having authority to restore a person's federal firearm privilege. The purpose of this administrative rule is to streamline the petition process for those individuals who have previously been granted State relief who now seek to have their federal mental health prohibitor lifted.

**Rules Coordinator:** Juliet Follansbee

**Address:** Psychiatric Security Review Board, 620 SW 5th Ave., Suite 907, Portland, OR 97204

**Telephone:** (503) 229-5596

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**Public Utility Commission**  
**Chapter 860**

**Rule Caption:** In the Matter of a Rulemaking Regarding Greenhouse Gas Emissions Requirements.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
9-16-11	9:30 a.m.	550 Capitol St. NE, 1st Floor Salem, OR 97301

**Hearing Officer:** Allan J. Arlow

**Stat. Auth.:** ORS 756.040, 757.538 & 2009 OL Ch. 751 Sec. 9

**Stats. Implemented:** ORS 756.040, 757.538 & 2009 OL Ch. 751 Sec. 9

**Proposed Adoptions:** 860-085-0005, 860-085-0010, 860-085-0020, 860-085-0030, 860-085-0040, 860-085-0050

**Last Date for Comment:** 9-22-11, 5 p.m.

**Summary:** These proposed rules implement ORS 757.522 through 757.538 (sections 1 through 6 of SB 101 from the 2009 legislative session) regarding the greenhouse gas emissions standard applicable to electric companies and electricity service suppliers.

The Commission encourages participants to file written comments as early as practicable in the proceedings so that other participants have the opportunity to consider and respond to the comments before the deadline. Please reference Docket No. AR 556 on comments and file them by e-mail to the Commission's Filing Center at [PUC.FilingCenter@state.or.us](mailto: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=16922>

Participants wishing to monitor the hearing by telephone (listen only) must contact Diane Davis at [diane.davis@state.or.us](mailto:diane.davis@state.or.us) or (503) 378-4372 by close of business September 13, 2011, to request a dial-in number. To present oral comment at the hearing, participants must attend in person.

**Rules Coordinator:** Diane Davis

**Address:** Public Utility Commission of Oregon, PO Box 2148, Salem, OR 97308

**Telephone:** (503) 378-4372

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**Rule Caption:** In the Matter of Revisions to the Solar Photovoltaic Pilot Program Rules.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
8-25-11	9:30 a.m.	550 Capitol St. NE, 1st Floor Salem, OR 97301

**Hearing Officer:** Sarah K. Wallace

**Stat. Auth.:** ORS 757.360–757.380

**Stats. Implemented:** ORS 757.360–757.380

**Proposed Amendments:** 860-084-0010 – 860-084-0450

**Last Date for Comment:** 9-12-11, 5 p.m.

**Summary:** ORS 757.365 (2009), as amended by HB 3690 (2010), requires the PUC to establish pilot programs to demonstrate the use and effectiveness of volumetric incentive rates (VIRs) for electricity delivered by solar photovoltaic energy (SPV) systems (SPV Pilot Programs). When the PUC established the SPV Pilot Programs in 2010, the PUC divided potential participants into three categories—small-scale, medium-scale, and large-scale—using SPV system size to differentiate between the categories. The PUC established that small- and medium-scale systems are eligible to participate in the SPV Pilot Programs' "net metering option" and that large-scale systems are eligible to participate in the "competitive bid" option. The PUC also established that small- and medium-scale participants reserve capacity in the SPV Pilot Programs on a first-come, first-served basis. See Order No. 10-198.

In 2011, the PUC ordered the implementation of a lottery-based capacity reservation system for small-scale and medium-scale SPV systems participating in the net metering option. The PUC Staff were directed to convene workshops to identify all the rule changes or "Commission direction" needed to implement a lottery system in time for the October 1 enrollment period. See Order No. 11-089. The PUC also determined that some of the medium-scale participants should participate in the SPV Pilot Programs' competitive bid option, and that utilities should allocate 50 percent of the capacity for medium-scale systems by competitive bidding. The rules currently require that medium-scale systems participate in the net metering option, so a rule change is required to adopt a method to split the medium-scale capacity between net-metering and competitive bid options.

In addition to implementing changes to the SPV Pilot Programs previously ordered by the PUC, the proposed rules are needed to clarify other issues, such as estimating capacity of SPV systems for new construction.

The Commission encourages participants to file written comments as early as practicable in the proceedings so that other participants have the opportunity to consider and respond to the comments before the deadline. Please reference Docket No. AR 558 on comments, file them by e-mail to the Commission's Filing Center at [PUC.FilingCenter@state.or.us](mailto:PUC.FilingCenter@state.or.us), and 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=16925>

Participants wanting to monitor the hearing by telephone (listen only) must contact Diane Davis at [diane.davis@state.or.us](mailto:diane.davis@state.or.us) or (503) 378-4372 by close of business August 23, 2011, to request a dial-in number. To present oral comment at the hearing, participants must attend in person.

**Rules Coordinator:** Diane Davis

**Address:** Public Utility Commission of Oregon, PO Box 2148, Salem, OR 97308

**Telephone:** (503) 378-4372

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**Rule Caption:** In the Matter of Revisions to the Residential Service Protection Fund Administrative Rules.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
8-31-11	9:30 a.m.	550 Capitol St. NE, 2nd Floor Salem, OR 97301

**Hearing Officer:** Shani Pines

**Stat. Auth.:** ORS 183, 756, 759 & Ch. 290 OL 1987

**Stats. Implemented:** ORS 756.040, 759.036 & Ch. 290 OL 1987

**Proposed Amendments:** 860-033-0005, 860-033-0006, 860-033-0007, 860-033-0008, 860-033-0009, 860-033-0030, 860-033-0045, 860-033-0505, 860-033-0506, 860-033-0530, 860-033-0537, 860-033-0545

**Proposed Repeals:** 860-033-0510

**Last Date for Comment:** 9-7-11, 5 p.m.



## NOTICES OF PROPOSED RULEMAKING

**Summary:** These proposed rule changes are needed to track and facilitate the remittance process in the newly developed Residential Service Protection Fund (RSPF) online system, which will allow telecommunications providers to complete and submit their RSPF Remittance Report and surcharges online. In addition, it allows eligible telecommunications providers to file Oregon Telephone Assistance Program (OTAP) Reimbursement Reports online. This rule-making addresses the potential problems of RSPF financial overcompensation to a telecommunications provider or refunds that may have a material impact on the fund. Overcompensation and refunds may occur because of errors and revisions to previously filed reports.

The rules are revised to comport with the recent enactment of Senate Bill (SB) 143 and 144. SB 143 removed the 135 percent federal poverty level restriction to allow Medicaid beneficiaries who reside in a long-term or residential care facility to reap the benefits of the OTAP, regardless of their income. SB 144 allows a person with a hearing loss or speech impairment to receive adaptive telephone equipment, not just those who have a severe or greater degree of hearing or speech disability. SB 144 also allows a nurse practitioner and rehabilitation counselor for the blind to certify a person as having a disability (within the scope of their profession) and needing adaptive equipment in order to communicate on the telephone.

To align with other Commission rules pertaining to fee collections, this rulemaking specifies that a person is responsible for and must pay all costs incurred by the Commission to collect a past-due invoice or surcharge amount. This rulemaking reflects current RSPF reporting practices for telecommunications providers and addresses house-keeping, organizational and other clarifying improvements.

The Commission encourages participants to file written comments as early as practicable in the proceedings so that other participants have the opportunity to consider and respond to the comments before the deadline. Please reference Docket No. AR 557 on comments, file them by e-mail to the Commission's Filing Center at PUC.FilingCenter@state.or.us, and 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 on-line at <http://apps.puc.state.or.us/edockets/docket.asp?DocketID=16924>

Participants wanting to monitor the hearing by telephone (listen only) must contact Diane Davis at [diane.davis@state.or.us](mailto:diane.davis@state.or.us) or (503) 378-4372 by close of business August 26, 2011, to request a dial-in number. To present oral comment at the hearing, participants must attend in person.

**Rules Coordinator:** Diane Davis

**Address:** Public Utility Commission of Oregon, PO Box 2148, Salem, OR 97308

**Telephone:** (503) 378-4372

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**Rule Caption:** In the Matter of a Rulemaking to Update Waiver Provisions in the Commission's Administrative Rules.

Date:	Time:	Location:
8-19-11	9:30 a.m.	550 Capitol St. NE, 2nd Floor Salem, OR 97301

**Hearing Officer:** Michael Grant

**Stat. Auth.:** ORS Ch. 183, 756, 757, 759, Ch. 290, OL 1987 & ORS 469A.065

**Stats. Implemented:** ORS 469A.065, 756.040, 756.060, 757.005, 757.015, 757.035, 757.039, 757.061, 757.110, 757.250, 757.270, 757.300, 757.360-757.380, 757.490, 757.495, 757.600-757.667, 758.505-758.555, 759.005, 759.020, 759.036, 759.040, 759.045, 759.050, 759.220, 759.225, 759.240, 759.385, 759.390, 759.450, 759.500-759.595, 759.650, 759.690, & Ch. 290, OL 1987

**Proposed Adoptions:** 860-016-0005, 860-032-0000

**Proposed Amendments:** 860-021-0005, 860-022-0000, 860-022-0045, 860-023-0000, 860-023-0054, 860-023-0055, 860-024-0000, 860-024-0012, 860-025-0000, 860-026-0000, 860-027-0000, 860-

027-0043, 860-027-0044, 860-028-0000, 860-029-0005, 860-029-0050, 860-030-0000, 860-031-0040, 860-032-0007, 860-032-0012, 860-033-0001, 860-034-0010, 860-034-0050, 860-034-0260, 860-034-0340, 860-034-0390, 860-036-0001, 860-036-0110, 860-036-0235, 860-036-0738, 860-036-0750, 860-037-0001, 860-037-0235, 860-037-0545, 860-037-0560, 860-038-0001, 860-039-0005, 860-082-0010, 860-083-0005, 860-084-0000

**Last Date for Comment:** 8-25-11, 5 p.m.

**Summary:** These proposed rule changes will provide consistent waiver provision in all divisions of the Commission's administrative rules to allow the Commission the discretion necessary to more efficiently regulate utilities under conditions of rapidly changing environments and technologies and under extenuating circumstances. Recently, the need for consistent waiver provisions was highlighted in a case before the Commission wherein parties filed a stipulation requiring waiver of certain Commission rules, but the rules implicated did not contain a waiver provision, and therefore, that stipulation cannot be adopted by the Commission until a waiver provision is in place.

The Commission encourages participants to file written comments as early as practicable in the proceedings so that other participants have the opportunity to consider and respond to the comments before the deadline. Please reference Docket No. AR 554 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=16896>

Participants wishing to monitor the hearing by telephone (listen only) must contact Diane Davis at [diane.davis@state.or.us](mailto:diane.davis@state.or.us) or (503) 378-4372 by close of business August 17, 2011, to request a dial-in number. To present oral comment at the hearing, participants must attend in person.

**Rules Coordinator:** Diane Davis

**Address:** Public Utility Commission of Oregon, PO Box 2148, Salem, OR 97308

**Telephone:** (503) 378-4372

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**Racing Commission  
Chapter 462**

**Rule Caption:** Proposed rulemaking will edit OARs with detailed direction to licensees and includes current industry practice.

Date:	Time:	Location:
9-15-11	10:30 a.m.	800 NE Oregon St., Rm. 221 Portland, OR

**Hearing Officer:** Charles Williamson

**Stat. Auth.:** ORS 462.250, 462.270(3) & 462.700

**Stats. Implemented:** ORS 462.020, 462.270, 462.405 & 462.700

**Proposed Amendments:** 462-110-0010, 462-120-0040, 462-130-0010, 462-130-0030, 462-130-0050, 462-140-0040, 462-150-0040, 462-150-0080, 462-200-0370

**Last Date for Comment:** 9-15-11, Close of Hearing

**Summary:** Amendment #1: 462-110-0010(7) (Racing Definitions): Amends the text of the definition for "bleeder."

Amendment #2: 462-120-0043(3) (Types of Licenses): Amends (a) and adds(b) speaking to entry of a horse(s) of a decedent who was owner in part.

Amendment #3: 462-120-0040(4)(b) (Types of Licenses): Removes "regardless of whether" and replaces with "if."

Amendment #4: 462-120-0040(4)(i) (Types of Licenses): Adds (a) Provisional Exercise Rider and Exercise Rider.

Amendment #5: 462-130-0010(1)(m) (Prohibited Conduct; Investigations; Discipline): Changes language to industry standard.

Amendment #6: 462-130-0010(3)(a)(D) (Prohibited Conduct; Investigations; Discipline): Changes language regarding the requirement of an evaluation to be submitted to the Commission.

# NOTICES OF PROPOSED RULEMAKING

Amendment #7: 462-130-0010(3)(b)(C) (Prohibited Conduct; Investigations; Discipline): Provides more detailed explanation to (i), (ii) and (iii).

Amendment #8: 462-130-0010(9) (Prohibited Conduct; Investigations; Discipline): Adds language to the rule requiring licensees to notify the Commission if they are convicted of a crime.

Amendment #9: 462-130-0030 (Informal Stewards' Hearing): Adds language regarding riding infractions.

Amendment #10: 462-130-0050(1) (Appeal to the Commission; Stay Pending Appeal): Removes language stating, "Any appeal concerning the board of stewards' decision regarding a claim of foul or inquiry must be filed with the commission offices at the Portland State Office Building, 800 NE Oregon Street, Suite 310, Portland, Oregon 97232, within 72 hours of the action or inaction which provides the basis of the appeal."

Amendment #11: 462-140-0040(3) (Veterinarian): Updates language to industry standard.

Amendment #12: 462-150-0040(7)(g) (Entering for Official Racing; Subscriptions): Adds language regarding a potential for waiver by the Commission Stewards.

Amendment #13: 462-150-0080(5) (Order of Finish; Weighing In; Objections and Disqualification): Removes "commenced before midnight" from the rule.

Amendment #14: 462-150-0080(7)(f) (Order of Finish; Weighing In; Objections and Disqualification): Adds language to more clearly define the rule.

Amendment #15: 462-200-0370(2) (General Operations of Off-Track Facility): Updates language to current practice.

**Rules Coordinator:** Nancy A. Artmann

**Address:** Oregon Racing Commission, 800 NE Oregon St., Suite 310, Portland, OR 97232

**Telephone:** (971) 673-0211

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## Real Estate Agency Chapter 863

**Rule Caption:** Amends licensing rules to implement new electronic licensing processes.

Date:	Time:	Location:
8-15-11	10 a.m.	Real Estate Agency 117 Center St. NE Salem, OR

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 696.385 & 696.425

**Stats. Implemented:** ORS 696.020, 696.022, 696.425, 696.026, 696.274, 696.182 & 696.184

**Proposed Adoptions:** 863-014-0066, 863-024-0066, 863-022-0060

**Proposed Amendments:** 863-014-0003, 863-014-0010, 863-014-0015, 863-014-0020, 863-014-0030, 863-014-0035, 863-014-0040, 863-014-0050, 863-014-0062, 863-014-0063, 863-014-0065, 863-014-0076, 863-014-0095, 863-024-0003, 863-024-0010, 863-024-0015, 863-024-0020, 863-024-0030, 863-024-0045, 863-024-0050, 863-024-0062, 863-024-0063, 863-024-0065, 863-024-0076, 863-024-0095, 863-022-0010, 863-022-0015, 863-022-0025

**Last Date for Comment:** 8-15-11, 1 p.m.

**Summary:** These rules amend the real estate broker, principal broker and property manager licensing rules in OAR chapter 863, Divisions 14 and 24 and implement the statutory changes in SB 156, which became effective May 27, 2011. The purposes of these amendments are to align the license application process with the Agency's new electronic licensing system. Changes to processes and requirements include: (1) the license application processes and payment of fees for fingerprinting and examination services, which have been contracted to a service provider; (2) the requirement of a licensee to renew online; (3) new requirement to maintain a license applicant or

licensee's email address; (4) establishes the Agency's primary and preferred method of notification, correspondence or confirmation is to a licensee's email address; and (5) allows the Agency to require an original or electronic signature. New rules in division 14 and 24 establish the new requirements for a licensee's name change. A new rule in division 22 establishes new requirements of the pre-license education providers to certify course completion to the examination service provider. The text of the rule is posted on the Agency's website at [www.rea.state.or.us](http://www.rea.state.or.us), and click on "Statutes and Rules." These rules were filed as temporary rules on June 22, 2011.

**Rules Coordinator:** Laurie Skillman

**Address:** Real Estate Agency, 1177 Center St. NE, Salem, OR 97301-2505

**Telephone:** (503) 378-4630

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**Rule Caption:** Suspends temporary rule and amends same rule for Board approval of qualifications.

Date:	Time:	Location:
8-15-11	10 a.m.	Real Estate Agency 117 Center St. NE Salem, OR

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 696.385

**Stats. Implemented:** ORS 696.182

**Proposed Amendments:** 863-020-0025

**Last Date for Comment:** 8-15-11, 1 p.m.

**Summary:** OAR 863-020-0025 establishes the requirements for a petitioner who wishes to petition the Real Estate Board for the Board to approve the petitioner's qualifications to apply to become a continuing education provider. On February 3, 2011, the Agency filed a temporary rule that was effective from 2-4-11 thru 8-3-11. The Board used the temporary rule during Board meetings as a basis for considering the qualifications of a continuing education provider. The Board found that the rule did not adequately reflect the Board's determinations and, at the June 6, 2011 Board meeting, requested that the rule be amended to conform to the Board's determinations. A person not otherwise qualified to be a continuing education provider must apply to the Board and request the Board's approval of the person's qualifications. The temporary rule filed on February 3, 2011 suspended the rule and a new temporary rule was filed.

The text of the rule is posted on the Agency's website at [www.rea.state.or.us](http://www.rea.state.or.us), and click on "Statutes and Rules."

**Rules Coordinator:** Laurie Skillman

**Address:** Real Estate Agency, 1177 Center St. NE, Salem, OR 97301-2505

**Telephone:** (503) 378-4630

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**Rule Caption:** Payment of fees to the Real Estate Agency.

Date:	Time:	Location:
8-15-11	10 a.m.	Real Estate Agency 117 Center St. NE Salem, OR

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 696.385

**Stats. Implemented:** ORS 696.270 & 293.525

**Proposed Adoptions:** 863-001-0020

**Last Date for Comment:** 8-15-11, 1 p.m.

**Summary:** Establishes that the Real Estate Agency's primary method for accepting payments for licensing following fees is electronic funds transfer or credit card payment using an online authorization and payment process.

**Rules Coordinator:** Laurie Skillman

**Address:** Real Estate Agency, 1177 Center St. NE, Salem, OR 97301-2505

**Telephone:** (503) 378-4630

# ADMINISTRATIVE RULES

## Board of Geologist Examiners Chapter 809

**Rule Caption:** Adopt Fee Schedule, 2011–2013 Operating Budget, Qualifications for Fundamental Exam/Geologist-in-Training, New Signature Requirements

**Adm. Order No.:** BGE 1-2011

**Filed with Sec. of State:** 6-21-2011

**Certified to be Effective:** 7-1-11

**Notice Publication Date:** 5-1-2011

**Rules Adopted:** 809-050-0005

**Rules Amended:** 809-010-0001, 809-010-0025, 809-030-0025

**Subject:** 809-010-0001: Adopts updated fee schedule for the Board.

809-010-0025: Adopts the 2011–2013 biennial budget of the Board with a spending limit of \$459,653.

809-030-0025: Adopts updated geology coursework requirements that must be addressed by an applicant for the geologist fundamentals examination. The rule also clarifies the need for documentation via official transcripts of the applicant.

809-050-0005: Adopts new procedures for signature of documents prepared by a registered geologist or registered engineering geologist. Allows for electronic or digital signatures and sets specifications for the authorized use of such signatures on documents prepared by a registered geologist or registered engineering geologist.

**Rules Coordinator:** Christine Valentine—(503) 566-2837

### 809-010-0001

#### Fees

Fees, as established by the Board of Geologist Examiners, are:

(1) Fundamental Section of the national examination for Geologist registration — \$175.00.

(2) Practice Section of the national examination for Geologist certification — 275.00.

(3) Examination for Engineering Geologist certification — \$200.00.

(4) Geologist-in-Training initial registration and annual renewal — \$50.00.

(5) Geologist initial registration and annual renewal — \$100.00.

(6) Engineering Geologist initial certification and annual renewal — \$75.00. Engineering Geologist must have a current Geologist registration.

(7) Duplicate or replacement of lost, destroyed, or mutilated registration card — \$25.00; duplicate or replacement of lost, destroyed, or mutilated wall certificate — \$25.00.

(8) Restoration fee if postmarked:

(a) One to ninety days after due date: \$25.00;

(b) Ninety-one to one-hundred seventy-nine days after due date: \$50;

(c) Over one-hundred seventy-nine days after due date: \$100.

(9) Renewal of registration by Geologist, if applicant is 70 years of age or over by renewal date — \$15.00.

(10) Renewal of certification by Engineering Geologist, if applicant is 70 years of age or over by renewal date — \$15.00.

(11) Application Fee — \$75.00. This fee is to accompany any application for registration or examination and any reapplication for examination.

(12) Temporary Permit Fee — \$100.00. This fee is to accompany any notification per 672.545(3)(b).

(13) File Maintenance Fee — \$25.00 per request. This fee is to cover maintaining examination files for passing examinees who do not register in Oregon.

(14) Fee for a list of all registrants — \$50.00.

Stat. Auth.: ORS 182.466, 670.310 & 672.705

Stats. Implemented: ORS 672.705

Hist.: GE 1(Temp), f. & ef. 11-3-77; GE 2, f. & ef. 12-13-77; GE 2-1979, f. 10-2-79, ef. 10-3-79; GE 1-1981, f. & ef. 8-3-81; GE 1-1982, f. & ef. 5-14-82; GE 2-1983(Temp), f. 10-14-83, ef. 11-1-83; GE 1-1984, f. & ef. 2-1-84; GE 1-1985, f. & ef. 7-1-85; GE 2-1986, f. & ef. 3-5-86; GE 1-1989, f. 12-18-89, cert. ef. 1-1-90; GE 1-1993(Temp), f. 3-1-93, cert. ef. 3-2-93; GE 2-1999; GE 2-1996, f. & cert. ef. 8-30-96; BGE 1-1999, f. & cert. ef. 6-17-99; BGE 2-2001, f. & cert. ef. 3-23-01; BGE 1-2002, f. & cert. ef. 2-6-02; BGE 3-2002, f. & cert. ef. 7-9-02; BGE 6-2004, f. & cert. ef. 8-5-04; BGE 2-2005, f. & cert. ef. 9-28-05; BGE 3-2005, f. & cert. ef. 12-7-05; BGE 2-2007, f. 6-25-07, cert. ef. 7-1-07; BGE 1-2011, f. 6-21-11, cert. ef. 7-1-11

### 809-010-0025

#### Operating Budget

The Oregon State Board of Geologist Examiners hereby adopts by reference the 2011–2013 Biennial Budget of \$459,653 covering the period from July 1, 2011, and ending June 30, 2013. With Board approval, the

Administrator of the Board may amend budgeted accounts as necessary within the approved budget of \$459,653 for the effective operation of the Board. The Board will not exceed the approved 2011–13 Biennial Budget unless registrants are noticed, a public hearing is convened, and this rule is amended as required by ORS Chapter 182.462(1)(2). Copies of the budget are available from the Board's office.

Stat. Auth.: ORS 670.310, 672.705 & 182.462

Stats. Implemented: ORS 672.705 & 1999 OL Ch. 1084

Hist.: BGE 1-1999, f. & cert. ef. 6-17-99; BGE 1-2001, f. & cert. ef. 3-23-01; BGE 2-2003, f. 6-13-03, cert. ef. 7-1-03; BGE 1-2005, f. & cert. ef. 8-15-05; BGE 2-2007, f. 6-25-07, cert. ef. 7-1-07; BGE 1-2009, f. 6-15-09, cert. ef. 7-1-09; BGE 1-2011, f. 6-21-11, cert. ef. 7-1-11

### 809-030-0025

#### Qualifications for Geologist Fundamentals Examination and Certification as a Geologist-in-Training

(1) To qualify to take the geologist fundamentals examination, an applicant shall:

(a) Have an undergraduate degree in geology, geological sciences, or earth science from an accredited college or university; or

(b) Have completed the equivalent of 45 quarter hours of geology coursework as outlined in (2) from an accredited college or university.

(2) All applicants must have the equivalent of 45 quarter hours of qualifying geologic coursework of which at least 80% of the qualifying 45 quarter hours presented in the official transcript of the applicant must include upper division coursework from the following list or substitutions approved by the Board:

(a) Coastal processes;

(b) Economic geology;

(c) Engineering geology;

(d) Environmental geology;

(e) Geochemistry;

(f) Geology field camp;

(g) Geology field methods;

(h) Geomorphology;

(i) Geophysics;

(j) Geostatistics;

(k) Glacial geology;

(l) Historical geology;

(m) Hydrogeology;

(n) Lithology;

(o) Marine geology;

(p) Mineral exploration;

(q) Mineralogy;

(r) Paleopedology/ Paleosols;

(s) Petrography;

(t) Petroleum geology;

(u) Petrology;

(v) Planetology;

(w) Remote sensing;

(x) Rock mechanics;

(y) Sedimentology;

(z) Seismology;

(aa) Stratigraphy;

(bb) Structural geology;

(cc) Tectonics;

(dd) Volcanology.

Stat. Auth.: ORS 183 & 672.505 - 672.991

Stats. Implemented: ORS 672.555

Hist.: GE 1-1984, f. & ef. 2-1-84; GE 1-1985, f. & ef. 7-1-85; GE 1-1990, f. & cert. ef. 10-2-90; BGE 1-2006, f. & cert. ef. 3-17-06; BGE 1-2008, f. & cert. ef. 3-20-08; BGE 1-2011, f. 6-21-11, cert. ef. 7-1-11

### 809-050-0005

#### Signature

(1) After the registrant's seal has been applied to the original or record copy, the registrant shall place the registrant's handwritten signature in permanent ink across the seal. The registrant shall write the word "Expires" followed by the registration expiration date directly below the seal. This requirement applies unless a digital signature is used as provided under Section (2).

(2) For an electronic or digital document, an electronic or digital signature is acceptable as allowed by ORS 84.001 to ORS 84.064.

(3) An electronic or digital signature must be:

(a) Unique to the registrant using it;

(b) Under the direct control of the registrant,

(c) Verifiable, and

(d) Include the registrant's expiration date immediately preceded by the word "Expires".



# ADMINISTRATIVE RULES

(4) Each displayed copy of and each hard copy printed from a transmitted or stored electronic document containing an electronic or digital signature shall bear the seal and the signature.

(5) If the electronic or digital document with an electronic or digital signature is altered in any manner, the seal is no longer valid and the document can no longer be considered prepared or approved by or under the direction of a Registered Geologist.

(6) The use of an electronic or digital signature by any person other than the owner may be grounds for disciplinary action.

Stat. Auth.: ORS Chapter 183 & 670.310

Stats. Implemented: ORS 672.605

Hist.: BGE 1-2011, f. 6-21-11, cert. ef. 7-1-11

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## Board of Licensed Social Workers Chapter 877

**Rule Caption:** Clarifies licensure and continuing education requirements, duties of Board Chair. Implements House Bill 2314 (2011).

**Adm. Order No.:** BLSW 1-2011(Temp)

**Filed with Sec. of State:** 7-5-2011

**Certified to be Effective:** 7-5-11 thru 12-31-11

**Notice Publication Date:**

**Rules Amended:** 877-001-0020, 877-010-0015, 877-010-0020, 877-015-0105, 877-015-0108, 877-015-0136, 877-020-0005, 877-020-0008, 877-020-0010, 877-020-0016, 877-020-0036, 877-025-0006, 877-025-0011, 877-040-0050

**Subject:** Limits applicability of LCSW late renewal fee increase to \$200 adopted by the Board effective January 1, 2011 (legislatively ratified in HB 5009- 2011) to LCSWs renewing on active status; provides Board authority to waive fees for licensees on active military duty and deployed outside of Oregon for 90 days or more; clarifies authority of Board Chair including administrative approvals between Board meetings related to licensure; removes requirement that applicant for LCSW licensure must hold LMSW license (implementing House Bill 2314 – 2011); clarifies process and requirements for out-of-state applicants for LCSW who intend to practice prior to issuance of LCSW; specifies types of continuing education that will meet the requirements for licensure or certification renewal for LCSWs, LMSWs, and RBSWs; makes other housekeeping and technical changes.

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

### 877-001-0020

#### Fees for Certification and Licensure

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

(1) With an application for an initial certificate or license:

(a) For Registered Baccalaureate Social Worker — \$50

(b) For Licensed Master's Social Worker — \$50

(c) For Clinical Social Work Associate — \$150

(d) For Licensed Clinical Social Worker — \$150

(2) For the initial issuance of a certificate or license:

(a) For Registered Baccalaureate Social Worker — \$50

(b) For Licensed Master's Social Worker — \$100

(c) For Clinical Social Work Associate — \$60

(d) For Licensed Clinical Social Worker — \$130

(3) For the renewal of a certificate or license:

(a) For Registered Baccalaureate Social Worker:

(A) Active — \$100

(B) Inactive — \$40

(b) For Licensed Master's Social Worker:

(A) Active — \$200

(B) Inactive — \$80

(c) For Clinical Social Work Associate — \$60

(d) For Licensed Clinical Social Worker:

(A) Active — \$130

(B) Inactive — \$48

(4) For a request for renewal of a certificate or license received by the board after the renewal date of the certificate or license:

(a) For Registered Baccalaureate Social Worker — \$50

(b) For Licensed Master's Social Worker — \$50

(c) For Clinical Social Work Associate — \$50

(d) For Licensed Clinical Social Worker on active status — \$200

(e) For Licensed Clinical Social Workers on inactive status or Licensed Clinical Social Workers renewing a license under the provisions of OAR 877020-0060 — \$50.

(5) The fees in 877-001-0020(1)(b) and (2)(b) are waived for any Clinical Social Work Associate who applies for Licensed Master's Social Worker licensure after having completed 75 hours of supervision required in OAR 877-020-0013(3)(b)(A).

(6) The Board may waive any fees in sections (1) through (4) of this rule, upon written request, for any active duty military personnel deployed for 90 days or more outside the State of Oregon.

Stat. Auth.: ORS 675.510-675.600, 675.532-675.533, SB 177(2009) & HB 2345(2009)

Stats. Implemented: ORS 675.571, 675.532, 675.533, 675.990-675.994 & 675.150

Hist.: BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11; BLSW 1-2011(Temp), f. & cert. ef. 7-5-11 thru 12-31-11

### 877-010-0015

#### Chair's Responsibilities

(1) The Board Chair shall be responsible to carry out the duties of the Chair, including but not limited to the following:

(a) Develop a draft agenda for each board meeting.

(b) Act as Chair during the meetings of the Board.

(c) Call Board meetings as necessary.

(d) Appoint Board members to Board committees.

(e) Supervise the Executive Director and act as Chair of the Personnel Committee.

(f) Conduct business with the Governor's Office and the Department of Administrative Services as necessary.

(g) Execute documents as necessary to conduct Board business.

(h) Carry out administrative actions which meet applicable Board rules and guidelines in the interim between Board meetings, which shall be presented to the full Board for ratification or approval on the Consent Agenda of the Board meeting immediately following the Chair administrative action. For purposes of this section of rules, administrative actions by the Board Chair include, but are not limited to:

(A) Approval of CSWA supervision plans, plan changes and plan completions.

(B) Approval of applications for licensure or certification.

(C) Approval of license or certification re-activations.

(D) Approval of extensions of time for investigations under ORS 676.165(4).

(i) The Chair is further authorized to take action in-between Board meetings on matters that require policy decisions by the Board, subject to ratification by the Board at the Board's next meeting immediately following the Chair's action. Any such actions shall be noted on the agenda for the next meeting of the Board and shall become the first order of new business at that next meeting.

(2) The Vice-Chair shall act in lieu of the Chair when the Chair is unable to perform the required duties. If the Chair is aware in advance of any time periods where the Chair is unable to perform the duties of Chair, the Chair shall inform the Vice Chair and the Board's Executive Director in writing.

Stat. Auth.: ORS 675

Stats. Implemented: ORS 675.590

Hist.: BCSW 1-1982, f. & ef. 1-29-82; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11; BLSW 1-2011(Temp), f. & cert. ef. 7-5-11 thru 12-31-11

### 877-010-0020

#### Board Communications

All correspondence in support of Board activities shall be prepared by the Board Executive Director or designee. When deemed necessary or appropriate, the Executive Director will review correspondence with the Board Chair or the Board's legal counsel. The full Board should approve in advance any correspondence which may materially affect Board policies and procedures. When a delay might render the Board's functioning ineffective, the Chair may be required to take immediate action which shall be reviewed at the next meeting of the Board.

Stat. Auth.: ORS 675.510 - 675.600

Stats. Implemented: ORS 675.590

Hist.: BCSW 1-1982, f. & ef. 1-29-82; BCSW 1-1986, f. & ef. 7-7-86; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 1-2001, f. & cert. ef. 5-4-01; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11; BLSW 1-2011(Temp), f. & cert. ef. 7-5-11 thru 12-31-11

### 877-015-0105

#### Rules Applicable to Registration and Licensure

This division of rules describes the procedures and requirements to obtain and renew a certificate of registration as a baccalaureate social worker and a license as a master's social worker and the requirements regarding surrender and reapplication for a certificate or license. The board may issue

# ADMINISTRATIVE RULES

a certificate of registration as a baccalaureate social worker or a license as a master's social worker commencing January 1, 2011.

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

## 877-015-0108

### Eligibility Requirements

To be eligible for initial certificate of registration or license, a person must meet the requirements in sections (1) through (6) of this rule:

(1) The person must submit a complete and accurate application on a form provided by the board.

(2)(a) The person must hold the degree described in sub-section (b) of this section from a college or university accredited by a credentialing body recognized by the board. For an initial certificate of registration only, the person may hold the degree described in sub-section (b)(A) of this section from a college or university accredited by or considered in candidacy status by a credentialing body recognized by the board. The Council on Social Work Education and the Canadian Association for Social Work Education are recognized by the Board. The Board accepts determinations of equivalency of foreign degrees by the Council on Social Work Education's International Social Work Degree Recognition and Evaluation Service. Submission of proof of foreign degree equivalency and cost of the foreign degree equivalency determination are the responsibility of the applicant.

(b)(A) The degree required for initial registration is a baccalaureate degree in social work.

(B) The degree required for initial licensure is a master's degree in social work.

(3) The person must be fit to practice social work in Oregon. The board uses the following standard and procedure to make a fitness determination:

(a) To be fit to practice social work in Oregon, the person must have demonstrated and must currently have:

(A) Good moral character. For purposes of this rule, lack of "good moral character" may be established by reference to acts or conduct which would cause a reasonable person to have substantial doubts about the individual's honesty, fairness, and respect for the rights of others and for the laws of the state and the nation. The conduct or acts in question should be rationally connected to the applicant's fitness to practice social work; and

(B) A personal history of conduct that is consistent with the standards contained in division 30 of this chapter of rules.

(b) In the event the person's history includes conduct that may call into question the person's fitness, the board will consider, if made available by the person, the amount of time elapsed since the conduct and the person's relevant conduct since the questioned conduct, including remedial or compensatory actions taken by the person, if appropriate.

(4) The person must be fit to practice social work in Oregon. In making this fitness determination, the board will consider whether the person is subject of an investigation or disciplinary action by a licensing board and the reasons for the action.

(5) The person must pass the following examination administered by the Association of Social Work Boards:

(a) For registration as a baccalaureate social worker, the bachelor's level examination.

(b) For licensure as a master's social worker, the master's level examination.

(6) The person must achieve a score of 90 percent on the examination on the Oregon statutes and rules prepared by the board on:

(a) The contents of ORS 675.510 to 675.600 and OAR chapter 877, which are the Oregon statutes and administrative rules governing regulated social work.

(b) Oregon Revised Statutes relating to mental health practice that may be relevant to regulated social work.

(7) In the case of an application submitted to the board prior to January 1, 2013, the requirement in section (5) of this rule to pass a test is not applicable. An application mailed to the board is considered submitted on the date the application is postmarked if it is subsequently received by the board.

(8) In the case of an application submitted to the board by a Clinical Social Work Associate who applies for Licensed Master's Social Worker licensure after having completed 75 hours of supervision required in OAR 877-020-0013(3)(b)(A), the requirement in section (5)(b) of this rule to pass a test is not applicable.

Stat. Auth: ORS 675.510-675.600, 675.532-675.533, SB 177(2009) & HB 2345(2009)  
Stats. Implemented: ORS 675.571, 675.532, 675.533, 675.990-675.994 & 675.150

Hist.: BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11; BLSW 1-2011(Temp), f. & cert. ef. 7-5-11 thru 12-31-11

## 877-015-0136

### Reissuance of Certificate of Registration

(1) Following a voluntary surrender under OAR 877-015-0131, the board may issue a new certificate of registration or license if:

(a) The applicant submits a letter to the board explaining the reasons for returning to practice as a regulated social worker;

(b) The board approves the applicant's proposal to demonstrate competence to hold the certificate of registration. The plan may involve participation in continuing education programs; and

(c) The applicant takes and passes the examination described in OAR 877-015-0108(6) on Oregon statutes and rules.

(2) If the board accepts a voluntary surrender after a complaint was filed with the board against the holder while the complaint is pending, the board may issue the certificate of registration or license under conditions that take into account the circumstances of the surrender and may attach conditions to the registration or licensure, including conditions contained in a final order if one was served in connection with the surrender. The board will not reinstate a certificate of registration or license that has been surrendered. A person who surrenders a certificate of registration or license may apply for a new certificate of registration three years after the date the surrender was accepted by the board.

(3) If the board revokes or refuses to renew a certificate of registration or license, other than for the holder's failure to timely apply for renewal, the former holder may reapply for a new license at the expiration of three years from the time it was revoked. The board may issue a new certificate of registration or license upon finding the applicant is fit to practice social work and otherwise meets the requirements for registration or licensure and may attach conditions to the registration or licensure, including conditions contained in a final order if one was served in connection with the revocation.

Stat. Auth: ORS 675.510-675.600, 675.532-675.533, SB 177(2009) & HB 2345(2009)  
Stats. Implemented: ORS 675.571, 675.532, 675.533, 675.990-675.994 & 675.150

Hist.: BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11; BLSW 1-2011(Temp), f. & cert. ef. 7-5-11 thru 12-31-11

## 877-020-0005

### Rules Applicable to Certification and Licensing

This division of rules contains:

(1) The requirements to obtain and renew a certificate of social work associate.

(2) The requirements to obtain and renew a clinical social work license.

(3) The rules regarding the surrender and reapplication for a new license.

(4) The rules regarding the surrender and reapplication for a new certificate.

(5) The process of de-activating and re-activating a clinical social work license.

Stat. Auth.: ORS 675.510 - 675.600

Stats. Implemented: ORS 675.537

Hist.: BCSW 1-1982, f. & ef. 1-29-82; BCSW 2-1990, f. & cert. ef. 7-13-90; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 1-2001, f. & cert. ef. 5-4-01; BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11; BLSW 1-2011(Temp), f. & cert. ef. 7-5-11 thru 12-31-11

## 877-020-0008

### Licensing Requirements

To be eligible for an initial clinical social work license, except when the provisions of OAR 877-020-0016 apply, a person must meet the requirements in sections (1) through (7) of this rule:

(1) The person must complete the requirements in OAR 877-020-0009 to receive a certificate of social work associate and must hold a current certificate in good standing, or must have completed the equivalent of this requirement in another state.

(2) The person must be fit to practice social work in Oregon. In making this fitness determination, the board will consider whether the person is subject of an investigation or disciplinary action by a licensing board and the reasons for the action. The board uses the following additional standard and procedure to make a fitness determination:

(a) To be fit to practice social work in Oregon, the person must have demonstrated and must currently have:

(A) Good moral character. For purposes of this rule, lack of "good moral character" may be established by reference to acts or conduct which would cause a reasonable person to have substantial doubt about the individual's honesty, fairness, or respect for the rights of others or for the laws

# ADMINISTRATIVE RULES

of the state or nation. The conduct or acts in question should be rationally connected to the applicant's fitness to practice clinical social work; and

(B) A personal history of conduct that is consistent with the standards contained in division 30 of this chapter of rules.

(b) In the event the person's history includes conduct that may call into question the person's fitness, the board will consider, if made available by the person, the amount of time elapsed since the conduct and the person's relevant conduct since the questioned conduct, including remedial or compensatory actions taken by the person, if appropriate.

(3) The person must complete the requirements of an approved plan of practice and supervision in accordance with the rules in this division of rules.

(4) The person must pass both the examination administered by the board on the subjects listed in section (6)(a) of this rule with a score of not less than 90 per cent and a national examination for clinical social workers administered by an organization approved by the board on the subjects listed in section (6)(b) of this rule. The person may take the national exam any time after having completed 75 hours of supervision required in OAR 877-020-0013 (3)(b)(A).

(5) The subjects tested on the exam are:

(a) For the examination on the Oregon statutes and rules:

(A) The contents of ORS 675.510 to 675.600 and OAR chapter 877, which are the Oregon statutes and administrative rules governing the practice standards and responsibilities of a licensed clinical social worker.

(B) Oregon Revised Statutes relating to mental health practice that may be relevant to clinical social work practice.

(b) For the national examination:

(A) Human Development and Behavior.

(B) Issues of Diversity.

(C) Diagnosis and Assessment.

(D) Psychotherapy and Clinical Practice.

(E) Communication.

(F) The Therapeutic Relationship.

(G) Professional Values and Ethics.

(H) Clinical Supervision, Consultation, and Staff Development.

(I) Practice Evaluation and the Utilization of Research.

(J) Service Delivery.

(K) Clinical Practice and management in the Organizational Setting.

Stat. Auth.: ORS 675.510 - 675.600 & 675.990

Stats. Implemented: ORS 675.535

Hist.: BCSW 2-1990, f. & cert. ef. 7-13-90; BCSW 3-1990(Temp), f. & cert. ef. 10-15-90; BCSW 1-1991, f. & cert. ef. 3-15-91; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 1-1992, f. & cert. ef. 6-30-92; BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 1-1997, f. & cert. ef. 3-25-97; BCSW 1-1999, f. & cert. ef. 4-9-99; BCSW 1-2001, f. & cert. ef. 5-4-01; BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11; BLSW 1-2011(Temp), f. & cert. ef. 7-5-11 thru 12-31-11

## 877-020-0010

### Plan of Practice and Supervision

(1) After a person submits an application described in OAR 877-020-0009, the board will inform the person whether the application, including the plan of practice and supervision, is approved.

(2) After an application has been approved, an associate may request a change to a plan of practice and supervision by submitting a request to the board that provides a justification for the change and ensures that the plan, as modified, will meet the requirements of this division of rules.

(3) For the associate to satisfactorily complete a plan of practice and supervision, the following requirements must be met while the associate is working under an approved plan of practice and supervision:

(a) The contact with clients described in OAR 877-020-0009(3)(b) must be direct contact during which the associate practices clinical social work, which is defined in ORS 675.510(2).

(b) The associate must meet with a supervisor identified in the plan, as required in OAR 877-020-0009(3)(d):

(A) For a total of 100 hours over a period of not less than 24 consecutive months nor more than 60 consecutive months, of which a minimum of 50 hours must be individual supervision. The associate must meet at least twice each month with a plan supervisor for a minimum of one hour. If there is a second supervisor for group supervision, the requirement in this paragraph (A) is met by a single one-hour meeting with each supervisor.

(B) After the associate has completed the plan requirements contained in paragraph (A) of this sub-section, the associate must continue to meet at least once each month with a plan supervisor for a minimum of one hour.

(c) All supervision must be accomplished directly, in a professional setting.

(d) The associate must submit to the board, on a form provided by the board, each evaluation by the supervisor (or supervisors in the event two are

authorized) required by OAR 877-020-0012(2)(e)(A) of the progress by the associate toward completion of the plan.

(e) The associate must pass the national examination required by OAR 877-020-0008.

(f) The associate must work with each supervisor identified in an approved plan for not less than six months unless

(A) A change in supervision is required by a reason outside the control of the associate and the board approves the change; or

(B) The associate has completed the requirements of the plan.

Stat. Auth.: ORS 675.510 - 675.600 & 675.990

Stats. Implemented: ORS 675.537

Hist.: BCSW 1-1982, f. & ef. 1-29-82; BCSW 1-1986, f. & ef. 7-7-86; BCSW 1-1987, f. & ef. 12-29-87; BCSW 2-1990, f. & cert. ef. 7-13-90; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 1-1992, f. & cert. ef. 6-30-92; BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 2-2005, f. & cert. ef. 12-22-05; BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11; BLSW 1-2011(Temp), f. & cert. ef. 7-5-11 thru 12-31-11

## 877-020-0016

### Licensing of People Qualified in Another Jurisdiction

A person licensed, certified, or registered as a social worker in another jurisdiction is eligible to be licensed or certified in Oregon if:

(1) The person meets the education requirement in OAR 877-020-0009(2) and OAR 877-015-0108(2);

(2) The person is fit to practice regulated social work in Oregon. In making this fitness determination, the board will consider whether the person is the subject of an investigation or disciplinary action by a licensing board and the reasons for the action;

(3) As a condition of licensure, certification, or registration in the other jurisdiction, the person was required to meet requirements substantially equivalent to those set out in division 20 and division 15 of these rules; as applicable; and

(4) The person successfully completes the exam on Oregon statutes and rules and the national exam for regulated social workers described in and subject to the limitation in 877-020-0008 and 877-015-0108(5)(a)(b).

(5) Applicants for LCSW licensure who intend to practice clinical social work in Oregon as defined in ORS 675.510(2) and OAR 877-001-0006 prior to issuance of an Oregon LCSW license, must first, prior to starting practice, qualify for and be issued a clinical social work associate certificate until all requirements for issuance of an Oregon LCSW are met

(6) Applicants for Oregon LCSW licensure who qualify for issuance of a CSWA certification as required in subsection (5) of this rule must comply with the supervision requirement in 877-020-0010(3)(b)(B).

Stat. Auth.: ORS 675.510 - 675.600 & 675.990

Stats. Implemented: ORS 675.535(4)

Hist.: BCSW 1-1997, f. & cert. ef. 3-25-97; BCSW 1-1998, f. & cert. ef. 9-14-98; BCSW 1-1999, f. & cert. ef. 4-9-99; BCSW 2-2005, f. & cert. ef. 12-22-05; BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11; BLSW 1-2011(Temp), f. & cert. ef. 7-5-11 thru 12-31-11

## 877-020-0036

### Reapplication for Certificate or License

(1) Following the voluntary surrender of a certificate or license under OAR 877-020-0031(2), the board may issue a new certificate or license if:

(a) The applicant submits a letter to the board explaining the reasons for returning to practice;

(b) The board approves the applicant's proposal to demonstrate competence to hold the certificate or license. The plan may involve participation in continuing education programs or clinical supervision; and

(c) The applicant takes and passes the examinations described in OAR 877-020-0008.

(2) If the board accepts a voluntary surrender of a certificate or license after a complaint was filed with the board against the holder while the complaint is pending, the board may issue a new certificate or license under conditions that take into account the circumstances of the surrender and may attach conditions to the certificate or license, including conditions contained in a final order if one was served in connection with the surrender. The board will not reinstate a license or certificate that has been surrendered. A person who surrenders a certificate or license may apply for a new license three years after the date the surrender was accepted by the board.

(3) If the board revokes or refuses to renew a certificate or license, other than for the holder's failure to timely apply for renewal, the former holder may reapply at the expiration of three years from the time it was revoked. The board may issue a new license upon finding the applicant is fit to practice social work and otherwise meets the requirements for licensure and may attach conditions to the certificate or license, including conditions contained in a final order if one was served in connection with the revocation.

Stat. Auth.: ORS 675.510 - 675.600 & 675.990

Stats. Implemented: ORS 675.595



# ADMINISTRATIVE RULES

Hist.: BCSW 2-1990, f. & cert. ef. 7-13-90; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 1-1997, f. & cert. ef. 3-25-97; BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08; BLSW 1-2011(Temp), f. & cert. ef. 7-5-11 thru 12-31-11

## 877-025-0006

### Types of Continuing Education

To meet the requirements of this division of rules, continuing education must be one of the following:

(1) A conference, seminar, book, journal article or workshop that:

(a) Addresses subjects related to the regulated social worker's work practice;

(b) Is attended (or read as applicable) by the regulated social worker in person, on-line or through a web cast; and

(c) Is provided or approved by a credentialing body recognized and approved by the board. The board recognizes and approves a credentialing body based on the following practices of the body:

(A) The body uses an established process for determining which training to provide or approve.

(B) The body uses an established process for determining who will present the training.

(C) The body provides, with respect to the training, written materials that demonstrate the relevance of the training to the field of clinical social work.

(D) The body establishes an appropriate number of continuing education credits for the training.

(E) The body verifies the credentials of the presenters of the training.

(F) The body uses an established system for the evaluation of presenters.

(G) The body provides a certificate of completion to those who attend, based on actual attendance.

(2) A conference, seminar, book, journal article, or workshop that:

(a) Meets the following requirements:

(A) Is related to the field of clinical social work or, in the case of a baccalaureate social worker or master's social worker, the field of social work;

(B) Addresses subjects related to the regulated social worker's work practice;

(C) Is not provided or approved by a credentialing body recognized and approved by the board; and

(D) Is attended (or read as applicable) by the regulated social worker in person, on-line, or through a web cast.

(b) Is approved by the Board based on the regulated social worker's written application that:

(A) Contains the following information:

(i) Name or description of the event.

(ii) Date of the event.

(iii) Brief description of the training sufficient to show that the training meets the requirements of section (2)(a) of this rule.

(iv) Name and credentials of each presenter.

(v) Number of continuing education units requested.

(vi) Copy of the certificate of completion.

(B) Is received by the board not later than the time of the submission of the report required by OAR 877-025-0021 and not later than 45 days prior to the last day of the birth month of the regulated social worker.

(3) For Registered Baccalaureate Social Workers and Licensed Master's Social Workers, an in-service, agency-sponsored program that otherwise meets the requirements of subsection (2) of this rule section. CE credit form such a qualifying in-service can be used for up to half the applicable CE hours required for renewal.

(4) A course related to social work at an accredited college or university.

(5) A training video or audio recording approved by a credentialing body recognized and approved by the board using the standards provided in section (1)(c) of this rule. Successful completion is demonstrated by award to the regulated social worker by the credentialing body.

(6) Participation in a study group, subject to the following limitations:

(a) The group must contain a minimum of five and a maximum of 10 licensed mental health professionals who meet for a minimum of an hour on a scheduled basis to discuss topics directly related to the field of clinical social work.

(b) The focus of the group's meeting must be a presentation or discussion of a book or article published by a professional body.

(c) The topics of the group's discussion must be directly related to established mental health care and relevant to good practice.

(d) A maximum of two hours may be credited for a group meeting.

(e) Credit for participation in a study group must be approved in advance by the board. To apply for approval, a regulated social worker must submit the names of the group members and discussion topics to the board.

(7) Development and presentation of a conference, workshop, or seminar that would be countable for credit under section (1) or (2) of this rule.

Stat. Auth.: ORS 675.510(3), 675.530(1)(3), 675.535(1), 675.537(1)(3), 675.560 (2), 675.571(4), 675.595(3), 675.600(1)(a)

Stats. Implemented: ORS 675.510 - 675.600

Hist.: BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11; BLSW 1-2011(Temp), f. & cert. ef. 7-5-11 thru 12-31-11

## 877-025-0011

### Required Hours of Continued Education

(1) Generally.

(a) A regulated social worker is required to report continuing education for all periods during which the person's registration or license is active except for the period covered by the initial certificate of registration or license, unless a waiver is granted under section (2) of this rule. An initial issuance is the first issuance of the board of a certificate of registration or license to the regulated social worker.

(b) Following the first renewal of a certificate of registration or license, except when the regulated social worker is on inactive status, the regulated social worker must complete continuing education in each reporting period at the times described in OAR 877-025-0021. The holder of an inactive certificate of registration or license is not required to submit the biennial report.

(c) A report covering a two-year period must include:

(A) For a registered baccalaureate social worker, a minimum of 20 hours of creditable continuing education.

(B) For a master's social worker, a minimum of 30 hours of creditable continuing education.

(C) For a licensed clinical social worker, a minimum of 40 hours of creditable continuing education.

(d) In a report that covers a shorter period than two years, as may happen in the case of the first report by a new regulated social worker or following the reactivation of a registration or license, the number of hours required by sub-section (c) of this section is pro-rated.

(2) Waiver of requirement.

(a) Upon timely written request of a regulated social worker, made as soon as the regulated social worker is aware of the possible need for a waiver, the board may reduce the number of hours required by section (1) of this rule in the event the regulated social worker is unable, due to circumstances beyond the reasonable control of the regulated social worker, to complete the number of hours of continued education required by this division of rules.

(b) A reduction authorized by the board would normally reflect the regulated social worker's ability to attend training during the time not affected by the adverse circumstances leading to the request. For instance, a regulated social worker unaffected by the adverse circumstance during the first year of a two-year reporting period would be expected to obtain 20 hours of credit.

(c) Examples of circumstances that may justify a waiver are:

(A) A circumstance beyond the reasonable control of the regulated social worker makes it impracticable to attend training for an extended time.

(B) The health of the regulated social worker or of another person makes it impracticable to attend training for an extended time.

Stat. Auth.: ORS 675.510(3), 675.530(1)(3), 675.535(1), 675.537(1)(3), 675.560 (2), 675.571(4), 675.595(3), 675.600(1)(a)

Stats. Implemented: ORS 675.510 - 675.600

Hist.: BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11; BLSW 1-2011(Temp), f. & cert. ef. 7-5-11 thru 12-31-11

## 877-040-0050

### Contested Case Hearing

When the board takes disciplinary action, the board will place notice of this action in the Directory of Regulated Social Workers. The board will also provide notice of the action to the Oregon Chapter of the National Association of Social Workers (NASW), the Oregon Society of Clinical Social Workers (OSCSW), and to the Association of Social Work Boards (ASWB) Disciplinary Action Reporting System (DARS).

[Publications: Publications referenced are available from the agency.]

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

Stats. Implemented: ORS 675.595

Hist.: BCSW 1-1986, f. & ef. 7-7-86; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 1-1995, f. 6-26-95, cert. ef. 7-1-95; BCSW 1-2001, f. & cert. ef. 5-4-01; BCSW 2-2005, f. & cert. ef. 12-22-05; BCSW 1-2009, f. 6-15-09, cert. ef. 7-1-09; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11; BLSW 1-2011(Temp), f. & cert. ef. 7-5-11 thru 12-31-11

# ADMINISTRATIVE RULES

## Board of Massage Therapists Chapter 334

**Rule Caption:** Amend budget, remove definition of agency.

**Adm. Order No.:** BMT 2-2011

**Filed with Sec. of State:** 6-29-2011

**Certified to be Effective:** 7-1-11

**Notice Publication Date:** 4-1-2011

**Rules Amended:** 334-001-0012, 334-001-0060

**Subject:** The Oregon Board of Massage Therapists (Board) is permanently amending the 2011–2013 biennium budget, to address the financial operations of the agency.

The Board is permanently amending definitions to remove the word “agency” as the current definition is erroneous and the word referenced in common terms.

**Rules Coordinator:** Diana Nott—(503) 365-8657, ext. 1

### 334-001-0012

#### Budget

The Oregon Board of Massage Therapists hereby adopts, and fully incorporates herein, the Oregon Board of Massage Therapists 2011–2013 Biennium budget of \$1,602,000

Stat. Auth.: SB 1127, ORS 183 & 687.121

Stats. Implemented: Section 6, (1) & (2)

Hist.: BMT 2-1999(Temp), f. & cert. ef. 9-17-99 thru 3-15-00; BMT 1-2000, f. & cert. ef. 1-12-00; BMT 2-2000, f. & cert. ef. 8-3-00; BMT 1-2001, f. & cert. ef. 5-29-01; BMT 2-2003, f. & cert. ef. 6-17-03; BMT 2-2005(Temp), f. & cert. ef. 6-24-05 thru 6-30-05; BMT 3-2005, f. & cert. ef. 7-1-05; BMT 1-2007, f. & cert. ef. 6-29-07; BMT 2-2007, f. & cert. ef. 7-3-07; BMT 3-2009, f. & cert. ef. 7-2-09; BMT 3-2010, f. 12-22-10, cert. ef. 1-1-11; BMT 1-2011, f. & cert. ef. 4-21-11; BMT 2-2011, f. 6-29-11, cert. ef. 7-1-11

### 334-001-0060

#### Definitions

(1) “Barter” means partial or complete trade or exchange of massage or bodywork services for any other type of goods or service other than money.

(2) “Board” means the State Board of Massage Therapists or its authorized representatives as provided by ORS 687.115.

(3) “Bodywork” means the use on the human body, for the purpose of, but not limited to, maintaining good health and establishing and maintaining good physical condition of:

(a) Pressure, friction, stroking, tapping, kneading, vibration or stretching by manual or mechanical means or gymnastics;

(b) Appliances, tools or devices;

(c) Topical preparations; or

(d) Hot and cold applications.

(4) “Boundary” means the limits in a professional relationship which create safety based on the needs of the client.

(5) “Boundary violation” means an alteration or shift in the limits of a professional relationship so that what is allowed in the relationship becomes ambiguous and/or may not be based on the needs of the client.

(6) “Caring” means acting in a manner in which things, events, people or relationships matter.

(7) “Certified Class or program” means a class or program that is approved by the Board and is offered:

(a) By a person or institution licensed as a career school under ORS 345.010 to 345.450; or

(b) By a community college approved by the Department of Education; or

(c) In another state and licensed or approved by the appropriate agency in that state.

(8) “Client” means any individual, group of individuals, or organization to whom an L.M.T. provides massage

(9) “Client vulnerability” means factors which diminish a client’s ability to be self-determining.

(10) “Compensation” means something given or received as payment including but not limited to bartering, tips, monies, donations, or services.

(11) “Conflict of interest” means any action or decision or recommendation by an LMT at the detriment of a client.

(12) “Contact hours” means actual hours in class under the instruction of and in the presence of an instructor.

(13) “Critical Reflection” means a process whereby knowledge and action are connected to each other through the application of careful, conscious, deliberate reflection on:

(a) Personal practice (perceptions, assumptions, motivations, values, behaviors).

(b) Assessment and understanding of a situation.

(c) Likely or actual consequences or impact of one’s actions.

(14) “Dual Relationship” means any relationship of a personal or business nature with a client that is in addition to or concurrent with a professional relationship in which the L.M.T. is providing or has provided massage or bodywork services to that same client.

(15) “Ethics” means a system of valued societal beliefs and behaviors that may be used to guide and evaluate conduct to ensure the protection of an individual’s person and rights.

(16) “Indorsement” means:

(a) The process of evaluating and recognizing the credentials of a person licensed in Oregon in another health care specialty that includes in its scope of practice, acts defined as massage: or

(b) The process of evaluating and recognizing the credentials of a massage or bodywork practitioner authorized to practice massage or bodywork in another jurisdiction.

(17) “Informed consent” means a process wherein clients have knowledge of what will occur, that participation is voluntary, and that the client is competent to give consent.

(18) “Licensee” means any person holding a license, permit, or certificate issued by this Board; an L.M.T.

(19) “L.M.T.” means a Licensed Massage Therapist.

(20) “Massage” or “massage therapy” is defined in ORS 687.011.

(21) “Personal power” means recognizing and taking personal responsibility for the inherent power differential between the L.M.T. and the client and recognizing and taking personal responsibility for the impact of professional decisions, actions and behavior on the client.

(22) “Power differential” means the basic inequality inherent in the professional relationship between an L.M.T. and a client in terms of who has the advantage in the relationship. The L.M.T. is presumed to have the advantage by virtue of the authority which emerges from the role of professional and the vulnerability which is automatically part of the role of client.

(23) “Practice of massage” is defined in ORS 687.011.

(24) “Professional authority” means the power inherent in the professional role and which is derived from a combination of an L.M.T.’s specialized or expert knowledge, societal expectations, stated and unstated client expectations, and an L.M.T.’s personal power.

(25) “Professional relationship” means the relationship established when an L.M.T. contracts with a client, verbally or in writing, to provide any service associated with the practice of massage or bodywork.

(26) “Professional role” means assuming the demands and responsibilities of professional authority by taking charge of the conditions which create and maintain client safety and trust in the professional-client relationship.

Stat. Auth.: ORS 687.011 & 687.121

Stats. Implemented: ORS 687.011

Hist.: BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2003, f. & cert. ef. 1-24-03; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 3-2009, f. & cert. ef. 7-2-09; BMT 2-2011, f. 6-29-11, cert. ef. 7-1-11

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## Board of Nursing Chapter 851

**Rule Caption:** Rule amendments for Nursing Assistant, Medication Aide, and CNA2 training programs.

**Adm. Order No.:** BN 2-2011

**Filed with Sec. of State:** 7-11-2011

**Certified to be Effective:** 7-11-11

**Notice Publication Date:** 5-1-2011

**Rules Adopted:** 851-061-0075

**Rules Amended:** 851-061-0020, 851-061-0030, 851-061-0040, 851-061-0050, 851-061-0080, 851-061-0090, 851-061-0110, 851-061-0130

**Subject:** These rules cover the standards for training programs for Nursing Assistants (NA) and Medication Aides (MA). This rule amendment includes language to permit on-line training for CNA2s and Medication Aides, removes barriers in the director/instructor/preceptor qualifications for MA training programs, increases the classroom/lab hours for MA training programs, and adds student protections for NA and MA training programs.

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

# ADMINISTRATIVE RULES

## 851-061-0020

### Definitions

As used in these rules:

(1) "Assisted Living Facility" means a facility that is licensed by the State of Oregon and as defined by the Oregon Department of Human Services.

(2) "Board-approved Curriculum" means content required in nursing assistant and medication aide training programs established by Board policy.

(3) "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.

(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) "Clinical Instructor" means a registered nurse whose role is education of students in the skills laboratory or clinical site and who may participate in classroom teaching under the direction of the program director or primary instructor.

(9) "Clinical Preceptor" means a licensed nurse who provides direct clinical supervision of students during their clinical experience under the direction of the program director or a primary instructor.

(10) "Clinical Site" is a location or situation in which hands on experience with actual clients is obtained.

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

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

(13) "Criminal History Check" means the Oregon Criminal History Check and when required, a National Criminal History Check and/or a State-Specific Criminal History Check, and processes and procedures equivalent to the Department of Human Services (DHS) rules.

(14) "Direct supervision" means that the registered nurse, clinical nurse specialist, or nurse practitioner is physically present and accessible in the immediate client care area and is available to intervene if necessary.

(15) "Facility-Based Program" means an approved nursing assistant or medication aide training program in a licensed nursing facility.

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

(17) "Independent Training Program" means an approved nursing assistant or medication aide training program that is not a facility-based program.

(18) "Instructor-directed" means an on-line training that is managed, directed, and facilitated through interaction between learners and identified instructor(s). Learning activities may occur through either synchronous or asynchronous interaction between instructor and students and among students.

(19) "Level 1 training" is the minimum training required to prepare a graduate to take the state certification examination for CNA 1.

(20) "Level 2 training" is training available to a CNA 1 to prepare them for a role in one or more of the Board approved category areas.

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

(22) "Nursing Assistant" means a person who assists licensed nursing personnel in the provision of nursing care. ORS 678.440(4)

(23) "On-line program" means an interactive computer based training program that provides at least the equivalent of the Board required classroom, laboratory, and clinical hours under the supervision of a Board approved instructor/preceptor.

(24) "On-line program provider" means a provider that has a proven track record of successfully providing professional development, training and educational programs in both classroom and on-line environments in

Oregon, either directly or in partnership, in the previous 24 months of application, and meets all Board requirements.

(25) "Program" means a training program that prepares graduates for certification as a nursing assistant level 1, level 2, or medication aide. The terms "nursing assistant program, or "medication aide program" as used in these rules, are synonymous with "Program."

(26) "Representative of the Board" means the Nursing Assistant Program Consultant or Board designee qualified to perform the necessary responsibilities.

(27) "Residential Care Facility" means a facility that is licensed by the State of Oregon and as defined by the Oregon Department of Human Services.

(28) "Self-directed" means an on-line program in which course materials, learning activities, communications, and assessment activities are delivered and completed electronically. Learners engage in and complete activities at their own pace.

(29) "Self-Evaluation" means a review of a basic nursing assistant or medication aide training program conducted by the program director using forms provided by the Board and submitted to the Board.

(30) "Site Visit" means that representative(s) of the Board go to the location of a program for specified purpose(s) which may include a survey for approval.

(31) "Standards for Approval" means authoritative statements which set expectations for a program to achieve and maintain approval status. (OAR 851-061-0080 through 0130).

(32) "Survey Visit" means that representative(s) of the Board go to the location of a program to review the program for compliance with Standards for Approval, and to prepare a report and recommendation regarding approval status.

(33) "Waiver of Prohibition" authorizes a program to be taught in but not by a facility that has had its approval denied or withdrawn pursuant to OAR 851-061-0050(2).

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 1-2004, f. 1-29-04, cert. ef. 2-12-04; BN 11-2004, f. & cert. ef. 7-13-04; BN 2-2008, f. & cert. ef. 2-25-08; BN 2-2011, f. & cert. ef. 7-11-11

## 851-061-0030

### Process for Program Approval

(1) Any person, partnership, association, corporation, or limited liability company desiring to offer training other than just nursing assistant or medication aide training to non-employed students will need to be licensed through the Oregon Department of Education in addition to meeting the Board's standards as described in these rules.

(2) Any person, partnership, association, corporation, or limited liability company desiring to offer only nursing assistant or medication aide training without being licensed through the Oregon Department of Education shall apply for an exemption of licensure from the Department of Education.

(3) All nursing assistant or medication aide training programs shall be Board-approved prior to being offered. Retroactive approval shall not be granted.

(4) Application for Initial Approval of level 1, level 2, and medication aide training programs. A facility, agency, on-line program provider, or individual wishing to establish a new nursing assistant or medication aide training program shall make application to the Board at least 45 days in advance of expected start date. The application for initial approval of a training program shall include:

- (a) A completed form provided by the Board;
- (b) Appropriate fees;
- (c) Faculty names and qualifications;
- (d) Names of classroom and clinical facilities;
- (e) Name of person authorized to accept service of notices issued by the Board;
- (f) Program rationale, philosophy and purpose;
- (g) Program outline:
  - (A) Objectives;
  - (B) Curriculum content divided into number and sequence of didactic and clinical hours; and
  - (C) Teaching methodology.
- (h) Evaluation method:
  - (A) Laboratory and clinical skills checklist approved by the Board;
  - (B) Final exam; and
  - (C) In addition, for level 2 training programs, a Board approved competency evaluation.
- (i) Enrollment agreement and disclosure statement that includes:



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- (A) Beginning and ending dates of the training;
- (B) An outline of the instructional program as required by these rules for which the student is enrolled;
- (C) Fees, tuition, and other program costs (books, clothing, etc.) itemized separately;
- (D) A published cancellation and refund policy, procedure, and schedule that is fully explained during orientation, prior to the beginning of instruction, and requires no less than:
  - (i) If the training program discontinues after the fees and tuition have been paid, the program provider must refund the tuition and fees in full if the closure happens before the course is completed;
  - (ii) If the student cancels enrollment in writing three days before the commencement of the first day of classes or three days before they receive access to the online didactic training, all tuition and fees paid to the program specific to the enrollment agreement, will be refunded, less a cancellation fee that cannot exceed 10 percent of the tuition and fees paid; and
  - (iii) Clearly stated reasons for which a refund will not be granted; and
- (E) Information about how the student can file a complaint about the program with the Board.
- (j) Tentative time schedule for initiating the program; and
- (k) Plan for what job placement assistance will consist of from the training program.

(5) A site visit may be conducted by a representative(s) of the Board;

(6) The program director will be notified of approval or non-approval. Following receipt of notification from the Board of approval or non-approval:

- (a) A program that is approved may begin classes according to the schedule submitted;
- (b) A program that is not approved will be notified of the deficiencies and will be re-evaluated after appropriate modifications are made;
- (c) A program denied approval may petition the Board for reconsideration.

(7) An approved nursing assistant level 1 or medication aide training program:

- (a) Shall be required to demonstrate ongoing compliance with the standards of approval at least every two years for continued approval.
- (b) Shall be surveyed for consideration of continued approval and may have a survey visit or interim self-evaluation report required by the Board at any time.
- (c) May be subject to scheduled or non-scheduled site visits for continued approval or any other purpose at any time.
- (d) Shall submit an interim self evaluation during the intervening year or as requested by the Board on forms provided by the Board.
- (e) Shall have records available for review.
- (f) Shall have adequate financial support for the stability and continuation of the program.

(8) An on-line provider shall have a proven track record of successfully providing professional development, training and educational programs in both classroom and on-line environments in Oregon, either directly or in partnership, in the previous 24 months, and meet all Board requirements prior to being approved.

(9) Following initial approval, level 2 training programs remain approved unless specifically withdrawn by the Board.

(10) Program changes requiring Board approval:

- (a) Change of program ownership:
  - (A) If the change only causes minor changes, there is no need to seek new approval of the program.

- (B) If the change causes a substantial difference as determined by the Board through the impact on the students, faculty, or program resources, an application and approval for the program shall be required.

- (b) Changes in course content, lab/clinical skill checklist, final exam, certificate of completion, program director, primary instructor, clinical instructor, clinical preceptor, policies and procedures related to attendance, course requirements, cancellation and refunds, or classroom or clinical training sites shall be submitted to the Board for approval.

Stat. Auth.: ORS 678.440 & 678.444

Stats. Implemented: ORS 678.444

Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 5-2002, f. & cert. ef. 3-5-02; BN 1-2004, f. 1-29-04, cert. ef. 2-12-04; BN 7-2006, f. & cert. ef. 5-8-06; BN 2-2008, f. & cert. ef. 2-25-08; BN 2-2011, f. & cert. ef. 7-11-11

## 851-061-0040

### Inactive Status or Closure of a Program

(1) Voluntary Inactive Status. A training program may be granted temporary inactive status for up to two years:

(a) The program director shall notify the Board in writing of the intended inactive date and the plan for allowing the currently enrolled students to complete the program.

(b) The program shall be continued until the committed class schedule of currently enrolled students is completed.

(2) Involuntary Inactive Status. A training program shall be placed on temporary inactive status for up to one year for the following reasons:

(a) To allow an opportunity for the program to take corrective action; or

(b) After a period of 12 months during which no classes were taught.

(3) Process to reinstate active status: A training program may be reinstated subsequent to voluntary or involuntary inactive status by submitting satisfactory evidence that the program meets Board standards.

(4) Voluntary Closing. When a facility, institution or individual considers closing a nursing assistant training program, the program director shall:

(a) Notify the Board in writing of the intended closing date and the plan for allowing the currently enrolled students to complete the program.

(b) Continue the program until the committed class schedule of currently enrolled students is completed.

(c) Provide for the custody of the records:

(A) If the nursing assistant or medication aide training program closes but the educational institution or licensed health care agency continues to function, the institution shall assume responsibility for the records of the students and the graduates. The Board of Nursing shall be advised of the arrangements made to safeguard the records.

(B) If the facility-based or independent training program ceases to exist, the Board of Nursing shall be consulted about the maintenance of student records.

Stat. Auth.: ORS 678.440 & 678.444

Stats. Implemented: ORS 678.440 & 678.444

Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 1-2004, f. 1-29-04, cert. ef. 2-12-04; BN 2-2011, f. & cert. ef. 7-11-11

## 851-061-0050

### Denial or Withdrawal of Program Approval

(1) The Board may deny or withdraw approval if standards for approval of new or existing nursing assistant level 1, level 2, or medication aide training programs are not being met:

(a) Notice of the deficiency(ies) shall be given in writing to the program director;

(b) The program director may submit evidence of correction to the Board;

(c) The Board may withdraw program approval immediately or prescribe the time within which the deficiency(ies) shall be corrected;

(d) The approval may be withdrawn, if the program fails to correct the deficiency(ies) within the time specified;

(e) A program may request a hearing if the approval is withdrawn; and

(f) The withdrawal may be effective after the last currently enrolled student has completed the program.

(2) Pursuant to Federal Regulations the Board shall deny approval to a nursing assistant training program and shall withdraw approval from a previously approved nursing assistant training program offered by or in a licensed nursing facility or a skilled nursing facility which, in the previous two years:

(a) Has operated under a waiver of the federal requirement for nursing facilities and skilled nursing facilities to have 24 hour a day licensed nurse staffing with eight hour a day registered nurse staffing when such waiver is in excess of 48 hours per week; or

(b) Has been determined by surveyors from the state Seniors and People with Disabilities Division or federal Center for Medicare and Medicaid Services to have conditions which pose an immediate threat to resident health and safety; or

(c) Has been subject to an extended or partial extended survey, a restriction of admissions or an impending restriction of admissions for provision of substandard quality of care; or

(d) Was subject to a denial of payment under federal law; or

(e) Has had its Medicare participation terminated under federal or state law; or

(f) Was assessed a civil penalty of \$5,000 or more, for deficiencies in nursing facility standards, except if waived pursuant to 42 CFR § 483.151; or

(g) Has operated under trusteeship appointed to oversee the operation of the nursing facility and to ensure the health and safety of its residents; or

(h) As a result of state action terminated the operation of the facility or was closed or has had its residents transferred.

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(3) A program or facility that has had its approval denied or withdrawn pursuant to OAR 851-061-0050(2) may apply for waiver of prohibition if:

(a) The facility has received written notice from Seniors and People with Disabilities Division's Client Care Monitoring Unit that it is in compliance with regulations governing licensure and/or certification; and

(b) There is not another program within ten road-miles from the facility submitting the request.

(4) The letter of request for waiver of prohibition shall:

(a) Address the distance in road-miles from the sanctioned facility to the closest program or facility that is willing and eligible for approval to serve as a clinical site for the training program; and

(b) Include a written statement of compliance with the standards for licensure and certification.

(5) The Board shall grant or deny the waiver based upon information received from applicant and Seniors and People with Disabilities Division's Client Care Monitoring Unit.

(6) The Board may withdraw program approval of a nursing assistant level 1 or medication aide training program if:

(a) The program cannot provide satisfactory evidence that the standards for nursing assistant or medication aide training programs are consistently maintained; or

(b) No classes have been taught for 24 consecutive months; or

(c) The average pass rate for graduates of the program falls below 85% over a two year period; or

(d) The clinical facility fails to permit a site visit of the training program.

(7) The Board may withdraw program approval of a nursing assistant level 2 training program if:

(a) Standards for program approval are not met as determined by a survey visit or interim self evaluation report which may be required by the Board at any time, for any purpose, and may be announced or unannounced; and

(b) A site visit is not permitted or records are not available for review.

(8) When program approval is withdrawn, the program shall:

(a) Submit a plan to the Board within ten working days for completion of the currently enrolled students;

(b) Allow students who have started a training program from which approval has been withdrawn to complete the course; and

(c) Submit the required student information to the Board, using the Board approved format, when the students have completed the course.

(9) The Board may reinstate approval of the nursing assistant or medication aide training program upon submission of satisfactory evidence that the program meets the Board standards.

Stat. Auth.: ORS 678.440 & 678.444

Stats. Implemented: ORS 678.444

Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 1-2004, f. 1-29-04, cert. ef. 2-12-04; BN 6-2008, f. & cert. ef. 6-24-08; BN 2-2011, f. & cert. ef. 7-11-11

## 851-061-0075

### Standards for Approval: Organization and Administration

(1) Training program policies and procedures shall be in written form and shall be reviewed at least once every two years.

(2) Training programs implementing program changes cannot require students who are currently enrolled to complete the requirements of a revised program. Enrolled students are to be taught out under the program identified in their most current signed enrollment agreement. Exceptions may be allowed when and if the school and student mutually agree to the program change(s) and a new or amended enrollment agreement is negotiated, accepted, and signed by the student and school. Examples of program changes as used in this rule include, but are not limited to, increase or decrease of hours required, changes in the schedule of hours of instruction, adding or dropping course requirements, increasing program costs or fees, or changes in the payment plan.

(3) Training program shall be financially viable for the stability and continuation of the program.

(a) Training program providers in assisted living, licensed nursing, and residential care facilities licensed by the Department of Human Services or the Health Authority and training programs licensed by the Department of Education are exempt from demonstrating financial viability to the Board.

(b) Training program providers not identified in OAR 851-061-0075(3)(a), will provide financial statements to demonstrate:

(A) Assets equal to or greater than liabilities;

(B) No operating loss in any year of more than 10% of their net worth; and

(C) No operating loss of any amount for two consecutive years.

(c) A training program that is unable to verify financial viability may be required to carry a bond, get a letter of credit, or escrow unearned tuition.

(4) All training program advertising, sales, collection, credit or other business practices are conducted in a manner that does not violate ORS 646.608.

Stat. Auth.: ORS 678.440 & 678.444

Stats. Implemented: ORS 678.440 & 678.444

Hist.: BN 2-2011, f. & cert. ef. 7-11-11

## 851-061-0080

### Standards for Program Approval: Faculty Qualifications and Responsibilities

(1) The training of nursing assistants level 1 shall be by or under the supervision of a program director or primary instructor who has at least one year of nursing experience in a licensed nursing facility.

(2) The program director shall hold a current, unencumbered license to practice as a registered nurse in Oregon; and

(a) For a nursing assistant level 1 and level 2 training program, have at least three years of nursing experience, including at least one year of working in direct patient care; and one of the following:

(A) One year of experience on a nursing faculty;

(B) One year of experience in staff development;

(C) Evidence of academic preparation for teaching adults; or

(D) Evidence of equivalent experience.

(b) For a medication aide training program, have at least three years of experience as a Registered Nurse, including at least one year as a nurse educator or nurse administrator.

(3) The program director shall:

(a) Act as liaison with the Board related to the program's continuing compliance with the required elements of these rules;

(b) Implement and maintain a program that complies with all Board standards;

(c) Assume the ultimate responsibility for the implementation of the Board-approved curriculum;

(d) Have sufficient time provided for carrying out administrative responsibilities. Number of faculty, students, classes in progress, and locations utilized for classroom and clinical training are to be considered in determining appropriate time allocated;

(e) Recruit, supervise, and evaluate qualified primary instructors and clinical instructors or preceptors;

(f) Develop and implement written policies necessary for the operation of the program, including those maintained under OAR 851-061-0110(1)(c)(G);

(g) Ensure that all students have initiated a criminal history check prior to entering the program and that all students are eligible pursuant to laws governing the clinical site facility to participate in the program's clinical experiences.

(h) Coordinate classroom and clinical sites and activities;

(i) Ensure that the classroom, lab, and clinical environment is conducive to teaching and learning;

(j) Assure that the clinical setting provides an opportunity for the students to perform the skills taught in the curriculum;

(k) Ensure that a Board-approved primary instructor, clinical instructor, or clinical preceptor is on the premises at all times during scheduled clinical hours;

(l) Supervise or coordinate supervision of students in the clinical setting or assign this responsibility to the primary instructor.

(m) Provide or arrange for the orientation of the primary and clinical instructors or clinical preceptors to their role and responsibilities.

(n) Assess students' reactions to course content, instructional effectiveness, and other aspects of the learning experience;

(o) Submit program data upon request of the Board on forms provided by the Board;

(p) Submit required reports;

(q) Verify that the training facility in which the training program is offered or utilized for the clinical experience is licensed under the appropriate licensing agency and is in substantial compliance with all standards for licensure;

(r) Verify that a facility utilized for out-of-state clinical experience:

(A) Has not been found within the preceding two years, by the state survey and certification agency, using the currently applicable Center for Medicare and Medicaid Services regulations, to be categorized as providing substandard quality of care;

(B) Is no more than 50 miles from an Oregon border; and

(C) Has given permission for site visit(s) by Board staff.

# ADMINISTRATIVE RULES

(s) For medication aide training programs, determine student eligibility by verifying that the applicant:

(A) Holds a current certificate to practice as a CNA 1 on the CNA Registry;

(B) Has graduated from an approved basic nurse aide training program at least six months prior to enrollment in the medication aide training program; and

(C) Meets the employment requirement of at least six months of full time experience as a nursing assistant or the equivalent in part time experience since graduation from a basic nursing assistant training program unless the applicant is exempt under OAR 851-062-0090.

(4) The primary instructor shall hold a current, unencumbered license to practice as a registered nurse in Oregon; and

(a) For a nursing assistant level 1 and level 2 training program, have two years experience as a registered nurse and teaching experience or educational preparation for teaching adults.

(b) For a medication aide training program, have at least three years of nursing experience, to include:

(A) One year as a nurse educator, a primary instructor in a nursing assistant training program or as a nurse administrator, and

(B) One year working with the particular type of clientele or providing clinical instruction in a setting with the particular type of clientele with whom students will have their clinical experience.

(c) May be the director of nursing service in a long term care facility only if there is evidence of formal arrangements for the director of nursing position to be filled by another qualified nurse during the period of instruction.

(5) The primary instructor shall:

(a) Implement the required Board-approved curriculum;

(b) Provide effective teaching strategies in an environment that encourages student and instructor interaction;

(c) Supervise and be present in the classroom at least 75% of the time that classes are being taught, or for on-line programs, be available for consultation and additional clarification at least every 72 hours;

(d) Evaluate competency of students; and

(e) In addition, for medication aide training programs, the primary instructor shall:

(A) Obtain approval from a facility prior to using a facility employee as a clinical preceptor. The facility has the right to refuse such approval;

(B) Ensure that each student's clinical experience includes administration of medications by all approved routes of administration and includes administration of a variety of medications; and

(C) Supervise the clinical experience for all medication aide students. Clinical preceptors may be used as appropriate.

(6) Other personnel from the healthcare professions may supplement the instructor in their area of expertise:

(a) For a nursing assistant level 1 and level 2 training program, the program director or primary instructor may:

(A) Involve as trainers for a specific portion of the nursing assistant training, other licensed nursing personnel or other licensed health care professionals who have at least one year of experience in their field.

(B) Use an approved clinical instructor who shall:

(i) Hold a current, unencumbered license to practice as a registered nurse in Oregon; and

(ii) Have the equivalent of one year full time experience as a registered nurse.

(C) Use an approved clinical preceptor who shall:

(i) Hold a current, unencumbered license to practice nursing in Oregon; and

(ii) Have the equivalent of at least one year of experience as a licensed nurse.

(b) For a medication aide training program, the clinical preceptor shall:

(A) Hold a current, unencumbered license to practice nursing in Oregon;

(B) Have the equivalent of one year full time experience as a licensed nurse and shall have three months' nursing experience in a facility licensed the same as the setting in which the medication aide student will be passing medications;

(C) Provide direct supervision; and

(D) Have only the responsibility for clinical precepting during the scheduled clinical experience.

(c) Certified medication aides, resident care managers, and directors of nursing are prohibited from acting as clinical preceptors for medication aide students.

Stat. Auth.: ORS 678.440 & 678.444

Stats. Implemented: ORS 678.440 & 678.444

Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 18-2002, f. & cert. ef. 10-18-02; BN 1-2004, f. 1-29-04, cert. ef. 2-12-04; BN 11-2004, f. & cert. ef. 7-13-04; BN 7-2006, f. & cert. ef. 5-8-06; BN 2-2008, f. & cert. ef. 2-25-08; BN 2-2011, f. & cert. ef. 7-11-11

## 851-061-0090

### Standards for Program Approval: Curriculum

(1) Board-approved curriculum shall be used in approved nursing assistant level 1 and medication aide training programs.

(2) A nursing assistant level 1 training program shall consist of:

(a) At least 150 hours of instruction divided into 75 hours of classroom instruction and 75 hours of supervised clinical experience;

(b) At least 24 hours of supervised classroom/laboratory instruction with return student demonstrations of learned skills to determine comprehension and competency, in addition to facility orientation, preceding the students' care of clients; and

(c) At least 75 hours of supervised clinical experience in a hospital, licensed nursing, residential care, or assisted living facility that has a registered nurse on duty during all scheduled student clinical hours, in substantial compliance with all standards of licensure, and provides an opportunity for the student to perform the skills taught in the Board's approved curriculum.

(3) An on-line nursing assistant level 1 training program shall consist of:

(a) At least the equivalent of 51 hours according to the nationally recognized standard of content to credit ratio;

(b) At least 24 hours of supervised laboratory instruction provided no later than two weeks after the successful completion of the on-line portion of the curriculum. The laboratory portion of the program shall include return student demonstration of learned skills to determine comprehension and competency, in addition to facility orientation, preceding the students' care of clients;

(c) At least 75 hours of supervised clinical experience in a hospital, licensed nursing, residential care, or assisted living facility that has a registered nurse on duty during all scheduled student clinical hours, in substantial compliance with all standards of licensure, and provides an opportunity for the student to perform the skills taught in the Board's approved curriculum;

(d) Ongoing technical support service(s) to sustain the electronically offered program including provisions for staffing, reliability, privacy, and security; and

(e) Ongoing technical support service(s) for students on each required educational technology hardware, software, and delivery system.

(4) A nursing assistant level 2 training program will have Board approved:

(a) Standardized category curriculum that may vary in training hours from other Board approved standardized category curricula; and

(b) Competency evaluation.

(5) Medication aide training program classroom and clinical instruction hours:

(a) A medication aide training program shall consist of at least 84 hours of instruction divided into at least 60 hours of classroom/lab instruction and at least 24 hours of 1:1 supervised clinical experience.

(b) All clinical hours shall be completed at one site (licensed nursing facility, hospital, assisted living facility, or residential care facility).

(c) All required clinical hours shall be in medication administration related activities.

(6) Admission requirements for medication aide training programs shall be:

(a) Current, unencumbered CNA 1 status on the Oregon CNA Registry maintained by the Board;

(b) Documentation of graduation from an approved basic nursing assistant level 1 training program at least six months prior to enrollment in the medication aide training program; and

(c) Documentation of at least six months full time experience as a nursing assistant level 1 or the equivalent in part time experience since graduation from a basic nursing assistant training program.

(7) An on-line nursing assistant level 2 or medication aide training program shall consist of:

(a) At least the nationally recognized standard of content to credit ratio to meet the Board's curriculum policy for the specific training program;

(b) Supervised laboratory instruction that meets the Board's approved curriculum provided no later than two weeks after the successful completion of the on-line portion of the curriculum. The laboratory portion of the program shall include return student demonstration of learned skills to



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determine comprehension and competency, in addition to facility orientation, preceding the students' care of clients;

(c) Supervised clinical experience in a hospital, licensed nursing, residential care, or assisted living facility that has a registered nurse on duty during all scheduled student clinical hours, is in substantial compliance with all standards of licensure, and provides an opportunity for the student to perform the skills taught in the Board's approved curriculum;

(d) Ongoing technical support service(s) to sustain the electronically offered program including provisions for staffing, reliability, privacy, and security; and

(e) Ongoing technical support service(s) for students on each required educational technology hardware, software, and delivery system.

(8) Classroom and clinical faculty/student ratios for nursing assistant level 1, level 2, and medication aide training programs:

(a) Classroom:

(A) The ratio of students per instructor in the classroom shall be such that each trainee is provided with registered nurse assistance and supervision and be no more than 30 students per instructor for nursing assistant level 1 training programs, 20 students per instructor for medication aide training programs, and 32 students per instructor for CNA level 2 training programs.

(B) The amount of students assigned per instructor with self-directed, on-line instruction shall be such that each trainee is provided with consultation and additional clarification by a Board approved instructor within 72 hours of a trainee's inquiry.

(C) The ratio of students per instructor with instructor-directed, on-line instruction shall be such that each trainee is provided with consultation and additional clarification by a Board approved instructor within 72 hours of a trainee's inquiry, and the class size shall be no more than 20 students per instructor per on-line classroom.

(b) Lab: The ratio of students per instructor in nursing assistant level 1, level 2, and medication aide training programs shall be no more than 10 students per instructor at all times during the lab experience.

(c) Clinical:

(A) The ratio of students per instructor in a nursing assistant level 1 training program shall be no more than 10 students per instructor at all times during the clinical experience.

(B) The ratio of students per instructor in a nursing assistant level 2 training program shall be no more than 8 students per instructor at all times during the clinical experience.

(C) The ratio of students per instructor in a medication aide training program shall begin with a ratio of one clinical preceptor to one medication aide student during the first 24 hours of the clinical experience. Less intensive supervision (either more students per preceptor or less direct supervision by preceptor) may occur after the first 24 hours, with satisfactory evaluation and approval of the clinical preceptor and primary instructor.

(9) Clinical experience and demonstration of competency for nursing assistant level 1 and medication aide training programs:

(a) A clinical schedule shall be prepared for all students prior to the beginning of the clinical experience, and provided to the clinical facility director of nursing, the clinical instructor/preceptor, and the student.

(b) Student practice and demonstration of competency for nursing assistant level 1 and medication aide training programs:

(A) Students may provide direct client care within their authorized duties under the supervision of an approved instructor.

(B) Students shall be identified as students at all times while in the clinical area.

(C) Students must not be counted as staff or utilized as staff during the hours that are scheduled for clinical experience.

(D) Students may be on a unit, floor or wing of a facility only under direct supervision of a qualified instructor.

(E) Students shall not be on a unit, floor, or wing without a CNA or licensed nurse.

(F) Students shall provide care only to the level they have been taught and determined competent by the approved clinical instructor.

(c) In addition, for medication aide training programs, the clinical experience shall be progressive with the Board approved clinical preceptor observing the medication administration and gradually increasing the number of clients to whom the student is administering medications;

(10) Program completion:

(a) Completion of a nursing assistant level 1 or medication aide training means that:

(A) The student has successfully completed 100% of the required classroom and clinical hours and content in the curriculum;

(B) The student has successfully demonstrated the required skills on the laboratory and clinical skills checklist;

(C) The student has achieved a score of 75% or higher on the program's final examination;

(D) The student has successfully completed the clinical portion of the program no later than four months following the last date of classroom instruction or within four months after the successful completion of the on-line portion of the program; and

(E) In addition, for nursing assistant level 1 training programs, the student has successfully completed current, adult CPR certification in accordance with Board-approved curriculum.

(b) Completion of a nursing assistant level 2 training means that:

(A) The student has successfully completed 100% of the required classroom and clinical hours and content in the curriculum; and

(B) The student has successfully completed the competency evaluation.

Stat. Auth.: ORS 678.440 & 678.444

Stats. Implemented: ORS 678.444

Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 15-2002, f. & cert. ef. 7-17-02; BN 1-2004, f. 1-29-04, cert. ef. 2-12-04; BN 11-2004, f. & cert. ef. 7-13-04; BN 12-2005, f. & cert. ef. 12-21-05; BN 7-2006, f. & cert. ef. 5-8-06; BN 2-2008, f. & cert. ef. 2-25-08; BN 1-2009, f. & cert. ef. 5-15-09; BN 10-2009, f. & cert. ef. 12-17-09; BN 2-2011, f. & cert. ef. 7-11-11

## 851-061-0110

### Standards for Program Approval: Records

(1) Nursing assistant level 1, level 2, and medication aide training program records shall:

(a) Be maintained for a period of seven years;

(b) Be maintained in a secure and dry manner;

(c) Include the following program files that are dated and contain:

(A) Faculty name and qualifications;

(B) Curricula, including the teaching methodology;

(C) Course schedules, including classroom and supervised clinical hours;

(D) Laboratory and clinical skill checklists;

(E) Final exams;

(F) Documentation of Board approvals and re-approvals; and

(G) Policies, including but not limited to attendance, behavioral expectations, course requirements including satisfactory progress standards, criminal history checks, dress code, cancellations and refunds, and administration of examinations.

(d) Include student records that contain:

(A) Course start date;

(B) Document signed by student stating that they have received, read, and understand the disclosure statement, enrollment agreement, and program policies;

(C) Student progress record;

(D) Laboratory and clinical skills checklist;

(E) Attendance record;

(F) Examination scores;

(G) Proof of CPR certification (nursing assistant level 1 training program);

(H) Proof of the criminal history check;

(I) Date of completion; and

(J) Record of student completion:

(i) Facility-based and independent programs shall maintain a copy of the student certificate of completion;

(ii) Community College and High School programs may meet this standard by appropriate notation on student transcript.

(K) Date the student was employed (if applicable).

Stat. Auth.: ORS 678.440 & 678.444

Stats. Implemented: ORS 678.444

Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 1-2004, f. 1-29-04, cert. ef. 2-12-04; BN 11-2004, f. & cert. ef. 7-13-04; BN 2-2011, f. & cert. ef. 7-11-11

## 851-061-0130

### Interstate Programs

(1) Out-of-State Programs who seek to send student(s) for clinical experience in Oregon shall meet the requirements established in OAR 851-061-0090(8)(c) and 851-061-0090(9)(b).

(2) Programs with faculty and facilities located in Oregon and approved by another state shall be required to obtain approval as a program in Oregon.

Stat. Auth.: ORS 678.440 & 678.444

Stats. Implemented: ORS 678.444

Hist.: BN 1-2004, f. 1-29-04, cert. ef. 2-12-04; BN 2-2011, f. & cert. ef. 7-11-11

# ADMINISTRATIVE RULES

## Board of Optometry Chapter 852

**Rule Caption:** Adopts the 2011-2013 biennial budget for the operation of the Board.

**Adm. Order No.:** OPT 1-2011

**Filed with Sec. of State:** 6-24-2011

**Certified to be Effective:** 7-1-11

**Notice Publication Date:** 5-1-2011

**Rules Amended:** 852-005-0005

**Subject:** 852-005-0005 — Adopts the 2011–2013 biennial budget for the operation of the Board.

**Rules Coordinator:** Kelly Paige—(503) 399-0662, ext. 23

### 852-005-0005

#### Budget

The Oregon Board of Optometry hereby adopts by reference the Oregon Board of Optometry 2011–2013 Biennium Budget of \$658,809 covering the period from July 1, 2011 through June 30, 2013. The Executive Director of the Board will amend budgeted accounts as necessary within the approved budget of \$658,809 for the effective operation of the Board. The Board will not exceed the approved 2011–2013 Biennium Budget without amending this rule, notifying holders of licenses, and holding a public hearing thereon as required by ORS Chapter 182.462(1) & (2). Copies of the budget are available from the Board's office and are also posted on the Board's website.

Stat. Auth.: ORS 683 & 182

Stats. Implemented: ORS 182.462(1) & (2)

Hist.: OPT 1-1999, f. 6-4-99, cert. ef. 7-1-99; OPT 1-2001, f. 6-18-01, cert. ef. 7-1-01; OPT 1-2003, f. 6-12-03, cert. ef. 7-1-03; OPT 3-2005, f. 6-29-05, cert. ef. 7-1-05; OPT 1-2007, f. 5-21-07, cert. ef. 7-1-07; OPT 1-2009, f. 6-10-09, cert. ef. 7-1-09; OPT 1-2011, f. 6-24-11, cert. ef. 7-1-11

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**Rule Caption:** Reorganize and revise Board Schedule of Fees.

**Adm. Order No.:** OPT 2-2011

**Filed with Sec. of State:** 6-24-2011

**Certified to be Effective:** 7-1-11

**Notice Publication Date:** 5-1-2011

**Rules Amended:** 852-010-0080

**Subject:** 852-010-0080 — Reorganize and revise Board Schedule of Fees.

**Rules Coordinator:** Kelly Paige—(503) 399-0662, ext. 23

### 852-010-0080

#### Schedule of Fees

The following fee schedule is established by the Oregon Board of Optometry to set forth in one place all of the fees charged by the Board:

(1) Active License (see also 852-050-0006):

(a) Annual renewal — \$323.

(A) License — \$298.

(B) Electronic Prescription Monitoring Fund — \$25.

(b) Additional office license — \$45.

(c) Multiple office license — \$90.

(d) Late renewal fee — \$50.

(e) Lapse in CPR certification during licensing period — \$50.

(f) Failure to notify the Board of practice locations — \$50, \$100, \$200.

(2) Inactive License (see also 852-050-0012):

(a) Annual renewal — \$98.

(b) Late renewal fee — \$15.

(3) Application for Licensure:

(a) Application for Examination and Licensure — \$200.

(b) Application for Endorsement Examination and Licensure — \$300.

(c) Application for TPA Certification — \$75.

(d) Law and Administrative Rule Examination — \$75.

(e) Wall Display Certificate — \$30.

(4) Other Fees:

(a) License Verification — \$20.

(b) List of Licensees — \$25–\$50.

(c) Reactivation of License — \$100.

(d) Reinstatement of License — \$100.

(e) Law and Administrative Rules Booklet — \$25.

(5) The Board will not refund any fee unless there has been an error by the Board in the charging of the fee. Information not known by the

Board because the licensee, applicant, etc. has not supplied the correct information is not considered an error.

Stat. Auth.: ORS 683 & 182 & 431

Stats. Implemented: ORS 683.270, 182.466 & 431.972

Hist.: OPT 1-2001, f. 6-26-01, cert. ef. 7-1-01; OPT 1-2003, f. 6-12-03, cert. ef. 7-1-03; OPT 3-2005, f. 6-29-05, cert. ef. 7-1-05; OPT 3-2006, f. 3-20-06, cert. ef. 7-1-06; OPT 1-2007, f. 5-21-07, cert. ef. 7-1-07; OPT 2-2009, f. & cert. ef. 12-11-09; OPT 2-2011, f. 6-24-11, cert. ef. 7-1-11

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**Rule Caption:** Extension of compliance date for requirements for business entity organization.

**Adm. Order No.:** OPT 3-2011

**Filed with Sec. of State:** 6-24-2011

**Certified to be Effective:** 7-1-11

**Notice Publication Date:** 5-1-2011

**Rules Amended:** 852-020-0045

**Subject:** 852-020-0045 — Extension of compliance date for requirements for business entity organization.

**Rules Coordinator:** Kelly Paige—(503) 399-0662, ext. 23

### 852-020-0045

#### Requirements for Business Entity Organization

The following provisions apply to licensed optometric physicians in Oregon organizing as a business entity and are in addition to the provisions for a professional corporation, limited liability company and partnership outlined in ORS Chapters 58, 63, 67, and 70.

(1) Definitions. As used in these administrative rules, unless the context requires otherwise.

(a) "Business entity" means:

(A) A professional corporation organized under ORS Chapter 58, predecessor law or comparable law of another jurisdiction;

(B) A limited liability company organized under ORS Chapter 63 or comparable law of another jurisdiction;

(C) A partnership organized in Oregon after January 1, 1998, or that is registered as a limited liability partnership, or that has elected to be governed by ORS Chapter 67 or comparable law of another jurisdiction; or

(D) A limited partnership organized under ORS chapter 70, predecessor law or comparable law of another jurisdiction.

(b) "Majority ownership interest" means more than 50 percent of:

(A) The issued voting stock of a professional corporation;

(B) The members of a limited liability company; or

(C) Participation in the profits of a partnership.

(c) "Organizational document" means:

(A) The articles of incorporation of a professional corporation, or comparable document of another jurisdiction;

(B) The articles of organization of a limited liability company, or comparable document of another jurisdiction;

(C) The partnership agreement and, for a limited liability partnership, its registration, or comparable document(s) of another jurisdiction; or

(D) A certificate of limited partnership, or comparable document of another jurisdiction.

(d) "Owner" means a voting shareholder of a professional corporation, member of a limited liability company, or partner of a partnership.

(e) "Principal" means a person who is a director of a professional corporation, manager of a limited liability company, or general partner of a limited partnership.

(2) Requirements for business entities organized to practice optometry:

(a) The majority ownership interest shall be held by optometric physicians licensed in this state to practice optometry.

(A) A majority of the principals shall be optometric physicians who are licensed in this state to practice optometry.

(B) All officers except the secretary and treasurer, if any, must be optometric physicians who are licensed in this state to practice optometry. Any two or more offices may be held by the same person.

(b) A professional corporation may be a shareholder of a professional corporation organized for the purpose of practicing optometry solely for the purpose of effecting a reorganization as defined in the Internal Revenue Code.

(c) Business entities organized before the effective date of this rule that are not in compliance with the provisions of this rule have until January 1, 2012 to come into compliance.

(d) The Oregon Board of Optometry has the discretion to allow business entities to apply for a waiver of the majority ownership requirement provided full disclosure of business ownership is provided to the Board, a plan and timetable is presented for a transition to meet the requirements of

# ADMINISTRATIVE RULES

this rule, and the Board finds that the health and welfare of the patient is the first priority of the optometric physicians and business entity.

(e) Upon a finding that a holder or owner of an optometric practice has failed to comply with the provisions of this rule or the regulations prescribed by the Board pursuant to the practice of optometry, the Oregon Board of Optometry may consider the failure to comply with this rule as a violation of this rule which may subject a holder or owner to discipline pursuant to ORS 683.140.

Stat. Auth.: ORS 58, 63, 683  
Stats. Implemented: ORS 58.367, 63.074, 683.270(11)  
Hist.: OPT 1-2010, f. & cert. ef. 9-20-10; OPT 3-2011, f. 6-24-11, cert. ef. 7-1-11

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**Rule Caption:** Eliminates requirement to purchase wall certificate; adds and amends language regarding display of license.

**Adm. Order No.:** OPT 4-2011

**Filed with Sec. of State:** 6-24-2011

**Certified to be Effective:** 7-1-11

**Notice Publication Date:** 5-1-2011

**Rules Amended:** 852-050-0005

**Subject:** 852-050-0005 — Eliminates requirement to purchase wall certificate; adds and amends language regarding display of license.

**Rules Coordinator:** Kelly Paige—(503) 399-0662, ext. 23

## 852-050-0005

### License and Certificate of Registration

(1) Upon becoming licensed to practice optometry in the state of Oregon, each licensee will receive an office license for the primary place of business. This original and current license must be posted conspicuously in the office. Each licensee shall be required to pay a license renewal fee on or before the license renewal date established by the Board. The licensee will be given written notification of the license renewal period at the time of licensure. The license renewal period will remain the same for the licensee once established.

(2) If a licensee engages in practice in more than one office or place of business, the licensee shall acquire and conspicuously display an original and current license for that specific location in each additional office or place of business. Upon written application of the licensee, the Board shall issue such number of licenses upon receipt of \$45 for each license. The licensee must renew each practice location on an annual basis during the license renewal period.

(3) In lieu of acquiring an additional office license for each practice location, any licensee who has acquired a license to practice optometry in Oregon may elect to acquire a multiple office license which allows the licensee to practice at an unlimited number of additional practice locations. Upon written application of the licensee and receipt of an additional \$90 fee, the Board shall issue a license for practicing at multiple locations. This original and current license shall be conspicuously displayed at each location prior to practicing there. It is the responsibility of the licensee to keep the Board informed of all practice locations. The licensee must renew this license to practice at multiple locations on an annual basis during the license renewal period.

(4) The licensee's status (active or inactive, T, AT or ATI certified, etc.) shall be indicated directly upon the annual license form.

(5) Upon becoming licensed to practice optometry in the state of Oregon, each licensee may pay to the Oregon Board of Optometry a \$30 fee for a Board-signed Wall Certificate of Registration.

Stat. Auth.: ORS 683 & 182  
Stats. Implemented: ORS 683.070, 683.100, 683.120, 683.270 & 182.466  
Hist.: OE 11, f. 5-19-72, ef. 6-1-72; OE 14, f. 2-20-73, ef. 3-1-73; OE 2-1980, f. 12-23-80, ef. 12-29-80; OE 2-1984, f. & ef. 7-14-84; OP 1-1987, f. & ef. 4-30-87; OP 1-1991, f. & cert. ef. 4-12-91; OP 2-1992, f. & cert. ef. 10-21-92; OP 2-1994, f. & cert. ef. 7-22-94; OP 2-1997, f. & cert. ef. 10-1-97; OPT 3-1998, f. 6-10-98, cert. ef. 7-1-98; OPT 1-2001, f. 6-18-01, cert. ef. 7-1-01; OPT 2-2002, f. & cert. ef. 12-18-02; OPT 1-2003, f. 6-12-03, cert. ef. 7-1-03; OPT 1-2007, f. 5-21-07, cert. ef. 7-1-07; OPT 4-2011, f. 6-24-11, cert. ef. 7-1-11

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**Rule Caption:** Amends language; clarifies manner of 30-day notice.

**Adm. Order No.:** OPT 5-2011

**Filed with Sec. of State:** 6-24-2011

**Certified to be Effective:** 7-1-11

**Notice Publication Date:** 5-1-2011

**Rules Amended:** 852-050-0006

**Subject:** 852-050-0006 — Amends language; clarifies manner of 30-day notice.

**Rules Coordinator:** Kelly Paige—(503) 399-0662, ext. 23

## 852-050-0006

### Annual Renewal of Active License

(1) Active licensees shall annually renew their license to practice optometry for the license period established by the Board. License year renewal periods are established by the Board based upon birth dates of licensees in order that expiration dates fall due each month of the year.

(a) If the licensee's date of birth is not available to the Board, a license renewal period will be established for the licensee.

(b) License renewals will cover 12-month license periods based upon birth dates.

(2) License renewal applications are due in the Board's office on the first day of the month of license expiration (month of licensee's birth date).

(3) The license renewal application must include the following to be considered complete:

(a) A completed license renewal form signed by the licensee;

(b) Check or money order for the correct license renewal fees;

(c) Documentation of completion of the required continuing optometric education.

(d) Documentation of current CPR certification, as required in OAR 852-80-040.

(4) The Board will, as a courtesy, send license year renewal forms to the licensee's last address of record. The license renewal application is due and must be postmarked on or before the first day of the month of license expiration.

(5) A licensee who is not more than 30 days delinquent in renewing the license may renew the license upon payment to the Board of the required fee plus a delinquent fee. If a licensee is more than 30 days delinquent the license is automatically suspended upon 30 day notice given to the licensee via certified mail, as required by ORS 683.120(2).

(6) If a person is more than 60 days in renewing the license the person may be required to take an examination and pay the examination fee as required in ORS 683.060. The Board may, upon written application, waive the examination requirement when in its opinion it is in the best interest of the public to do so.

(7) The annual fee for the renewal of a license to practice optometry shall be \$298. In addition to the optometry renewal fees, the Board is required by ORS 431.972 to collect an annual \$25 fee from each optometry license renewal for the Electronic Prescription Drug Monitoring Fund. The fees collected for the Electronic Prescription Monitoring Fund will be remitted to the Department of Human Services as required by law.

(8) Any licensee whose license renewal fee is postmarked after the first day of the month of license expiration shall be subject to a late payment fee of \$50. This late payment fee must be received before the license will be issued.

(9) Any licensee whose CPR certification lapsed at any time during the licensing period shall be subject to a fee of \$50. This fee must be received before the license will be issued.

Stat. Auth.: ORS 683 & 182 & 431  
Stats. Implemented: ORS 683.070, 683.100, 683.120, 683.270, 182.466 & 431.972  
Hist.: OE 2-1982, f. & ef. 3-18-82; OE 2-1984, f. & ef. 7-14-84; OP 1-1987, f. & ef. 4-30-87; OP 1-1988, f. & cert. ef. 6-28-88; OP 1-1989, f. 1-13-89, cert. ef. 1-16-89; OP 2-1992, f. & cert. ef. 10-21-92; OP 3-1993, f. & cert. ef. 10-27-93; OP 2-1997, f. & cert. ef. 10-1-97; OPT 3-1998, f. 6-10-98, cert. ef. 7-1-98; OPT 1-2001, f. 6-18-01, cert. ef. 7-1-01; OPT 1-2002, f. & cert. ef. 7-26-02; OPT 1-2003, f. 6-12-03, cert. ef. 7-1-03; OPT 3-2005, f. 6-29-05, cert. ef. 7-1-05; OPT 2-2006, f. 3-20-06, cert. ef. 4-1-06; OPT 3-2006, f. 3-20-06, cert. ef. 7-1-06; OPT 1-2007, f. 5-21-07, cert. ef. 7-1-07; OPT 3-2007, f. & cert. ef. 12-7-08; OPT 2-2009, f. & cert. ef. 12-11-09; OPT 5-2011, f. 6-24-11, cert. ef. 7-1-11

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**Rule Caption:** Decrease late renewal fee for Inactive License renewal; amend other language.

**Adm. Order No.:** OPT 6-2011

**Filed with Sec. of State:** 6-24-2011

**Certified to be Effective:** 7-1-11

**Notice Publication Date:** 5-1-2011

**Rules Amended:** 852-050-0012

**Subject:** 852-050-0012 — Decrease late renewal fee for Inactive License renewal; amend other language.

**Rules Coordinator:** Kelly Paige—(503) 399-0662, ext. 23

## 852-050-0012

### Inactive Status License

(1) Eligible licensees may be granted an inactive status license by petitioning the board by letter. If the licensee's date of birth is not available to the Board, a license renewal period will be established for the licensee.

(2) Inactive licensees shall annually renew their license to practice optometry for the license period established by the Board. License year



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renewal periods are established by the Board based upon birth dates of licensees in order that expiration dates fall due each month of the year. License renewals will cover 12-month license periods based upon birth dates.

(3) License renewal applications are due in the Board's office on the first day of the month of license expiration (month of licensee's birth date).

(4) The license renewal application must include the following to be considered complete:

- (a) A completed license renewal form signed by the licensee;
- (b) Check or money order for the correct license renewal fees;

(5) The Board will, as a courtesy, send license year renewal forms to inactive status licensee's last address of record. The license renewal application is due and must be postmarked on or before the first day of the month of license expiration.

(6) A licensee who is not more than 30 days delinquent in renewing the license may renew the license upon payment to the Board of the required fee plus a delinquent fee. If a licensee is more than 30 days delinquent the license is automatically suspended upon 30 day notice given to the licensee.

(7) If a person is more than 60 days delinquent in renewing the license the person may be required to take an examination and pay the examination fee as required in ORS 683.060. The Board may, upon written application, waive the examination requirement when in its opinion it is in the best interest of the public to do so.

(8) The renewal fee for inactive status licensees shall be \$98.

(9) Any licensee whose license renewal fee is postmarked after the first day of the month of license expiration shall be subject to a late payment fee of \$15. This late payment fee must be received before the license will be issued.

(10) To reactivate a license to practice optometry in Oregon an inactive status licensee shall meet the following prior to the first day of practice in Oregon:

(a) Pay the difference between the inactive and active status license renewal fees;

(b) Submit continuing education hour's equivalent to Oregon requirements for the previous licensing period;

(c) Submit documentation of current CPR certification, as required in OAR 852-80-040, if licensed to use Nontopical TPA's;

(d) Submit the inactive license certificate issued for the current licensing period;

(e) Provide the Board's office with the current practice location in the State of Oregon;

(f) Submit written verification from state(s) licensed. This verification shall contain a statement to indicate the status of the licensee regarding past and/or present sanctioning or investigations for sanctioning; and

(g) Pass the Oregon optometric law and administrative rules examination if it has been more than two years since the person held an active status license in Oregon.

(h) If the request for reactivation occurs within one year from the date of being placed in inactive license status by the Board, there will be a \$100 reactivation fee in addition to the other conditions in (a) through (f) above.

Stat. Auth.: ORS 683 & 182

Stats. Implemented: ORS 683.070, 683.100, 683.120, 683.270 & 182.466

Hist.: OE 2-1984, f. & ef. 7-14-84; OP 1-1987, f. & ef. 4-30-87; OP 2-1992, f. & cert. ef. 10-21-92; OP 3-1993, f. & cert. ef. 10-27-93; OP 2-1997, f. & cert. ef. 10-1-97; OPT 3-1998, f. 6-10-98, cert. ef. 7-1-98; OPT 1-2001, f. 6-18-01, cert. ef. 7-1-01; OPT 1-2002, f. & cert. ef. 7-26-02; OPT 1-2003, f. 6-12-03, cert. ef. 7-1-03; OPT 2-2006, f. 3-20-06, cert. ef. 4-1-06; OPT 1-2007, f. 5-21-07, cert. ef. 7-1-07; OPT 6-2011, f. 6-24-11, cert. ef. 7-1-11

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**Rule Caption:** Implementation of criminal records checks for new, renewing, reinstating, and reactivating licensees.

**Adm. Order No.:** OPT 7-2011

**Filed with Sec. of State:** 6-24-2011

**Certified to be Effective:** 7-1-11

**Notice Publication Date:** 5-1-2011

**Rules Adopted:** 852-050-0025

**Subject:** 852-050-0025 — Implementation of criminal records checks for new, renewing, reinstating, and reactivating licensees.

**Rules Coordinator:** Kelly Paige—(503) 399-0662, ext. 23

## 852-050-0025

### State Criminal Records Check and Fitness Determination

(1) The purpose of these rules is to provide for the reasonable screening of applicants and licensees in order to determine if they have a history

of criminal behavior such that they are not fit to be granted or hold a license that is issued by the Board.

(2) These rules are to be applied when evaluating the criminal history of an applicant or licensee and conducting fitness determinations based upon such history. The fact that an applicant or licensee has cleared the criminal history check does not guarantee the granting or renewal of a license.

(3) The Board may require criminal history of all applicants for an initial or renewal license as an optometrist; licensees applying to reinstate or reactivate a lapsed license; and licensees under investigation to determine the fitness of an applicant or licensee. This information will be provided on prescribed forms made available by the Board. The Board will submit information to the Oregon Department of State Police Law Enforcement Data System to conduct an Oregon Criminal History Check.

(4) The Board determines whether an applicant or licensee is fit to be granted a license based on the criminal records background check, any false statements made by the applicant or licensee regarding the criminal history of the individual, any refusal to submit or consent to a criminal records check, and any other pertinent information obtained as part of an investigation. If an applicant is determined to be unfit, the applicant may not be granted a license. If a licensee is determined to be unfit the licensee's license may not be renewed, reactivated, or reinstated. The Board may make a fitness determination conditional upon applicant's or licensee's acceptance of probation, conditions, limitations, or other restrictions upon licensure.

(5) Except as otherwise provided in section (2), in making the fitness determination the Board considers:

(a) The nature of the crime;

(b) The facts that support the conviction or pending indictment or that indicate the making of the false statement;

(c) The relevancy, if any, of the crime or the false statement to the specific requirements of the applicant's or licensee's present or proposed license; and (d) Intervening circumstances relevant to the responsibilities and circumstances of the license. Intervening circumstances include but are not limited to:

(A) The passage of time since the commission of the crime;

(B) The age of the applicant or licensee at the time of the crime;

(C) The likelihood of a repetition of offenses or of the commission of another crime;

(D) The subsequent commission of another relevant crime;

(E) Whether the conviction was set aside and the legal effect of setting aside the conviction; and

(F) A recommendation of an employer.

(6) All requested background checks include Oregon data. In some circumstances, national criminal data collection may be required.

(7) In order to conduct the Oregon Criminal History Check and fitness determination, the Board may require additional information from the licensee or applicant as necessary, such as but not limited to, proof of identity; residential history; names used while living at each residence; or additional criminal, judicial or other background information.

(8) Criminal offender information is confidential. Dissemination of information received under ORS 181.534 is only to people with a demonstrated and legitimate need to know the information. The information is part of the investigation of an applicant or licensee and as such is confidential pursuant to 676.175(1).

(9) The Board will permit the individual for whom a background records check was conducted to inspect the individual's own criminal offender records and, if requested by the subject individual, provide the individual with a copy of the individual's own criminal offender records.

(10) The Board may consider any conviction of any violation of the law for which the court could impose a punishment and which is in compliance with ORS 670.280. The Board may also consider any arrests, court records, or other information that may be indicative of an individual's inability to perform as a licensee with care and safety to the public.

(11) If an applicant or licensee is determined not to be fit for a license, the applicant or licensee is entitled to a contested case process pursuant to ORS 183.413-183.470. Challenges to the accuracy or completeness of information provided by the Oregon Department of State Police, Federal Bureau of Investigation and agencies reporting information must be made through the Oregon Department of State Police, Federal Bureau of Investigation, or reporting agency and not through the contested case process pursuant to ORS 183. If an individual successfully contests the accuracy or completeness of information provided by the Oregon State Police, the FBI or other reporting agency, the Board will conduct a new criminal history check upon submission of a new request.

# ADMINISTRATIVE RULES

(12) If the applicant discontinues the application process or fails to cooperate with the criminal history check process, the application is considered incomplete.

Stat. Auth.: ORS 683.182, 181.676  
Stat. Implemented: ORS 683.140; 683.270; 182.466; 181.534; 676.303  
Hist.: OPT 7-2011, f. 6-24-11, cert. ef. 7-1-11

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

**Rule Caption:** Amends Division 36 to update procedures to comply with statutory changes relating to extended deferral.

**Adm. Order No.:** PAR 5-2011

**Filed with Sec. of State:** 6-23-2011

**Certified to be Effective:** 6-23-11

**Notice Publication Date:** 5-1-2011

**Rules Amended:** 255-036-0005, 255-036-0010, 255-036-0020, 255-036-0025, 255-036-0030

**Subject:** Division 36 establishes the procedures and rules that apply to Dangerous Offenders whose crimes occurred prior to November 1, 1989. Amendments are necessary to establish procedures that comply with changes to ORS 144.228 (2009), relating to the authority of the Board to defer an inmate's parole and consideration date for longer than two years (up to ten years). OAR 255-036-0005(7) is amended to conform the rule to the Board's statutory authority.

**Rules Coordinator:** Michelle Mooney — (503) 945-0914

### 255-036-0005

#### Parole Consideration Hearings

(1) Within six (6) months after commitment to the Department of Corrections' custody of any person sentenced as a dangerous offender, the Board shall set a date for a parole consideration hearing which shall be no later than ten (10) days prior to the date the inmate would have been eligible for parole release under Division 35 of these rules if the court had not sentenced the offender pursuant to ORS 161.725 and 161.735 as a dangerous offender.

(2) A person sentenced as a dangerous offender for felonies committed prior to November 1, 1989 is eligible for parole release:

- (a) After having served the Board ordered prison term; and
- (b) The Board finds the inmate no longer dangerous; or

(c) The Board finds the inmate remains dangerous but can be adequately controlled with supervision and mental health treatment and that the necessary resources for supervision and treatment are available to the inmate.

(3) If the Board is unable to make the findings required by section (2) of this rule, the Board will conduct the next review hearing no less than two years, or more than ten years, from the current parole consideration date.

(a) The Board may not grant the inmate a hearing that is more than two years from the date the petition is denied unless the Board finds that it is not reasonable to expect that the inmate would be granted a parole release date two years from that date.

(b) A decision to establish a deferral period of longer than two years requires a unanimous vote of the members participating in the hearing. The length of deferral shall be determined by majority vote.

(c) Factors to be considered in establishing a deferral period of longer than two years include those listed in OAR 255-062-0015.

(d) The inmate may request an interim parole consideration hearing pursuant to OAR 255-062-0020.

(e) If the Board finds, based upon the 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, the Board shall conduct a hearing as soon as is reasonably convenient. An interim parole consideration hearing may be granted by a majority of the Board.

(f) If the Board denies a petition for an interim hearing, it shall issue a final order accompanied by findings of fact and conclusions of law, pursuant to ORS 144.228(1)(d) (2009).

(g) A finding by the Board under (e) above does not bind the Board to any specific finding at the interim parole consideration hearing.

(4) The Board will hold parole consideration hearings pursuant to these rules until:

- (a) The Board is able to make the required findings; or
- (b) The maximum court ordered sentence, less good time, expires.

(5) If, at the parole consideration hearing or at any subsequent review, the Board makes the findings required by section (2) of this rule, the Board

shall order parole release, subject to ORS 144.125 144.270-144.275 regarding review of release plans and supervision conditions.

(6) At any hearing or review, the Board may consider:

(a) The examining psychologist or psychiatrist's written report;

(b) A written report from the executive officer of Department of Corrections institution in which the inmate has been confined;

(c) A release plan, including verification that adequate supervision and mental health treatment are immediately available for the particular inmate;

(d) Any other information regarding the inmate that the Board finds relevant.

(7) If after the Board makes the findings required by section (2) of this rule, resulting in the inmate's release on parole, the Board later has reasonable cause to believe the inmate's dangerousness has returned and/or the inmate cannot be adequately controlled with supervision and mental health treatment or that the necessary resources for supervision and treatment are unavailable, the Board may order the inmate's return to the custody of the Department of Corrections, and schedule a future disposition hearing to determine whether to deny re-release on parole pursuant to OAR 255-075-0096.

Stat. Auth.: ORS 144.226 & 144.228  
Stats. Implemented: ORS 144.096, 144.098, 144.102, 144.106, 144.108, 144.346 & Ch. 51, OL 1997 (Enrolled SB156)  
Hist.: PAR 1-1993(Temp), f. & cert. ef. 7-26-93; PAR 4-1993, f. & cert. ef. 10-29-93; PAR 3-1998, f. 8-26-98, cert. ef. 8-27-98; PAR 3-1998, f. 8-26-98, cert. ef. 8-27-98; PAR 5-2011, f. & cert. ef. 6-23-11

### 255-036-0010

#### Evaluations

(1) Within 120 days of the last day of the prison term and thereafter within 120 days before any parole consideration hearing, the Board shall order a complete mental and psychological or psychiatric examination of the inmate.

(2) The evaluation provided may consist of a diagnostic study, including a comprehensive evaluation of the individual's personality, intelligence level, personal and social adjustments, or other information the psychologist or psychiatrist believes will aid the Board in determining whether the examined person is eligible for release.

(3) The report of the psychologist or psychiatrist shall:

(a) Include a statement as to whether the dangerous offender has any 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;

(b) Any other information which would aid the Board in determining whether the inmate is eligible for release;

(c) State progress or changes in the condition of the examined inmate;

(d) Contain recommendations for treatment or medication that would assist the inmate in performing satisfactorily in the community upon release;

(e) Be filed with the Board within 60 days after the examination;

(f) Be certified and sent to the inmate, the inmate's attorney, and to the institution superintendent.

Stat. Auth.: ORS 144.226 & 144.228  
Stats. Implemented: ORS 144.096, 144.098, 144.102, 144.106, 144.108, 144.346 & Ch. 51, OL 1997 (Enrolled SB156)  
Hist.: PAR 1-1993(Temp), f. & cert. ef. 7-26-93; PAR 4-1993, f. & cert. ef. 10-29-93; PAR 2-1994, f. 8-1-94, cert. ef. 8-15-94; PAR 3-1998, f. 8-26-98, cert. ef. 8-27-98; PAR 3-1998, f. 8-26-98, cert. ef. 8-27-98; PAR 3-2006, f. & cert. ef. 4-5-06; PAR 5-2011, f. & cert. ef. 6-23-11

### 255-036-0020

#### Request for Review Prior to Release Hearing Date

(1) Notwithstanding subsection 1 of OAR 255-036-0005, an inmate sentenced as a dangerous offender under ORS 161.725 and 161.735 may request a parole consideration hearing prior to the earliest time the inmate is eligible for parole release. The Board may consider information presented by the inmate to determine whether the inmate is no longer dangerous or that even though dangerous, can be adequately controlled with supervision and mental health treatment which are available in the community.

(2) The Board shall review the request for a parole consideration hearing by administrative file pass.

(3) If the Board finds, based upon the request and the information therein, there is reasonable cause to believe the inmate is no longer dangerous or even though dangerous, can be adequately controlled with supervision and mental health treatment which are in fact available to the inmate, the Board shall order the documents required by ORS 144.228 and this division and conduct a parole consideration hearing as soon as reasonably convenient.

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(4) If the Board finds there is not reasonable cause to believe the inmate is no longer dangerous or to believe that the inmate can be adequately controlled with supervision and mental health treatment that is available in the community, the Board will deny the request for an early parole consideration hearing, and review the inmate's case at the originally scheduled parole consideration hearing pursuant to OAR 255-036-0005(1).

Stat. Auth.: ORS 144.228

Stats. Implemented: ORS 144.096, 144.098, 144.102, 144.106, 144.108, 144.346 & Ch. 51, OL 1997 (Enrolled SB 156)

Hist.: PAR 1-1993(Temp), f. & cert. ef. 7-26-93; PAR 4-1993, f. & cert. ef. 10-29-93; PAR 2-1994, f. 8-1-94, cert. ef. 8-15-94; PAR 3-1998, f. 8-26-98, cert. ef. 8-27-98; PAR 5-2011, f. & cert. ef. 6-23-11

## 255-036-0025

### The Release Hearing Packet

The Parole Consideration Hearing Packet shall contain:

- (1) Institution face sheet;
- (2) All prior Board Action Forms;
- (3) Psychological or psychiatric evaluations; and reports pursuant to ORS 144.226 to 144.228;
- (4) Documents listed in OAR 255-036-0005(6);
- (5) Correspondence;
- (6) Presentence Investigation report, post-sentence investigation report, or report of similar content; and
- (7) Sentencing orders.

Stat. Auth.: ORS 144.228

Stats. Implemented: ORS 144.226 & 144.228

Hist.: PAR 1-1993(Temp), f. & cert. ef. 7-26-93; PAR 4-1993, f. & cert. ef. 10-29-93; PAR 5-2011, f. & cert. ef. 6-23-11

## 255-036-0030

### Parole Supervision

A dangerous offender released to parole prior to the sentence expiration shall serve the remainder of the sentence term imposed under ORS 161.725 and 161.735 on parole. The inmate shall serve at least three years of supervised parole.

Stat. Auth.: OL 1993, Ch. 680, Section 1(b) (SB 139)

Stats. Implemented: ORS 144.096, 144.098, 144.102, 144.106, 144.108, 144.346 & Ch. 51, OL 1997 (Enrolled SB 156)

Hist.: PAR 1-1993(Temp), f. & cert. ef. 7-26-93; PAR 4-1993, f. & cert. ef. 10-29-93; PAR 3-1998, f. 8-26-98, cert. ef. 8-27-98; PAR 5-2011, f. & cert. ef. 6-23-11

## Board of Pharmacy Chapter 855

**Rule Caption:** Rules for criminal background checks on employees and potential employees, and amend pharmacist licensing rules.

**Adm. Order No.:** BP 4-2011

**Filed with Sec. of State:** 6-24-2011

**Certified to be Effective:** 7-1-11

**Notice Publication Date:** 6-1-2011

**Rules Adopted:** 855-010-0050, 855-010-0055, 855-010-0057, 855-010-0060, 855-010-0065, 855-010-0067, 855-010-0070, 855-010-0075, 855-010-0080, 855-010-0085, 855-010-0087

**Rules Amended:** 855-019-0120

**Subject:** These rules provide the authority and process for the Board to conduct fingerprint-based nationwide criminal background checks, through the Oregon State Police and FBI, on employees, potential employees and applicants for volunteer positions with the Board. This includes a process for final determination of fitness and an appeals procedure. The rules in Division 010 replace temporary rules adopted in January 2011. The amendment to 855-019-0120 provides a one-year waiting period for applicants for licensure as a pharmacist who have failed the MPJE or NAPLEX three times.

Copies of the full text of these rules can be obtained from the Board's web site, [www.pharmacy.state.or.us](http://www.pharmacy.state.or.us), or by calling the Board office (971) 673-0001.

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

## 855-010-0050

### Purpose

The purpose of these rules is to provide for the reasonable screening of subject individuals to determine if they have a history of criminal behavior such that they are not fit to work or volunteer for the Board. The fact that the Board determines that a subject individual is fit does not guarantee the individual a position as a Board employee, volunteer, or that the individual will be hired by the Board.

Stat. Auth.: ORS 181.534, 676.303, 689.205

Stats. Implemented: ORS 181.534

Hist.: BP 1-2011(Temp), f. & cert. ef. 2-8-11 thru 6-30-11; BP 4-2011, f. 6-24-11, cert. ef. 7-1-11

## 855-010-0055

### Definitions

As used in OAR 855-010-0050 through 855-010-0086, unless the context of the rule requires otherwise, the following definitions apply:

(1) **Conviction:** A final judgment on a verdict or finding of guilty, a plea of guilty, or a plea of nolo contendere (no contest) or any determination of guilt entered by a court of law against a subject individual in a criminal case, unless that judgment has been reversed or set aside by a subsequent court decision.

(2) **Fitness determination:** A determination made by the Board, pursuant to the process established under OAR 855-010-0060, that a subject individual is fit or not fit to be a Board employee or volunteer.

(3) **Criminal offender information:** Records and related data concerning physical description and vital statistics, fingerprints received and compiled by the Oregon State Police (OSP) to identify criminal offenders and alleged offenders, records of arrests and the nature and disposition of criminal charges, including sentencing, confinement, parole and release records.

(4) **Criminal records check:** One or more of the following three processes undertaken by the Board to check the criminal history of a subject individual:

(a) A name-based check of criminal offender information conducted through the Law Enforcement Data System (LEDS) maintained by the OSP, in accordance with the rules adopted and procedures established by the OSP;

(b) A check of Oregon criminal offender information, through fingerprint identification and other means, conducted by the OSP at the Board's request (Oregon Criminal Records Check); or

(c) A nationwide check of federal criminal offender information, through fingerprint identification and other means, conducted by the OSP through the FBI or otherwise at the Board's request (Nationwide Criminal Records Check).

(5) **Criminal Records Request form:** A Board-approved form, completed by a subject individual, requesting the Board to conduct a criminal records check.

(6) **False statement:** In association with an activity governed by these rules, a subject individual either:

(a) Provided the Board with false information about the subject individual's criminal history, including but not limited to false information about the individual's identity or conviction record; or

(b) Failed to provide the Board information material to determining the individual's criminal history.

(7) **Subject Individual:** An individual identified in OAR 855-010-0057 as someone from whom the Board may require a criminal records check.

Stat. Auth.: ORS 181.534, 676.303, 689.205

Stats. Implemented: ORS 181.534

Hist.: BP 1-2011(Temp), f. & cert. ef. 2-8-11 thru 6-30-11; BP 4-2011, f. 6-24-11, cert. ef. 7-1-11

## 855-010-0057

### Subject Individual

The Board may require a subject individual to complete a criminal records check pursuant to these rules because the person is:

(1) A Board employee

(2) A Board volunteer; or

(3) An applicant for employment with the Board.

Stat. Auth.: ORS 181.534, 676.303, 689.205

Stats. Implemented: ORS 181.534

Hist.: BP 1-2011(Temp), f. & cert. ef. 2-8-11 thru 6-30-11; BP 4-2011, f. 6-24-11, cert. ef. 7-1-11

## 855-010-0060

### Criminal Records Check Process

(1) **Disclosure of Information by Subject Individual.**

(a) Preliminary to a criminal records check, a subject individual must complete and sign the Board Criminal Records Request form and a fingerprint card. Both forms ask for identifying information (e.g., name, birth date, social security number, physical characteristics, driver's license or identification card number and current address of the subject individual). The Board Criminal Records Request form also requires information about the subject individual's prior residences in other states and any other identifying information deemed necessary by the Board.

(b) A subject individual must complete and submit to the Board the Criminal Records Request form and, if requested, a fingerprint card within



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five business days of receiving the forms. The Board may extend the deadline for good cause.

(c) The Board may require additional information from the subject individual as necessary to complete the criminal records check and fitness determination, such as, but not limited to, proof of identity, or additional criminal, judicial, or other background information.

(d) The Board shall not request a fingerprint card from a subject individual under the age of 18 years unless the subject individual is emancipated pursuant to ORS 419B.550 et seq, or unless the Board also requests the written consent of a parent or guardian. In such case, such parent or guardian and youth must be informed that they are not required to consent. Notwithstanding, failure to consent may be construed as a refusal to consent under OAR 855-010-0065(3).

(2) When a Criminal Records Check is required. The Board may conduct, or request the OSP to conduct, a criminal record check when:

(a) An individual meets the definition of a subject individual; or

(b) Required by federal law or regulation, by state statute or administrative rule, or by contract or written agreement with the Board.

(3) Which Criminal Records Check is conducted. When the Board determines under section (2) of this rule that a criminal records check is needed, the Board may request or conduct a LEDS Criminal Records Check, an Oregon Criminal Records Check, a Nationwide Criminal Records Check, or any combination thereof.

Stat. Auth.: ORS 181.534, 676.303, 689.205

Stats. Implemented: ORS 181.534

Hist.: BP 1-2011(Temp), f. & cert. ef. 2-8-11 thru 6-30-11; BP 4-2011, f. 6-24-11, cert. ef. 7-1-11

## 855-010-0065

### Final Fitness Determination

(1) If the Board elects to conduct a criminal records check, the Board shall make a fitness determination about a subject individual based on information provided by the subject individual under OAR 855-010-0060(1), any criminal records check conducted, and any false statement made by the subject individual.

(2) In making a fitness determination about a subject individual, the Board will also consider the factors in subsections (a) through (f) below in relation to information provided by the subject individual under OAR 855-010-0060(1), any LEDS report or criminal offender information obtained through a criminal records check, and other information known by the Board. To assist in considering these factors, the Board may obtain any other information deemed relevant from the subject individual or any other source, including law enforcement and criminal justice agencies or courts within or outside of Oregon. To acquire other criminal offender information from the subject individual, the Board may request to meet with the subject individual, and may request to receive written materials or authorization to obtain other relevant information, from the subject individual. The subject individual shall meet with the Board if requested and provide additional information or authorization within a reasonable period of time, as established by the Board. The Board will use all collected information in considering:

(a) Whether the subject individual has been convicted, found guilty except for insanity (or a comparable disposition), or has a pending indictment for a crime listed in OAR 855-010-0067;

(b) The nature of any crime identified under section (2)(a) of this rule;

(c) The facts that support the conviction, finding of guilty except for insanity, or pending indictment;

(d) Any facts that indicate the subject individual made a false statement;

(e) The relevance, if any, of a crime identified under section (2)(a) of this rule or of a false statement made by the subject individual to the specific requirements of the subject individual's present or proposed position, services or employment; and

(f) The following intervening circumstances, to the extent that they are relevant to the responsibilities and circumstances of the services or employment for which the fitness determination is being made:

(A) The passage of time since the commission or alleged commission of a crime identified under section (2)(a) of this rule;

(B) The age of the subject individual at the time of the commission or alleged commission of a crime identified under section (2)(a) of this rule;

(C) The likelihood of a repetition of offenses or of the commission of another crime;

(D) The subsequent commission of another crime listed in OAR 855-010-0067;

(E) Whether a conviction identified under section (2)(a) of this rule has been set aside, and the legal effect of setting aside the conviction;

(F) A recommendation of an employer;

(G) The disposition of a pending indictment identified under section (2)(a) of this rule;

(H) Whether the subject individual has been arrested for or charged with a crime listed under OAR 855-010-0067;

(I) Whether the subject individual is being investigated, or has an outstanding warrant, for a crime listed under OAR 855-010-0067;

(J) Whether the subject individual is currently on probation, parole or another form of post-prison supervision for a crime listed under 855-010-0067;

(K) Whether the subject individual has a deferred sentence or conditional discharge in connection with a crime listed under OAR 855-010-0067;

(L) Whether the subject individual has been adjudicated in a juvenile court and found to be within the court's jurisdiction for an offense that would have constituted a crime listed in OAR 855-010-0067 if committed by an adult;

(M) Periods of incarceration of the subject individual;

(N) The education and work history (paid or volunteer) of the subject individual since the commission or alleged commission of a crime.

(3) Refusal to Consent. If a subject individual refuses to submit or consent to a criminal records check including fingerprint identification, the Board will deny the employment of the subject individual or deny any applicable position or authority to provide services. A person may not appeal any determination made based on a refusal to consent.

(4) If a subject individual is determined to be not fit, the subject individual may not be employed by or provide services as a volunteer to the Board.

(5) Final Order. A completed final fitness determination is a final order of the Board unless the affected subject individual appeals the determination by requesting a contested case hearing as provided by OAR 855-010-0080(2) or an alternative appeals process as provided by OAR 855-010-0080(6).

Stat. Auth.: ORS 181.534, 676.303, 689.205

Stats. Implemented: ORS 181.534

Hist.: BP 1-2011(Temp), f. & cert. ef. 2-8-11 thru 6-30-11; BP 4-2011, f. 6-24-11, cert. ef. 7-1-11

## 855-010-0067

### Potentially Disqualifying Crimes

(1) Crimes Relevant to a Fitness Determination:

(a) All felonies;

(b) All misdemeanors;

(c) Any United States Military crime or international crime;

(2) Evaluation of Crimes. The Board shall evaluate a crime on the basis of the law of the jurisdiction in which the crime or offense occurred, as those laws are in effect at the time of the fitness determination.

(3) Expunged Juvenile Record. Under no circumstances shall a subject individual be determined to be not fit under these rules on the basis of the existence or contents of a juvenile record that has been expunged pursuant to ORS 419A.260 and ORS 419A.262.

Stat. Auth.: ORS 181.534, 676.303, 689.205

Stats. Implemented: ORS 181.534

Hist.: BP 1-2011(Temp), f. & cert. ef. 2-8-11 thru 6-30-11; BP 4-2011, f. 6-24-11, cert. ef. 7-1-11

## 855-010-0070

### Incomplete Fitness Determination

(1) The Board will close a preliminary or final fitness determination as incomplete when:

(a) Circumstances change so that a person no longer meets the definition of a "subject individual" under OAR 855-010-0057;

(b) The subject individual does not submit materials or information within the time required under OAR 855-010-0060;

(c) The Board cannot locate or contact the subject individual;

(d) The subject individual fails or refuses to cooperate with the Board's attempts to acquire other criminal records information under OAR 855-010-0065; or

(e) The Board determines that the subject individual is not eligible or not qualified for the position of employee or volunteer, for a reason unrelated to the fitness determination process.

(f) The position is no longer open.

(2) A subject individual does not have a right to a contested case hearing under OAR 855-010-0080(2) or a right to an alternative appeals process under OAR 855-010-0080(6) to challenge the closing of a fitness determination as incomplete.

Stat. Auth.: ORS 181.534, 676.303, 689.205

Stats. Implemented: ORS 181.534

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Hist.: BP 1-2011(Temp), f. & cert. ef. 2-8-11 thru 6-30-11; BP 4-2011, f. 6-24-11, cert. ef. 7-1-11

## 855-010-0075

### Notice to Subject Individual of Fitness Determination

The Board shall inform the subject individual who has been determined not to be fit on the basis of a criminal records check, via personal service, or registered or certified mail to the most current address provided by the subject individual, of such disqualification.

Stat. Auth.: ORS 181.534, 676.303, 689.205

Stats. Implemented: ORS 181.534

Hist.: BP 1-2011(Temp), f. & cert. ef. 2-8-11 thru 6-30-11; BP 4-2011, f. 6-24-11, cert. ef. 7-1-11

## 855-010-0080

### Appealing a Fitness Determination

(1) Purpose: Sections (2) to (5) of this rule set forth the contested case hearing process a subject individual must use to appeal a completed final fitness determination made under OAR 855-010-0065 that the individual is not fit to hold a position with, or provide services to the Board as an employee or volunteer. Section (6) of this rule identifies an alternative appeal process available only to current Board employees.

(2) Appeal process.

(a) To request a contested case hearing, the subject individual or the subject individual's legal representative must submit a written request for a contested case hearing to the address specified in the notice provided under OAR 855-010-0075. To be timely, the request must be received by the Board at the specified address within 14 calendar days of the date stated on the notice. The Board shall address a request received after expiration of the deadline as provided under OAR 137-003-0528.

(b) When a timely request is received by the Board under subsection (a), a contested case hearing shall be conducted by an administrative law judge assigned by the Office of Administrative Hearings, pursuant to the Attorney General's Uniform and Model Rules, "Procedural Rules, Office of Administrative Hearings" OAR 137-003-0501 to 137-003-0700, as supplemented by the provisions of this rule.

(3) Discovery. The Board or the administrative law judge may protect information made confidential by ORS 181.534(15) or other applicable law as provided under OAR 137-003-0570(7) or (8).

(4) No Public Attendance. Contested case hearings on fitness determinations are closed to non-participants.

(5) Proposed and Final Order:

(a) Proposed Order. After a hearing, the administrative law judge will issue a proposed order.

(b) Exceptions. Exceptions, if any, shall be filed within 14 calendar days after service of the proposed order. The proposed order shall provide an address to which exceptions must be sent.

(c) Default. A completed final fitness determination made under OAR 855-010-0065 becomes final:

(A) Unless the subject individual makes a timely request for a hearing; or

(B) When a party withdraws a hearing request, notifies the Board or the ALJ that the party will not appear, or fails to appear at the hearing.

(6) Alternative Process. A subject individual currently employed by the Board may choose to appeal a fitness determination either under the process made available by this rule or through a process made available by applicable personnel rules, policies and collective bargaining provisions. A subject individual's decision to appeal a fitness determination through applicable personnel rules, policies, and collective bargaining provisions is an election of remedies as to the rights of the individual with respect to the fitness determination and is a waiver of the contested case process made available by this rule.

(7) Remedy. The only remedy that may be awarded is a determination that the subject individual is fit or not fit. Under no circumstances shall the Board be required to place a subject individual in any position, nor shall the Board be required to accept services or enter into a contractual agreement with a subject individual.

(8) Challenging Criminal Offender Information. A subject individual may not use the appeals process established by this rule to challenge the accuracy or completeness of information provided by the OSP, the FBI, or agencies reporting information to the OSP or the FBI.

(a) To challenge information identified in this section of the rule, a subject individual may use any process made available by the agency that provided the information.

(b) If the subject individual successfully challenges the accuracy or completeness of information provided by the OSP, the FBI, or an agency reporting information to the OSP or the FBI, the subject individual may

request that the Board conduct a new criminal records check and re-evaluate the original fitness determination made under OAR 855-010-0065 by submitting a new Board Criminal Records Request form. This provision only applies if the position for which the original criminal history check was conducted is vacant and available.

(9) Appealing a fitness determination under section (2) or section (6) of this rule, challenging criminal offender information with the agency that provided the information, or requesting a new criminal records check and re-evaluation of the original fitness determination under section (8)(b) of this rule, will not delay or postpone the Board's hiring process or employment decisions.

Stat. Auth.: ORS 181.534, 676.303, 689.205

Stats. Implemented: ORS 181.534

Hist.: BP 1-2011(Temp), f. & cert. ef. 2-8-11 thru 6-30-11; BP 4-2011, f. 6-24-11, cert. ef. 7-1-11

## 855-010-0085

### Recordkeeping and Confidentiality

Any information obtained in the criminal records check is confidential. The Board must restrict the dissemination of information obtained in the criminal records check. Only those persons, as identified by the Board, with a demonstrated and legitimate need to know the information, may have access to criminal records check records.

Stat. Auth.: ORS 181.534, 676.303, 689.205

Stats. Implemented: ORS 181.534

Hist.: BP 1-2011(Temp), f. & cert. ef. 2-8-11 thru 6-30-11; BP 4-2011, f. 6-24-11, cert. ef. 7-1-11

## 855-010-0087

### Fees

(1) The Board may charge a fee for acquiring criminal offender information for use in making a fitness determination that will not exceed the fee charged the Board by the OSP and the FBI to obtain such information.

(2) The Board may charge the fee to the subject individual on whom criminal offender information is sought.

Stat. Auth.: ORS 181.534, 676.303, 689.205

Stats. Implemented: ORS 181.534

Hist.: BP 1-2011(Temp), f. & cert. ef. 2-8-11 thru 6-30-11; BP 4-2011, f. 6-24-11, cert. ef. 7-1-11

## 855-019-0120

### Licensure

Before licensure as a pharmacist, an applicant must meet the following requirements:

(1) Provide evidence from a school or college of pharmacy approved by the Board that they have successfully completed all the requirements for graduation and, starting with the graduating class of 2011, including not less than 1440 hours of School-based Rotational Internships as that term is defined in OAR 855-031-0005, and that a degree will be conferred;

(2) Pass the North American Pharmacist Licensure Examination (NAPLEX) exam with a score of not less than 75. This score shall remain valid for only one year unless the Board grants an extension. A candidate who does not attain this score may retake the exam after a minimum of 91 days except that a candidate who has failed the exam three times must wait at least one year before retaking the exam;

(3) Pass the Multistate Pharmacy Jurisprudence Examination (MPJE) exam with a score of not less than 75. The applicant may not take the MJPE until they have graduated from a school or college of pharmacy approved by the Board. A candidate who does not attain this score may retake the exam after a minimum of 30 days except that a candidate who has failed the exam three times must wait at least one year before retaking the exam. The MJPE score shall be valid for 6 months unless extended by the Board;

(4) Submit a completed application form that may be obtained from the Board office, and pay the fee specified in Division 110 of this chapter of rules.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.151

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; 1PB 1-1981(Temp), f. & ef. 4-1-81; 1PB 2-1981, f. & ef. 8-20-81; 1PB 3-1985, f. & ef. 12-2-85; PB 3-1991, f. & cert. ef. 9-19-91; PB 4-1992, f. & cert. ef. 8-25-92; PB 1-1994, f. & cert. ef. 2-2-94; PB 1-1996, f. & cert. ef. 4-5-96; BP 1-2002, f. & cert. ef. 1-8-02; Renumbered from 855-019-0005, BP 2-2008, f. & cert. ef. 2-20-08; BP 3-2010, f. 4-29-10, cert. ef. 4-30-10; BP 4-2011, f. 6-24-11, cert. ef. 7-1-11

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**Rule Caption:** Amends licensing fees for registration and renewal of individuals and certain drug outlets.

**Adm. Order No.:** BP 5-2011(Temp)

**Filed with Sec. of State:** 6-24-2011

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# ADMINISTRATIVE RULES

## Notice Publication Date:

**Rules Amended:** 855-110-0005, 855-110-0007, 855-110-0010

**Subject:** The Board's 2011-2013 budget as approved, is dependent on fee increases that become effective 7/1/11. The budget was signed into law by Governor Kitzhaber on 6/2/11. These increases amend licensing fees for the registration and renewal for individuals and certain drug outlets. The temporary rule also includes minor house-keeping changes.

A copy of the fee schedule may be obtained from the Board's web-site: [www.pharmacy.state.or.us](http://www.pharmacy.state.or.us).

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

## 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 — \$300.

(4) Pharmacist licensing by score transfer fee — \$300.

(5) Intern license fee. Expires November 30 every two years — \$50.

(6) Pharmacist:

(a) License fee. Expires June 30 annually — \$200. 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 ORS 431.972 that must be paid with the pharmacist license renewal fee).

(c) Workforce Data Collection fee. Due by June 30 biennially — \$. (This is a mandatory fee, it may be charged annually at \$2.50 per year as required by OAR 409-026-0130 that must be paid with the pharmacist license renewal fee.

(7) Certification of approved provider of continuing education course fee, none at this time.

(8) Pharmacy Technician license fee. (This is a one year non-renewable license unless under the age of 19) — \$50.

(a) Under 19 years of age expires September 30 annually — \$50. Delinquent renewal fee, (postmarked after August 31) — \$20.

(9) Certified Pharmacy Technician:

(a) License fee. Expires September 30 annually — \$50. Delinquent renewal fee, (postmarked after August 31) — \$20.

(b) Workforce Data Collection fee. Due by June 30 biennially — \$. (This is a mandatory fee, it may be charged annually at \$2.50 per year as required by OAR 409-026-0130 that must be paid with the Certified Pharmacy Technician license renewal fee.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.135, ORS 431.972, ORS 676.410

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; 1PB 5-2011(Temp), f. 6-24-11, cert. ef. 7-1-11 thru 12-27-11

## 855-110-0007

### Fees for Registration, Renewal, and Reinspection of Drug Outlets

(1) County Health Clinic (including family planning clinics). Expires March 31 annually — \$100. 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 — \$100. 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 — \$50. Delinquent renewal fee (postmarked after December 31) — \$25.

(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 — \$100. Expires December 31 annually.

(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 — \$300. Delinquent renewal fee (postmarked after February 28) — \$75.

(12) Wholesaler Class I. Expires September 30 annually — \$400. Delinquent renewal fee (postmarked after August 31) — \$100.

(13) Wholesaler Class II. Expires September 30 annually — \$400. Delinquent renewal fee (postmarked after August 31) — \$100.

(14) Remote Dispensing Machine/Facility. 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.

(16) Home Dialysis. Expires March 31 annually — \$300. Delinquent renewal fee (postmarked after February 28) — \$75.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.135, 689.774

Hist.: 1PB 1-1996, f. & cert. ef. 4-5-96; 1PB 1-1997, f. & cert. ef. 9-22-97; 1PB 3-1998, f. & cert. ef. 3-23-98; 1PB 2-2001(Temp), f. & cert. ef. 7-26-01 thru 1-22-02; 1PB 1-2002, f. & cert. ef. 1-8-02; 1PB 4-2002, f. 6-27-02, cert. ef. 7-1-02; 1PB 2-2005, f. 2-14-05, cert. ef. 3-1-05; 1PB 2-2009(Temp), f. 6-22-09, cert. ef. 6-26-09 thru 12-23-09; 1PB 5-2009, f. & cert. ef. 12-24-09; 1PB 6-2010, f. & cert. ef. 6-29-10; 1PB 5-2011(Temp), f. 6-24-11, cert. ef. 7-1-11 thru 12-27-11

## 855-110-0010

### Fees for Registration for Controlled Substances under ORS 475.095

(1) Animal Euthanasia controlled substance registration fee — \$50 annually.

(2) Drug Distribution Agent controlled substance registration fee — \$100 annually.

(3) Drug Room (including correctional facility) controlled substance registration fee — \$100 annually.

(4) Manufacturer controlled substance registration fee — \$100 annually.

(5) Retail or Institutional Drug Outlet controlled substance registration fee — \$100 annually.

(6) Schedule II Precursor registration fee — \$100 annually.

(7) Wholesaler controlled substance registration fee — \$100 annually.

(8) Remote Dispensing Facility controlled substance registration fee — \$100 annually.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.135

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; 1PB 6-1982, f. & ef. 8-6-82; 1PB 2-1984, f. & ef. 3-7-84; 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 1-1996, f. & cert. ef. 4-5-96; 1PB 2-2005, f. 2-14-05, cert. ef. 3-1-05; 1PB 2-2009(Temp), f. 6-22-09, cert. ef. 6-26-09 thru 12-23-09; 1PB 5-2009, f. & cert. ef. 12-24-09; 1PB 5-2011(Temp), f. 6-24-11, cert. ef. 7-1-11 thru 12-27-11

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## Bureau of Labor and Industries Chapter 839

**Rule Caption:** Amends the prevailing rates of wage for the period beginning July 1, 2011.

**Adm. Order No.:** BLI 4-2011

**Filed with Sec. of State:** 6-30-2011

**Certified to be Effective:** 7-1-11

**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 July 1, 2011.

**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* dated July 1, 2011, 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, 2011,



# ADMINISTRATIVE RULES

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* dated July 1, 2011, are available from any office of the Wage and Hour Division of the 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](http://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; BLI 20-2010, f. & cert. ef. 10-1-10; BLI 24-2010, f. 12-30-10, cert. ef. 1-1-11; BLI 2-2011, f. 3-25-11, cert. ef. 4-1-11; BLI 4-2011, f. 6-30-11, cert. ef. 7-1-11

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**Rule Caption:** Conforms Apprenticeship administrative rules to the provisions of HB 2034 (2011).

**Adm. Order No.:** BLI 5-2011(Temp)

**Filed with Sec. of State:** 7-13-2011

**Certified to be Effective:** 7-18-11 thru 1-4-12

**Notice Publication Date:**

**Rules Amended:** 839-011-0051, 839-011-0070, 839-011-0084, 839-011-0088, 839-011-0140, 839-011-0141, 839-011-0142, 839-011-0143, 839-011-0145, 839-011-0290

**Subject:** These temporary rules conform the provisions of OAR 839-011 (relating to the administration of apprenticeship programs) to the

provisions of HB 2034 (2011) that amended the statutes regarding the administration of apprenticeship programs as follows:

Defines "journey worker" and deletes references to "journeyman" throughout ORS Chapter 660;

Reduces timeline for registering new apprenticeship agreement to 45 days;

Allow transfers between apprenticeship programs;

Clarifies reciprocity with apprenticeship programs in other states;

Redefines the roles and responsibilities of the apprenticeship agency and the State Apprenticeship Council; and implements program performance standards.

This legislation having an "emergency clause," became effective upon signature by the Governor on May 27, 2011.

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

## 839-011-0051

### Delegation of Authority by Council

(1) The Chair and Director, with the approval of the Chair, may act on behalf of the Council for federal purposes and in all cases where immediate action is deemed necessary by the Chair and Director. All such actions shall be placed on the agenda for the next regular Council meeting for Council approval or ratification.

(2) All matters pertaining to the approval or deregistration of apprenticeship committees, standards, program sponsors, employers, training agents or apprentices must be ratified by the Council at its next meeting.

(3) Any standards referred back to local committees by the Council for revision may be approved by the Director when revised according to Council action.

Stat. Auth.: ORS 660.120(3)

Stats. Implemented: ORS 660.120, 660.210 & 660.170

Hist.: BLI 18-2010, f. 7-29-10, cert. ef. 8-1-10; BLI 5-2011(Temp), f. 7-13-11, cert. ef. 7-18-11 thru 1-4-12

## 839-011-0070

### Definitions

(1) "Division" means the Apprenticeship and Training Division of the Bureau.

(2) "Employee" means any person employed or active in an applicable trade.

(3) "Local Committee" means any registered joint or trades apprenticeship or training committee approved by the Council.

(4) "State minimum guideline standards" means industry/trade benchmarks developed by a Council approved state committee and approved by the Council that represent the fundamental requirements necessary for entry into and completion of specific Council approved apprenticeship or training programs.

(5) "Registered program" means a local committee approved by the Council to operate an apprenticeship or training program in a specific occupation.

(6) "Registration of an Agreement" means the acceptance and recording of an apprentice or trainee agreement by the Division on behalf of the Council. Registration is evidence of the participation of the apprentice or trainee in a registered program.

(7) "Standards" means a written agreement submitted by a local committee and approved by the Council, which sets forth a plan containing all terms and conditions for the qualification, employment and training of apprentices or trainees as set forth in ORS 660.126 and 660.137.

(8) "Trainee" means any individual registered to a registered training program. For the purposes of these rules, all apprentice requirements apply to trainees unless otherwise noted.

(9) "Training agent" means an employer approved by a local committee to train apprentices and registered with the Division.

(10) "Training program" means any registered program of 2,000 on-the-job training hours or less. For the purposes of these rules, all apprenticeship requirements apply to training programs unless otherwise noted.

(11) "Traveling Training Agent" is an approved training agent working outside the geographic area where its primary place of business is located and registered by the Division.

(12) "Journeyworker" is a fully skilled practitioner who can work independently in a given trade or occupation in accordance with ORS 660.010(4). Generally, a skilled crafts person has a minimum of four years of verifiable trade-specific experience or has completed a state certified apprenticeship program in the applicable trade and holds a license where required.

Stat. Auth.: ORS 660.120(3)

Stats. Implemented: ORS 660.120(1)

# ADMINISTRATIVE RULES

Hist.: BL 6-1985, f. & ef. 10-15-85; BL 7-1991, f. & cert. ef. 8-15-91 (and corrected 2-3-92); BL 6-1994, f. & cert. ef. 10-10-94; BLI 2-1999, f. & cert. ef. 4-2-99; BLI 18-2010, f. 7-29-10, cert. ef. 8-1-10; BLI 5-2011(Temp), f. 7-13-11, cert. ef. 7-18-11 thru 1-4-12

## 839-011-0084

### Approval of New Committees and Standards

(1) Additional committees or standards in an area already served by an existing committee in the same trade, craft or occupation shall be established in the same manner as any other local committee.

(2) All employers and their qualified employees shall be afforded the opportunity to participate, on a non-discriminatory basis, in existing programs.

(3) The Council and the Apprenticeship and Training Division of the Bureau of Labor and Industries will approve the creation of a new local committee or new standards for an existing committee only if the applicant for the new program or new standards can first demonstrate to the Council and the Apprenticeship and Training Division, by a preponderance of evidence, that the application is in conformity with the following requirements:

(a) The applicant shall submit documentation showing committee composition pursuant to ORS 660.135, .145.

(b) The applicant shall submit standards in a format approved by the Council that meet or exceed any existing statewide minimum guideline standards for the occupation. Where no state guideline standards exist, proposed standards shall meet or exceed national guideline standards approved by the federal Office of Apprenticeship. Where no state or national guideline standards exist, standards will be approved at the discretion of the Council and the Apprenticeship and Training Division when the proposed occupation is clearly identified and commonly recognized throughout an industry.

(c) The applicant shall submit an administration plan that includes:

(A) Written designation of the program administrator;

(B) Documented assurances that the committee will be adequately funded to support its administration and the presentation of related instruction;

(C) A written statement that details all costs to apprentices (including instruction, books, tuition); and

(D) Assurances that training agents and prospective training agents will be provided with a written statement of costs for program participation.

(d) The applicant must demonstrate the ability to track required on-the-job training, related and supplemental training and affirmative action information (i.e., work progress reports, apprentice/trainee rotation system, employer's apprentice/trainee evaluation forms, grading sheets, applicant logs) and provide the Council with copies of the forms and documents that will be used to track such information.

(e) The applicant shall submit a plan detailing how the committee will ensure that participating employers will provide work in all areas covered by the program standards (ORS 660.137(5)), including:

(A) Training in all counties listed in proposed geographical area;

(B) Training in all work processes set forth in the standards;

(C) Committee expectations of supervising journey workers and a plan for the supervision of apprentices/trainees in the ratio set forth in the standards (ORS 660.126(1)(c), (f));

(D) Training agent qualifications and duties (ORS 660.137(5)); and

(E) A plan for training participating employers on their duties and responsibilities.

(f) The applicant shall submit a complete related training curriculum, including instructor qualifications, class outlines and expected competencies, grading procedures and completion criteria. This submission shall include:

(A) An explanation of the curriculum delivery method and a description of the related training facilities;

(B) Certification of the curriculum and instructional delivery plan by either a state education certifying authority or nationally recognized industry association (ORS 660.137(2)(c), .126(1)(j), .157); and

(C) Assurances that classroom and related instruction can be delivered throughout the geographic area. The applicant must submit a contract or other documentation demonstrating that actual instructional resources are in place. The committee's geographic area must be one that can be reasonably served by the committee with respect to employers and the location of the related training services (ORS 660.126(1)(a)).

(g) The applicant must submit operating policies and procedures and assurances that the program will be operated in accordance with the same; and

(h) The applicant shall submit a plan to recruit, evaluate and select apprentice/trainee applicants, including an application form that meets Council requirements.

(4) All objections to the approval of a new committee or new standards shall be submitted to the Council in writing at the meeting where the application is being considered for approval, specifically detailing any objections to the application. Council may rule on the application and objections thereto at that time or grant the applicant 30 days after the Council meeting to submit a written rebuttal to the objections to the Director. Council shall direct the Director to investigate and evaluate the objections and rebuttal and to provide a report to Council within 45 days of receipt of the rebuttal statement. At the next Council meeting after the initial submission, Council shall either approve or deny the application and provide a specific written explanation for its actions.

(5) All new programs shall serve a probationary period of three years after Council approval. Failure to clearly demonstrate the ability to operate a satisfactory program during the probationary period, based upon periodic program reviews conducted by the Division, shall result in cancellation of the program by Council.

(6) Compliance reviews will be conducted during the probationary period pursuant to OAR 839-011-0145 unless the Council directs the Division to conduct reviews more frequently. Should the Council find operating deficiencies in the course of any such review, the program shall immediately take action to correct the deficiencies and submit a report to the Council explaining corrective measures taken within 90 days of the Council initial finding of deficiencies. If the committee has not corrected the deficiencies within the 90 day period, the Council shall dissolve the program at the next scheduled Council meeting.

Stat. Auth.: ORS 660.120(3)

Stats. Implemented: ORS 660.135(1)

Hist.: BL 6-1985, f. & ef. 10-15-85; BL 1-1991, f. & cert. ef. 1-23-91; BLI 2-1999, f. & cert. ef. 4-2-99; BLI 16-2005(Temp), f. & cert. ef. 8-23-05 thru 2-19-06; Administrative correction 3-20-06; BLI 16-2006, f. 4-17-06, cert. ef. 4-18-06; BLI 18-2010, f. 7-29-10, cert. ef. 8-1-10; BLI 5-2011(Temp), f. 7-13-11, cert. ef. 7-18-11 thru 1-4-12

## 839-011-0088

### Registration of Apprenticeship Agreements

(1) The Council delegates registration of apprenticeship agreements to the Division and recognizes an agreement as registered when:

(a) It is on a form that has been approved pursuant to ORS 660.020 and issued by the Division;

(b) Information requested on the form as authorized by ORS 660.020 has been supplied by the apprentice. The requested information includes, but is not limited to the apprentice's Social Security Number for identification purposes;

(c) It has been signed by the apprentice and the local joint committee. Approval must be recorded as soon as possible at a committee meeting; and

(d) The agreement has been submitted to and received by a representative of the Division.

(2) The effective starting date of an apprenticeship in non-licensed trades shall be not more than ninety forty five (45) days prior to the date that a fully executed agreement is submitted to and received by a representative of the Division. In the licensed trades, the effective starting date of an apprenticeship shall not commence before a fully executed apprenticeship agreement is received by a representative of the Division, unless the committee has written authorization from the Division to issue an initial license and operates in accordance with the conditions of authorization.

(3) Local committees shall develop and implement a policy and procedures detailing the process for evaluating previous experience in a uniform manner and awarding advanced standing to new apprentices for on-the-job or related training.

(a) The committee may grant credit for prior experience for any time previously spent by the apprentice in the trade or occupation that the committee considers applicable to the work processes in the program standards.

(b) In licensed trades only lawfully obtained and documented experience that specifically applies to an Oregon license may be considered in granting credit for prior experience.

(4) All apprenticeship agreements will be maintained in the Division's main office.

Stat. Auth.: ORS 660.120(3)

Stats. Implemented: ORS 657.732 & 660.060(8)

Hist.: BL 6-1985, f. & ef. 10-15-85; BL 1-1991, f. & cert. ef. 1-23-91; BL 7-1996, f. & cert. ef. 7-22-96; BLI 2-1999, f. & cert. ef. 4-2-99; BLI 18-2010, f. 7-29-10, cert. ef. 8-1-10; BLI 5-2011(Temp), f. 7-13-11, cert. ef. 7-18-11 thru 1-4-12

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## 839-011-0140

### Approval and Dissolution of Standards

(1) A local committee must submit new standards or revisions to previously approved standards, together with executed signature sheets and committee minutes to the Director at least 45 calendar days before the date of the next Council meeting pursuant to OAR 839-011-0030.

(2) Proposed standards and revisions must be in a form and format approved by Council that includes all elements specified in ORS 660.126. The Council may require additional information of committees pursuant to OAR 839-011-0084, including program administration and training plans.

(3) Standards in a form or format other than that approved by the Council and the Division may be accepted when they are part of the federal Office of Apprenticeship approved national pattern standards and are consistent with Federal Office of Apprenticeship regulations and guidelines, these rules and Council policies.

(4) With Council approval, local committees may charge applicants a reasonable non-refundable application fee. Such fees shall be stated in the standards as a minimum qualification for entry into the program. Committees shall be required to:

(a) Incorporate the payment of a non-refundable application fee into the minimum qualifications of the committee's standards. The standards shall also reflect that applicants with an income below 150% of the federal poverty guidelines may apply for a non-refundable application fee waiver. Federal poverty guidelines are established by the Federal Department of Health and Human Services and are recognized by the Oregon Adult and Family Services Division;

(b) Show that the non-refundable application fee results in no disparate impact and report annually to the Council whether disparate impact has been determined to result from the fees charged; and

(c) Show that the local committee experiences an extraordinary burden with respect to the administration of applications, i.e., beyond the ordinary course of conducting such procedures. Examples of an extraordinary burden are, but not limited to, development of specific entrance examinations, validation studies and extensive testing or interview procedures.

(5) Revised standards will supersede the committee's previous standards covering the same occupation.

(6) The Division will report any standards that apprentices have not been active in for two or more years to the Council for dissolution due to inactivity. Thereafter, new standards must be approved prior to registration of any new apprentices.

Stat. Auth.: ORS 660.120(3)

Stats. Implemented: ORS 660.120(2)(b), 660.126 & 660.137

Hist.: BL 95, f. 8-16-65; BL 130, f. 10-5-72, ef. 10-15-72; BL 3-1978, f. & ef. 4-3-78; BL 13-1988, f. & cert. ef. 7-1-88; BL 1-1991, f. & cert. ef. 1-23-91; BL 6-1994, f. & cert. ef. 10-10-94; BLI 2-1999, f. & cert. ef. 4-2-99; BLI 18-2010, f. 7-29-10, cert. ef. 8-1-10; BLI 5-2011(Temp), f. 7-13-11, cert. ef. 7-18-11 thru 1-4-12

## 839-011-0141

### Minimum Guideline Standards

The Council may approve minimum guideline standards for occupations it deems necessary.

(1) At its discretion, or upon petition by two or more local committees directly affected by minimum guideline standards, the Council will direct the Division to convene a state committee composed of members of local committees training in the occupation. Division staff will organize the meeting time and location, and contact all appropriate local committees.

(a) Each local joint committee training in the occupation may appoint no more than one employer and one employee representative (with alternates) to the state committee pursuant to OAR 839-011-0074. Notification of this action must be submitted to the Division in writing annually. Appointments will be valid only after written notice of the names of the appointees is received by the Division at least one (1) day before a scheduled state guideline committee meeting.

(b) The employer and employee members of local trades committees (and alternates) shall represent their respective occupations on the state committee pursuant to ORS 660.155(2).

(c) Only properly appointed representatives to the state guideline committee will be permitted to vote on issues before the State Guideline Committee.

(d) A quorum shall consist of 50% plus one of the total appointed local joint committee representatives; local trade committee representatives will be counted only if they are present at the state committee meeting. A quorum of the total appointed local committee representatives constituted pursuant to this rule may revise the quorum requirement for future state committee meetings, pending review and approval by the Council.

(e) Each state committee may adopt policies and procedures consistent with ORS 660 as it deems necessary for the orderly conduct of its meetings.

(2) The state committee will develop or revise minimum guideline standards in accordance with the needs of the industry and occupation. This committee shall establish minimum guidelines in the following standards areas:

(a) Minimum qualifications;

(b) Hours of employment;

(c) Maximum probationary period;

(d) Maximum ratio of apprentices to journey level workers;

(e) Minimum work processes and approximate hours; and

(f) Minimum related/supplemental instruction.

(3) New or revised minimum guideline standards shall be distributed to all local committees training in the occupation for review and comment prior to submission to the Council.

(a) Each local committee shall have not more than 30 days to present any written objections. This information shall be referred to the state committee for review.

(b) The state committee shall then prepare its final recommendations to the Council.

(c) If consensus is not reached by the state committee, a majority and minority report will be submitted to the Council for consideration.

(d) When majority and minority reports are submitted, the Council and the Division will take into consideration the geographic area covered by each participating committee as well as the number of apprentices served and the number of training agents affected.

(4) Total on-the-job training hours for a local committee may not fluctuate below the requirements dictated by minimum guideline standards. The variations must be within statutory limits governing the licensed occupations.

Stat. Auth.: ORS 660.120(3)

Stats. Implemented: ORS 660.120(2)(a)

Hist.: BLI 18-2010, f. 7-29-10, cert. ef. 8-1-10; BLI 5-2011(Temp), f. 7-13-11, cert. ef. 7-18-11 thru 1-4-12

## 839-011-0142

### Apprentice/Trainee Qualifications

(1) The Council and the Division shall evaluate proposed qualification standards or selection methods pursuant to the criteria set forth in Title 29 CFR Part 30, the Equal Employment Opportunity in Apprenticeship Plan noted in OAR 839-011-0200, the objectives expressed by the committee and/or sponsor, and such other factors as the Council and the Division may deem appropriate. Evaluation of proposed qualification standards or selection methods shall include an analysis of whether they would result in an adverse impact upon any protected class of applicants.

(2) The Council and the Division shall not consider proposed standards that contain any of the following requirements within their minimum qualifications:

(a) Physical ability to do the job, unless it specifically references a validated occupational requirement, such as lifting a sack of cement to a specified height;

(b) Any tests (including color tests) that do not meet the validity requirements under 41 CFR 60.3;

(c) A valid driver's license; or

(d) A medical exam.

(3) Standards submitted containing any of these requirements will not be placed on the Council agenda.

(4) The minimum qualifications section of the standards may include a note advising applicants that employers may require apprentices to meet additional lawful conditions of employment. These must be identified by employers and specified in the standards.

Stat. Auth.: ORS 660.120(3)

Stats. Implemented: ORS 660.120(2)(a)

Hist.: BLI 18-2010, f. 7-29-10, cert. ef. 8-1-10; BLI 5-2011(Temp), f. 7-13-11, cert. ef. 7-18-11 thru 1-4-12

## 839-011-0143

### Ratio

(1) Registered apprentices shall only work for training agents registered to the same committee as the apprentice and must be supervised by journey workers in the same trade or occupation, except as provided in sections (5) and (6) below and employed by the same training agent employing the apprentice.

(2) The apprentice to journey level worker ratio for any registered program approved by the Council and the Division shall be clearly set forth in



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the standards for the given occupation and must be specific as to application in terms of jobsite, workforce, department or plant.

(3) The maximum ratio of apprentices to journey level workers for an occupation covered by a state committee will be developed as part of the minimum guideline standards for the occupation. Requests for a less restrictive ratio from local committees will be referred to the state committee for evaluation of minimum guideline ratio.

(4) For occupations where a minimum guideline standard is not in place, local committees are expected to meet the following apprentice to journey level ratios:

(a) Construction trades: 1:1,1:3

(b) Industrial trades and fixed-site facilities: 1:1,1:2

(c) Other trades (non-traditional and new and emerging occupations): 1:1,1:1

(d) Committees wishing a less restrictive ratio must submit a request to the Council for consideration, along with information including but not limited to:

(A) Specific workforce demographics justifying a different ratio;

(B) Plan to monitor effects of ratio on the safety and continuity of employment for apprentices; and

(C) Comparison of completion rate to statewide average for occupation.

(5) In licensed trades, an apprentice must be supervised by a journey level worker holding the same or a higher license classification than the apprentice unless the Council has approved state guideline standards permitting a lower level of journey worker supervision.

(6) Electrical power line installers and repairers and linemen apprentices may work for training agents registered to other local joint committees in order to ensure that all work processes are fulfilled, pursuant to a written agreement between the apprentice, the local committees and both training agents.

(7) In limited situations, the Council may grant a training agent a short-term waiver of the established ratio for a given program, upon demonstration of extreme need. In no event shall an apprentice work without qualified journey worker supervision. Ratio waivers of less than 90 days must be requested by the committee on behalf of a training agent. Local committees are not authorized to grant temporary waivers to training agents. A temporary waiver of ratio may be granted under the following circumstances:

(a) Serious injury or illness of the journeyworker, where the journeyworker is expected to return to work in 90 days or less; or

(b) The sudden departure of a journeyworker from employment with the training agent for causes not attributable to the training agent. The employer is expected to replace the departing journeyworker within a reasonable amount of time and in no event shall this amount of time exceed ninety (90) days. The training agent must document its efforts to replace journey level workers which may include, but shall not be limited to:

(A) Copies of job orders;

(B) Classified advertising placed, including a posting of the journey wage rate offered; and

(C) Job orders placed with the Oregon Employment Division.

(8) The lack of available qualified or licensed journeyworkers shall not be a valid reason for granting a temporary ratio waiver.

(9) The Council may authorize the Director to grant or deny waivers as set forth above on an interim basis. Such action taken by the Director must be submitted to the Council for ratification at its next meeting after interim approval or denial has been made.

Stat. Auth.: ORS 660.120(3)

Stats. Implemented: ORS 660.120(2), 660.126(1)(f)

Hist.: BLI 18-2010, f. 7-29-10, cert. ef. 8-1-10; BLI 5-2011(Temp), f. 7-13-11, cert. ef. 7-18-11 thru 1-4-12

## 839-011-0145

### Compliance Reviews

(1) All committees are subject to periodic reviews of program operation and affirmative action activities.

(2) The Division shall develop and maintain a review schedule that identifies programs scheduled for review, the type of review to be conducted and the time period to be evaluated.

(3) The Program Operation Compliance Review will evaluate program operation and administration.

(a) New committees will receive a Program Operation Compliance Review annually for the first three years of operation, unless otherwise directed by the Council.

(b) After the first three (3) years, committees found in compliance will receive a Program Operation Compliance Review every three (3) years.

Committees maintaining a completion rate of at least 70% for all standards during the three (3) previous consecutive years will receive a Program Operation Compliance Review every five (5) years.

(4) The Affirmative Action Compliance Review will evaluate outreach, recruitment, and selection activities.

(a) Committees with five or more apprentices registered to a single standard during the previous three years will receive an annual Affirmative Action Compliance Review.

(b) Training agents who select their own apprentices in accordance with the committee's approved selection procedure will receive a separate annual Affirmative Action Compliance Review.

(5) Additional reviews may be scheduled if

(a) The Director has a reasonable belief that such reviews are prudent and in the best interest of apprenticeship;

(b) Complaints have been received that the program is not operating in compliance; or

(c) At the Council's direction.

(6) Committees found out of compliance will be required to appear at the next meeting of the appropriate Council subcommittee.

(7) All reviews shall be reported on a form and in a format approved by the Council. Upon review of compliance reports, the Council shall take action including but not limited to the following:

(a) Approve the report;

(b) Refer the report back for further clarification;

(c) Extend the review period for up to six (6) months;

(d) Order a probationary period including more frequent and detailed program reviews;

(e) Direct compliance and/or corrective action accordingly;

(f) Impose sanctions;

(g) Deregister the committee and/or standards for non-compliance; or

(h) Any other action as directed by the Council and the Division.

Stat. Auth.: ORS 660.120(3)

Stats. Implemented: ORS 660.120(2)(a) & 660.120(2)(f)

Hist.: BL 16-1979, f. & ef. 11-8-79; BL 6-1994, f. & cert. ef. 10-10-94; BLI 2-1999, f. & cert. ef. 4-2-99; BLI 18-2010, f. 7-29-10, cert. ef. 8-1-10; BLI 5-2011(Temp), f. 7-13-11, cert. ef. 7-18-11 thru 1-4-12

## 839-011-0290

### Plumber Apprentices — Phased Supervision

(1) The Division shall issue plumbing apprentice licenses to active apprentices or trainees registered to standards approved by the Council. Apprentice license formats shall be jointly agreed to by the Division and the Oregon Building Codes Division.

(2) All apprentices and trainees must be directly supervised in accordance with OAR 839-011-0143, unless approved for phased supervision.

(3) Pursuant to OAR 918-695-0140, a local committee may take action to permit plumbing apprentices to work under phased supervision under the following circumstances:

(a) The plumber apprentice must work in the physical presence of an appropriate journey level plumber; and

(b) An appropriate journey level plumber present at the immediate work site at all times, except for not more than a cumulative thirty (30) minutes during any work shift during which time the journeyworker is immediately available by voice communication.

(4) The plumber apprentice may work under phased supervision when the following specific conditions are met:

(a) The appropriate journeyworker is immediately available to the apprentice by voice communication (immediately available means that the apprentice can reach the appropriate journeyworker within a 15-minute period);

(b) The appropriate journeyworker meets with the apprentice at least once each day to go over the work done by the apprentice;

(c) The activity is consistent with the committee's work requirements as established in its written policy;

(d) There is only one apprentice on the job site; and

(e) The apprentice has been specifically approved for one (1) or more of the following phases:

(A) Phase 1: The apprentice only engages in water heater replacement or conversion after completing at least six (6) months of work experience, eight (8) hours of related instruction and is evaluated and authorized to do this type of work by the committee;

(B) Phase 2: The apprentice engages in work covered in Phase 1 and minor repairs in a one (1) or two (2) family dwelling after completion of three (3) periods of work experience, the appropriate related instruction for three (3) periods and is evaluated and authorized to do this type of work by the committee;

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(C) Phase 3: The apprentice engages in work covered in Phase 1 and 2, and general repairs and replacement of existing installations after completion of four (4) periods of work experience, the appropriate related instruction for four (4) periods and is evaluated and authorized to do this type of work by the committee; or

(D) Phase 4: The apprentice engages in work covered in Phase 1, 2 and 3, and new or remodel installations after completing five (5) periods of work experience, the appropriate related instruction for five (5) periods and is evaluated and authorized to do this type of work by the committee.

(5) Phased supervision licenses will be issued by the Division upon notification of committee approval and reissued for the duration of the program unless the committee takes action to rescind approval.

Stat. Auth.: ORS 660.120(3)

Stats. Implemented: ORS 693.040

Hist.: BLI 2-1999, f. & cert. ef. 4-2-99; BLI 18-2010, f. 7-29-10, cert. ef. 8-1-10; BLI 5-2011(Temp), f. 7-13-11, cert. ef. 7-18-11 thru 1-4-12

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## Columbia River Gorge Commission Chapter 350

**Rule Caption:** Temporary Rule Revising Dates for development Review Decisions.

**Adm. Order No.:** CRGC 2-2011(Temp)

**Filed with Sec. of State:** 6-16-2011

**Certified to be Effective:** 6-16-11 thru 10-12-11

**Notice Publication Date:**

**Rules Amended:** 350-081-0036, 350-081-0042, 350-081-0054

**Subject:** Currently, the Executive Director of the Gorge Commission must review a development review application for completeness within 14 days after receiving it, and must issue a decision on a standard development review application within 72 days after accepting the application as complete and an expedited review application within 30 days. This temporary rule changes those time periods into goals that the Executive Director will attempt to make.

**Rules Coordinator:** Nancy A. Andring—(509) 493-3323, ext. 221

### 350-081-0036

#### Acceptance of Application

The Executive Director shall review the application for completeness and if complete, shall accept the application for review.

(1) No application shall be accepted until all documented omissions and deficiencies have been corrected by the applicant. The Executive Director shall notify the applicant of all omissions and deficiencies in writing. The Executive Director shall review supplemental application materials to determine if the application is complete.

(2) No application for a proposed use, which is explicitly prohibited by this ordinance, shall be accepted.

(a) The application shall be returned to the applicant.

(b) A letter, signed by the Executive Director, stating that the proposed use is prohibited and citing the guideline which explicitly prohibits the proposed use, shall be sent to the applicant.

(c) Issuance of this letter shall not prohibit the applicant from appealing the decision pursuant to 350-70.

(3) As a goal, the Executive Director shall attempt to accept the application as complete or notify the applicant of omissions and deficiencies within 14 days of receipt of the application. The Executive Director shall attempt to review supplemental materials within 14 days of receipt. The 14-day time periods in this rule are effective retroactively to all development review applications that have been submitted to the Commission and for which the Executive Director has not made a decision.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05; CRGC 2-2011(Temp), f. & cert. ef. 6-16-11 thru 10-12-11

### 350-081-0042

#### Decision of the Executive Director

(1) In making a decision on a proposed use or development the Executive Director shall:

(a) Consult with the applicant and such agencies as the Executive Director deems appropriate;

(b) Consider information submitted by the applicant and all other relevant information available;

(c) Consider all comments submitted pursuant to Commission Rule 350-81-040; and

(d) Solicit and consider the comments of the Forest Service.

(2) The Executive Director shall approve a proposed use or development only if it is consistent with the standards of section 6 and the purposes of P.L. 99-663 and Commission Rule 350-81.

(a) In approving a proposed development action, the Executive Director may impose conditions as necessary to ensure consistency with the guidelines of Commission Rule 350-81.

(b) Conditions attached to approval of a proposed development action shall be recorded in county deeds and records to ensure notice of the conditions to successors in interest. The Executive Director's decision shall include this requirement.

(3) The Executive Director shall issue a decision on a proposed use or development including findings of fact and conclusions of law and any conditions to ensure consistency with the standards of section 6 and the purposes of P.L. 99-663 and Commission Rule 350-81. As a goal, the Executive Director shall attempt to issue a decision within 72 days after acceptance of the application.

(4) The Executive Director shall send a copy of the decision to the applicant, the Forest Service, the applicable state, the four Indian tribal governments, the applicable county and/or city and each person who submitted comments under Commission Rule 350-81-040. The decision shall set forth the rights of appeal under Commission Rule 350-70.

(5) The decision of the Executive Director shall be final unless a Notice of Appeal is filed in accordance with Commission Rule 350-70. An applicant who chooses to proceed with an approved development during the appeal period shall assume all associated risks and liabilities.

(6) The 72-day time period in this rule is effective retroactively to all development review applications that have been submitted to the Commission and for which the Executive Director has not made a decision.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05; CRGC 1-2007, f. 11-1-07, cert. ef. 1-1-08; CRGC 2-2011(Temp), f. & cert. ef. 6-16-11 thru 10-12-11

### 350-081-0054

#### Procedures for Expedited Review Process

(1) Applications

(a) Prior to initiating any use or development which requires review and approval by the Executive Director, an application shall be completed pursuant to 350-81-054.

(b) The Executive Director shall accept and review the application pursuant to 350-81-054 for consistency with the appropriate guidelines of this rule.

(c) The Commission may charge a fee for review of applications after a public hearing. The Gorge Commission shall set the fee.

(d) Standard application forms shall be available at the Commission Office, and shall be provided to county and city planning offices for which this ordinance is effective and the Forest Service.

(e) Applications for uses eligible for expedited review shall include the information required for review uses listed in 350-81-032(5). They shall also include elevation drawings if the proposed development would be visible from a key viewing area. The drawing shall show natural grade and finished grade.

(2) Acceptance of Application

(a) The Executive Director shall review the application for completeness, and if complete, shall accept the application for review.

(b) No application shall be accepted until all documented omissions and deficiencies have been corrected by the applicant. The Executive Director shall notify the applicant of all omissions and deficiencies in writing. The Executive Director shall review supplemental application materials to determine if the application is complete.

(c) As a goal, the Executive Director shall attempt to accept the application as complete or notify the applicant of omissions and deficiencies in writing within 14 days of receipt of the application. The Executive Director shall attempt to review supplemental application materials within 14 days of receipt of the materials.

(3) Notice of Development Review

(a) Within 7 days of the acceptance of an application, the Executive Director shall issue notice of a proposed development review. The notice shall provide the following information:

(A) The name of the applicant;

(B) The general and specific location of the subject property;

(C) A brief description of the proposed action;

(D) The deadline for rendering a decision; and

(E) The deadline for filing comments on the proposed action.

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(b) The notice shall state that the application and supporting documents are available for inspection at the Commission office during normal working hours.

(c) The notice shall state the applicant must comply with all applicable local, state, and federal laws.

(d) The notice shall be mailed to the Forest Service, the four Indian tribal governments, applicable county or city planning office(s), libraries and other agencies and interested parties that request a notice or that the Executive Director determines should be notified.

(e) A copy of the notice shall be filed in the records of the Commission.

(4) Comment Period: Any interested person or party shall submit written comments within 10 days from the date a notice is sent.

(5) Written Decision

(a) In making a decision on a proposed use or development the Executive Director shall:

(A) Consult with the applicant and such agencies as the Executive Director deems appropriate;

(B) Consider information submitted by the applicant and all other relevant information available;

(C) Consider all comments submitted pursuant to 350-81-054(4); and

(D) Solicit and consider the comments of the Forest Service.

(b) The Executive Director shall approve a proposed use or development only if it is consistent with the standards of section 6 and the purposes of P.L. 99-663 and Commission Rule 350-81.

(A) In approving a proposed development action, the Executive Director may impose conditions as necessary to ensure consistency with the guidelines of Commission Rule 350-81.

(B) Conditions attached to approval of a proposed development action shall be recorded in county deeds and records to ensure notice of the conditions to successors in interest. The Executive Director's decision shall include this requirement.

(c) The Executive Director shall issue a decision on a proposed use or development including findings of fact and conclusions of law and any conditions to ensure consistency with the standards of section 6 and the purposes of P.L. 99-663 and Commission Rule 350-81. As a goal, the Executive Director shall attempt to issue a decision within 30 days after acceptance of the application.

(d) The decision of the Executive Director shall be final unless a Notice of Appeal is filed in accordance with Commission Rule 350-70. An applicant who chooses to proceed with an approved development during the appeal period shall assume all associated risks and liabilities.

(6) Notice of Decision and Opportunity to Appeal

(a) The Executive Director shall send a copy of a decision issued under the expedited review process to the four Indian tribal governments, the Forest Service, landowners within 200 feet of the perimeter of the subject parcel, and anyone who submitted comments pursuant to 350-81-054(4).

(b) Any person shall be allowed to appeal a decision issued under the expedited review process in accordance with Commission Rule 350-70.

(7) Expiration of Approvals. Approvals issued under the expedited review process shall expire in accordance with the standards for expiration of approvals for review uses (Commission Rule 350-81-044, above).

(8) Changes or Alterations to an Approved Action. Changes or alterations to an approval issued under the expedited review process shall be made in accordance with the standards for changes or alterations to approved actions for review uses (Commission Rule 350-81-046, above).

(9) The time periods in this rule are effective retroactively to all expedited review applications that have been submitted to the Commission and for which the Executive Director has not made a decision.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05; CRGC 2-2011(Temp), f. & cert. ef. 6-16-11 thru 10-12-11

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**Construction Contractors Board**  
**Chapter 812**

**Rule Caption:** Correct cite reference, amend course fee, continuing education credits.

**Adm. Order No.:** CCB 4-2011

**Filed with Sec. of State:** 6-24-2011

**Certified to be Effective:** 7-1-11

**Notice Publication Date:** 6-1-2011

**Rules Amended:** 812-005-0800, 812-021-0016, 812-021-0019

**Rules Repealed:** 812-021-0016(T)

**Subject:** 812-005-0800 is amended to correct a cite reference.

812-021-0016 is amended to revise the fee from \$35 per credit hour to \$15.

812-021-0019 is amended to grant credit for non-traditional education (here, activities more like experience) is not the best policy for implementing CCB's residential continuing education program.

**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 a 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 sus-



## ADMINISTRATIVE RULES

pension 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 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)(h), the number of licensed contractors working together on the same task on the same job site, where one of the contractors is licensed exempt under 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 ORS 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 con-

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tractor or otherwise exempt under ORS 701.490: first offense, \$1,000; second offense, \$3,000; third offense, \$5,000.

(47) Using the title of locksmith, locksmith professional, commercial locksmith, lock installer or any title using a form of the word "locksmith" that indicates or tends to indicate that the individual is a locksmith, unless an individual is certified as a locksmith or otherwise exempt under ORS 701.490: first offense, \$1,000; second offense, \$3,000; third offense, \$5,000.

(48) Using the title of locksmith, locksmith professional, commercial locksmith, lock installer or any title using a form of the word "locksmith" that indicates or tends to indicate that the business providing locksmith services, unless a business (a) is a licensed construction contractor and (b) is owned by or employs a certified locksmith or is otherwise exempt under ORS 701.490: first offense, \$1,000; second offense, \$3,000; third offense, \$5,000.

(49) Violating any applicable provision of the rules in division 30, including violating any standard of professional conduct other than OAR 812-030-0300(4): first offense, \$1,000; second offense, \$3,000; third offense, \$5,000 and revocation of the certificate.

(50) Violating OAR 812-030-0300(4): first offense, \$200; second offense, \$500; third offense, \$1,000.

Stat. Auth.: ORS 183.310 to 183.500, 670.310, 701.235, 701.515, 701.992 & 701.995  
Stats. Implemented: ORS 87.093, 279C.590, 701.005, 701.026, 701.042, 701.046, 701.073, 701.091, 701.098, 701.106, 701.109, 701.227, 701.305, 701.315, 701.330, 701.345, 701.480, 701.485, 701.510, 701.515, 701.992 & 701.995  
Hist.: IBB 4-1982, f. & ef. 10-7-82; IBB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0080(13); IBB 3-1983, f. 10-5-83, ef. 10-15-83; IBB 3-1984, f. & ef. 5-11-84; IBB 3-1985, f. & ef. 4-25-85; BB 1-1987, f. & ef. 3-5-87; BB 1-1988(Temp), f. & cert. ef. 1-26-88; BB 2-1988, f. & cert. ef. 6-6-88; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 2-1990, f. 5-17-90, cert. ef. 6-1-90; CCB 3-1990(Temp), f. & cert. ef. 7-27-90; CCB 4-1990, f. 10-30-90, cert. ef. 11-1-90; CCB 3-1991, f. 9-26-91, cert. ef. 9-29-91; CCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; CCB 2-1992, f. & cert. ef. 4-15-92; CCB 4-1992, f. & cert. ef. 6-1-92; CCB 5-1993, f. 12-7-93, cert. ef. 12-8-93; CCB 2-1994, f. 12-29-94, cert. ef. 1-1-95; CCB 3-1995, f. 9-7-95, cert. ef. 9-9-95; CCB 4-1995, f. & cert. ef. 10-5-95; CCB 3-1996, f. & cert. ef. 8-13-96; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 7-1999(Temp), f. & cert. ef. 11-1-99 thru 4-29-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 13-2000(Temp), f. & cert. ef. 11-13-00 thru 5-11-01; CCB 2-2001 f. & cert. ef. 4-6-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 1-2002(Temp), f. & cert. ef. 3-1-02 thru 8-26-02; CCB 2-2002, f. & cert. ef. 3-1-02; CCB 7-2002, f. 6-26-02, cert. ef. 7-1-02; CCB 8-2002, f. & cert. ef. 9-3-02; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 6-2004, f. 6-25-04, cert. ef. 9-1-04; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 5-2005, f. 8-24-05, cert. ef. 1-1-06; Renumbered from 812-005-0005, CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 2-2006, f. & cert. ef. 1-26-06; CCB 7-2006, f. & cert. ef. 6-23-06; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 4-2007, f. 6-28-07, cert. ef. 7-1-07; CCB 2-2008(Temp), f. & cert. ef. 1-2-08 thru 6-29-08; CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08; CCB 13-2008, f. 6-30-08, cert. ef. 7-1-08; CCB 17-2008, f. 9-26-08, cert. ef. 10-1-08; CCB 19-2008, f. & cert. ef. 11-20-08; CCB 1-2009, f. 1-30-09, cert. ef. 2-1-09; CCB 4-2009, f. 5-6-09, cert. ef. 6-1-09; CCB 6-2009, f. & cert. ef. 9-1-09; CCB 2-2010, f. & cert. ef. 2-1-10; CCB 8-2010, f. & cert. ef. 4-28-10; CCB 13-2010(Temp), f. & cert. ef. 7-7-10 thru 1-2-11; Administrative correction 1-25-11; CCB 1-2011, f. 2-28-11, cert. ef. 3-1-11; CCB 4-2011, f. 6-24-11, cert. ef. 7-1-11

## 812-021-0016 Fees for Agency Courses — Continuing Education for Residential Contractors

(1) The agency may charge a fee of \$15 per course hour for the following courses:

(a) Building Exterior Shell (BEST), offered by the agency as provided in OAR 812-021-0015(3)(a)(A).

(b) Construction Laws, Regulations, and Business Practices, offered by the agency as provided in OAR 812-021-0015(3)(a)(C) and 812-021-0015(4)(a)(B).

(2) In addition to the fee for the course, CCB may charge for processing, shipping and handling course materials made available other than online.

Stat. Auth.: ORS 670.310, 701.126 & 701.235  
Stats. Implemented: ORS 701.126  
Hist.: CCB 14-2010, f. 8-24-10, cert. ef. 9-1-10; CCB 3-2011(Temp), f. & cert. ef. 4-28-11 thru 10-25-11; CCB 4-2011, f. 6-24-11, cert. ef. 7-1-11

## 812-021-0019 Elective Hours — Continuing Education for Residential Contractors

(1) Elective hours may be earned by attending construction or construction business related offerings provided by any of the following:

- (a) Post-secondary institutions such as colleges or universities;
- (b) Trade schools;
- (c) Trade associations;
- (d) Professional societies;
- (e) Private companies;
- (f) Public agencies;
- (g) Business associations;
- (h) Contractor-provided in-house training programs;
- (i) Non-profit organizations; or
- (j) Manufacturers or businesses in the construction industry.

(2) Elective hours may be earned by attending trainings or demonstrations offered by building component manufacturers on product use, capabilities, or installation.

(3) Elective hours may be earned by attending education classes required to maintain another construction industry license, such as a certified home inspector or a registered professional engineer.

(4) Elective hours may be earned by completing core classes not otherwise completed for core credit.

Stat. Auth.: ORS 670.310, 701.126 & 701.235  
Stats. Implemented: ORS 701.126  
Hist.: CCB 5-2009, f. 6-25-09, cert. ef. 7-1-09; CCB 4-2011, f. 6-24-11, cert. ef. 7-1-11

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## Rule Caption: Residential Continuing Education (RCE) CCB Building Code Courses.

Adm. Order No.: CCB 5-2011(Temp)

Filed with Sec. of State: 7-1-2011

Certified to be Effective: 7-1-11 thru 12-28-11

Notice Publication Date:

Rules Amended: 812-021-0015, 812-021-0028

Subject: • 812-021-0015 is amended to allow for building code courses that were approved by the Building Codes Division (BCD) or the International Codes Council (ICC) to qualify for the two-hour mandatory building code requirement if completed by July 1, 2012. Otherwise, only CCB-approved courses will qualify.

• 812-021-0028 is amended to remove the requirement that a building codes course must have been approved by the Building Codes Division before CCB can approve.

Rules Coordinator: Catherine Dixon—(503) 378-4621, ext. 4077

## 812-021-0015

### Minimum Continuing Education Requirements — Continuing Education for Residential Contractors

(1) Residential contractors, other than residential limited contractors, shall have an owner, officer, RMI or employee, or a combination of those persons, who complete a minimum of 16 hours of continuing education every license period as described in sections (3) and (4).

(2) Residential limited contractors shall have an owner, officer, RMI or employee, or a combination of those persons, who complete:

(a) A minimum of eight hours of continuing education as described in subsection (3)(a), for license renewals on or after October 1, 2011, and before October 1, 2013;

(b) A minimum of eight hours of continuing education, for license renewals on or after October 1, 2013 as follows:

- (A) Five core hours as described in subsection (4)(a); and
- (B) Three elective hours as described in OAR 812-021-0019.

(3) For a residential contractor renewing on or after October 1, 2011 and before October 1, 2013 continuing education hours shall consist of the following:

(a) Eight core hours consisting of the following:

(A) Three hours of BEST offered by the agency or an approved provider;

(B) Two hours of education on one or more building codes or on "green" or sustainable building practices offered by:

(i) A provider approved by the agency; or

(ii) A provider offering a building codes course completed by the contractor on or before June 30, 2012, and approved by the Oregon Department of Consumer and Business Services, Building Codes Division, or the International Codes Council; and

(C) Three hours of education on laws, regulations, and business practices offered by the agency.

(b) Eight elective hours which may be satisfied by completing additional core hours or by completing other construction related courses or as otherwise set forth in OAR 812-021-0019.

(c) For contractors renewing on or after October 1, 2009, and before October 1, 2011, education completed on or after July 1, 2009, shall be considered education obtained during the license period.

(4) For a residential contractor renewing on or after October 1, 2013, continuing education hours shall consist of the following:

(a) Five core hours consisting of the following:

(A) Two hours of education on one or more building codes or on "green" or sustainable building practices offered by a provider approved by the agency; and

(B) Three hours of education on laws, regulations, and business practices offered by the agency.

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(b) Eleven elective hours which may be satisfied by completing additional core hours or by completing other construction related courses or as otherwise set forth in OAR 812-021-0019.

(5) Courses shall be a minimum of one clock hour to qualify for one hour of continuing education credit.

(6) Credit shall not be given for a person repeating the same continuing education course during a two-year period.

(7) If, during the two years immediately preceding the expiration date of the license, a residential contractor served on active duty in the United States armed forces, including but not limited to mobilization or deployment, the continuing education requirement is waived for that two-year period. This exemption applies only if the residential contractor is a:

- (a) Sole proprietor without employees;
- (b) Sole owner of a corporation; or
- (c) Sole member of a limited liability company.

Stat. Auth.: ORS 670.310, 701.126 & 701.235

Stats. Implemented: ORS 701.126

Hist.: CCB 5-2009, f. 6-25-09, cert. ef. 7-1-09; CCB 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

## 812-021-0028

### Course Approval, Standards, Fees and Renewal for Core — Continuing Education for Residential Contractors

(1) The agency will approve courses that provide training in BEST, building codes, or “green” or sustainable building practices.

(2) Approved courses may be offered as an individual course or as part of a comprehensive curriculum.

(3) A provider seeking approval of its courses must submit the following:

(a) Course name, course description, objectives of the offered course, and number of hours of continuing education credit;

(b) A written description of the course educator’s credentials;

(c) Copies of the course materials provided to registrants as described in section (4)(b);

(d) Cost of the offered course(s) to registrant;

(e) For live classes and classes held in real-time:

(A) Anticipated date, time, place of the course; and

(B) Number of registrants that each course can accommodate;

(f) For self-study courses:

(A) Anticipated date when the course will first be offered;

(B) Description of provider’s procedures to answer student questions;

and

(C) The length of time a student has to complete the course and receive credit; and

(g) A non-refundable fee of \$50 per credit hour submitted for approval.

(4) To meet minimum standards for course approval, the provider must:

(a) Submit the course syllabus describing the course objectives and content on BEST, building codes, or “green” or sustainable building practices, as appropriate;

(b) Have written materials for each registrant of sufficient explanation and quality to provide information about the subject of BEST, building codes, or “green” or sustainable building practices, as appropriate; and

(c) Have no attendance restrictions except for payment of money or membership in the provider organization.

(5) Providers seeking to offer BEST must offer training substantially equivalent to criteria established by the agency.

(6) Course approval will be valid for two (2) years from the date the course is approved by the agency.

(7) Providers must re-submit application and fees under this section for renewal of approval. Renewal of approval will be subject to the same requirements as initial approval.

Stat. Auth.: ORS 670.310, 701.126 & 701.235

Stats. Implemented: ORS 701.126

Hist.: CCB 5-2009, f. 6-25-09, cert. ef. 7-1-09; CCB 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

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**Rule Caption:** Residential Continuing Education (RCE) Exemptions.

**Adm. Order No.:** CCB 6-2011(Temp)

**Filed with Sec. of State:** 7-1-2011

**Certified to be Effective:** 7-1-11 thru 12-28-11

**Notice Publication Date:**

**Rules Adopted:** 812-021-0021

**Subject:** OAR 812-021-0021 adoption will exempt from the residential continuing education requirement those contractors that are licensed as plumbing or electrical contractors. The rule will also exempt contractors that have an owner or officer licensed as an architect or a professional engineer, regardless of whether the architect or engineer is acting within the scope of their license. (Those individuals are already exempt from ORS chapter 701 if acting within the scope of their license. See ORS 701.010(8)(a), (b)).

The exempt persons must take an equivalent number of elective courses to satisfy the 16-hour requirement for CCB’s residential contractor continuing education.

**Rules Coordinator:** Catherine Dixon—(503) 378-4621, ext. 4077

## 812-021-0021

### Exemptions from Continuing Education

(1) The following persons are exempt from obtaining BEST education as required under OAR 812-021-0015(2) or (3)(a)(A):

(a) Contractors who are licensed as:

(A) Plumbing contractors under ORS 447.010 to 447.156; or

(B) Electrical contractors under ORS 479.630.

(b) Contractors who have an owner or officer who is licensed as:

(A) An architect under ORS 671.010 to 671.220, whether or not operating within the scope of that license; or

(B) A professional engineer under ORS 672.002 to 672.325, whether or not operating within the scope of that license.

(2) The following persons are exempt from obtaining education in building codes or on “green” or sustainable practices as required under OAR 812-021-0015(2), (3)(a)(B) or (4)(a)(A):

(a) Contractors who are licensed as:

(A) Plumbing contractors under ORS 447.010 to 447.156; or

(B) Electrical contractors under ORS 479.630.

(b) Contractors who have an owner or officer who is licensed as:

(A) An architect under ORS 671.010 to 671.220, whether or not operating within the scope of that license; or

(B) A professional engineer under ORS 672.002 to 672.325, whether or not operating within the scope of that license.

(3) Persons who are exempt under sections (1) and (2) of this rule from completing mandatory core continuing education must substitute an equivalent amount of elective continuing education. Total continuing education for the license period is 16 hours.

Stat. Auth.: ORS 670.310, 701.126 & 701.235

Stats. Implemented: ORS 701.126

Hist.: CCB 6-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

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**Rule Caption:** Amend and Adopt rules to implement SB 939, Dispute Resolution Services Change to Mediation Only Process.

**Adm. Order No.:** CCB 7-2011(Temp)

**Filed with Sec. of State:** 7-8-2011

**Certified to be Effective:** 7-8-11 thru 1-4-12

**Notice Publication Date:**

**Rules Adopted:** 812-004-1001, 812-004-1110, 812-004-1120, 812-004-1140, 812-004-1160, 812-004-1180, 812-004-1195, 812-004-1210, 812-004-1240, 812-004-1250, 812-004-1260, 812-004-1300, 812-004-1320, 812-004-1340, 812-004-1350, 812-004-1360, 812-004-1400, 812-004-1420, 812-004-1440, 812-004-1450, 812-004-1460, 812-004-1490, 812-004-1500, 812-004-1510, 812-004-1520, 812-004-1530, 812-004-1537, 812-004-1600, 812-004-1480, 812-004-1505

**Rules Amended:** 812-004-0001, 812-009-0010, 812-010-0020

**Subject:** 812-004-0001, 812-009-0010, and 812-010-0020 are amended to implement SB 939 (2011). They identify the existing rules as applicable to complaints filed before July 1, 2011.

812-004-1001, 812-004-1110, 812-004-1120, 812-004-1140, 812-004-1160, 812-004-1180, 812-004-1195, 812-004-1210, 812-004-1240, 812-004-1250, 812-004-1260, 812-004-1300, 812-004-1320, 812-004-1340, 812-004-1350, 812-004-1360, 812-004-1400, 812-004-1420, 812-004-1440, 812-004-1450, 812-004-1460, 812-004-1490, 812-004-1500, 812-004-1510, 812-004-1520, 812-004-1530, 812-004-1537, 812-004-1600 are adopted to implement SB 939 (2011).

**Rules Coordinator:** Catherine Dixon—(503) 378-4621, ext. 4077



# ADMINISTRATIVE RULES

## 812-004-0001

### Application of Rules

(1) The rules in division 4 of OAR chapter 812 apply to a complaint involving work on a residential structure or an appurtenance to the structure and any other complaint filed under ORS 701.145 before July 1, 2011.

(2) Except as provided in section (4) of this rule, the following rules apply to a complaint involving work on a large commercial structure or an appurtenance to the structure and any other complaint filed under ORS 701.146:

- (a) OAR 812-004-0001 through 812-004-0240;
- (b) OAR 812-004-0260 through 812-004-0320;
- (c) OAR 812-004-0340, except 812-004-0340(2)(c), (2)(i) and (8);
- (d) OAR 812-004-0420;
- (e) OAR 812-004-0520; and
- (f) OAR 812-004-0550 through 812-004-0600.

(3)(a) Except as provided in subsection (3)(b) of this rule, the rules that apply to a complaint involving work on a residential structure under section (1) of this rule apply to a complaint involving work on a small commercial structure or an appurtenance to the structure.

(b) The rules that apply to the complaint involving work on a large commercial structure under section (2) of this rule apply to a complaint involving work on a small commercial structure or an appurtenance to the structure if the complainant files the complaint under ORS 701.146.

(4) The rules that apply to a complaint involving work on a residential structure under section (1) of this rule apply to a complaint involving work on a large commercial structure or an appurtenance to the structure if:

- (a) The complaint is filed by the owner of the structure;
- (b) The total contract for the work is \$25,000 or less; and
- (c) The complainant files the complaint under ORS 701.145.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 701.235

Stats. Implemented: ORS 701.139, 701.140, 701.145 & 701.146

Hist.: CCB 1-1989, f. & cert. ef. 11-1-89; CCB 2-1990, f. 5-27-90, cert. ef. 6-1-90; CCB 2-1991, f. 6-28-91, cert. ef. 7-1-91; CCB 3-1991, f. 9-26-91, cert. ef. 9-29-91; 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 1-1995, f. & cert. ef. 2-2-95; CCB 4-1995, f. & cert. ef. 10-5-95; CCB 4-1997, f. & cert. ef. 11-3-97; CCB 4-1998, f. & cert. ef. 4-30-98; CCB 6-1998, f. 8-31-98, cert. ef. 9-1-98; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 2-2003, f. & cert. ef. 3-4-03; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 7-2011(Temp), f. & cert. ef. 7-8-11 thru 1-4-12

## 812-004-1001

### Application of Rules

(1) The rules in 812-004-1001 to 812-004-1600 apply to all complaints filed under ORS 701.145 on or after July 1, 2011.

(2) The following rules apply to a complaint filed under ORS 701.146:

- (a) OAR 812-004-1001 through 812-004-1240;
- (b) OAR 812-004-1260 through 812-004-1320;
- (c) OAR 812-004-1340, except 812-004-1340(2)(c), (2)(i) and (8);
- (d) OAR 812-004-1420;
- (e) OAR 812-004-1520; and
- (f) OAR 812-004-1600.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: SB 939 (2011)

Hist.: CCB 7-2011(Temp), f. & cert. ef. 7-8-11 thru 1-4-12

## 812-004-1110

### Complaint Processing Fee; Waiver of Fee

(1) The complaint processing fee authorized under ORS 701.133 is \$50 for a complaint filed under ORS 701.145. There is no complaint processing fee for a complaint filed under ORS 701.146.

(2) The agency must collect the processing fee under OAR 812-004-1400.

(3) A complainant may request that the agency waive the complaint processing fee described in section (1) of this rule by submitting a properly executed waiver request. The waiver request must be submitted on a form provided by the agency.

(4) The agency may waive the complaint processing fee if the waiver request submitted by the complainant shows that:

- (a) The complainant is an individual;
- (b) The complainant has no significant assets except the home that is the subject of the complaint and one automobile; and
- (c) The complainant's gross income does not exceed the 2011 Department of Health and Human Services Poverty Guidelines published in the Federal Register, Vol. 76, No. 13, January 20, 2011, pp. 3637-3638.

(5) A complainant, who requests a waiver of the complaint processing fee under section (3) of this rule, must certify that the information on the request is true.

(6) The agency may require that the complainant pay a complaint processing fee of \$97 if the agency finds that the complainant provided false information on a request for a waiver of the complaint processing fee submitted under section (3) of this rule.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: SB 939 (2011)

Hist.: CCB 7-2011(Temp), f. & cert. ef. 7-8-11 thru 1-4-12

## 812-004-1120

### Liability of Licensee

A licensee, as defined in OAR 812-002-0450, participating in a corporation wholly owned by the licensee, or a limited liability partnership, limited liability company, joint venture, limited partnership or partnership, may be held individually liable for complaints brought under ORS 701.131 to 701.180, whether or not the corporation, limited liability partnership, limited liability company, joint venture, limited partnership, or partnership was licensed as required by ORS Chapter 701.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: SB 939 (2011)

Hist.: CCB 7-2011(Temp), f. & cert. ef. 7-8-11 thru 1-4-12

## 812-004-1140

### Liability of Contractor for Complaint Related to Contractor's Property

(1) If an employee complaint, material complaint or subcontractor complaint arises from property owned by a licensed contractor, the licensed contractor is a contractor subject to ORS Chapter 701 unless the contractor supplies pre-contract written notice to suppliers, subcontractors, and other potential complainants that the property is for the contractor's personal use and that the contractor is not subject to ORS Chapter 701, as provided in ORS 701.010(7).

(2) If a licensed contractor files a complaint against another licensed contractor arising from property owned by the contractor filing the complaint, the contractor filing the complaint is a contractor subject to ORS Chapter 701 unless the property is for the contractor's personal use and occupancy.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: SB 939 (2011)

Hist.: CCB 7-2011(Temp), f. & cert. ef. 7-8-11 thru 1-4-12

## 812-004-1160

### Establishment of Co-Complainant

The agency may allow a person to become a co complainant, with the complainant's permission, even though that person did not sign the complaint form if the person would otherwise qualify as a complainant.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: SB 939 (2011)

Hist.: CCB 7-2011(Temp), f. & cert. ef. 7-8-11 thru 1-4-12

## 812-004-1180

### Complainant's Responsibility to Pursue Complaint

(1) Throughout the processing of a complaint, a complainant has the responsibility to pursue the complaint and to respond in a timely manner to requests from the agency for information or documents.

(2) The agency may close a complaint under OAR 812-004-1260 if:

- (a) The complainant does not respond to a written request from the agency, or to provide requested information or documents within a time limit specified in that request; or
- (b) The complainant does not respond in writing to a written request from the agency, after being instructed to do so by the agency.

(3) A written request from the agency under section (2) of this rule must comply with the requirements of OAR 812-004-1260(2).

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: SB 939 (2011)

Hist.: CCB 7-2011(Temp), f. & cert. ef. 7-8-11 thru 1-4-12

## 812-004-1195

### Exhibits

(1) If a party to a complaint submits a document that is larger than 8-1/2 inches by 14 inches or a photograph as an exhibit, the agency may require that the party submit four copies of the document or photo.

(2) The disposal of large exhibits is subject to OAR 812-001-0130.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: SB 939 (2011)

Hist.: CCB 7-2011(Temp), f. & cert. ef. 7-8-11 thru 1-4-12

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## 812-004-1210

### Address of Complainant and Respondent

(1) All communications directed to the last known address of record of a party to a complaint is considered delivered when deposited in the United States mail and sent by regular mail.

(2) A party must notify the agency in writing within 10 days of any change in the party's address, withdrawal or change of the party's attorney or change of address of the

party's attorney during the processing of the complaint and until 90 days after the date the agency notifies the parties that the complaint is closed.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: SB 939 (2011)

Hist.: CCB 7-2011(Temp), f. & cert. ef. 7-8-11 thru 1-4-12

## 812-004-1240

### Exhaustion of Surety Bond, Letter of Credit or Cash Deposit

The agency may continue processing a complaint even though the surety bond, letter of credit or cash deposit related to that complaint is exhausted by prior complaints.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: SB 939 (2011)

Hist.: CCB 7-2011(Temp), f. & cert. ef. 7-8-11 thru 1-4-12

## 812-004-1250

### Payments From the Bond for Court Costs, Complaint Processing Fee, Interest and Other Costs

(1) For complaints filed under ORS 701.145, the agency may include the following costs in the amount of a judgment that is subject to payment by a surety or financial institution:

(a) Court costs;

(b) Interest;

(c) Costs, other than attorney fees, to pursue litigation or the complaint; or

(d) Service charges or fees.

(2) For complaints filed under ORS 701.145, the agency's determination of payment due from a surety or financial institution may not include amounts arising out of claims for anything other than construction work involving negligence, improper work or breach of contract.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: SB 939 (2011)

Hist.: CCB 7-2011(Temp), f. & cert. ef. 7-8-11 thru 1-4-12

## 812-004-1260

### Closing a Complaint

(1) The agency may close a complaint because:

(a) The complainant did not act in response to a request from the agency;

(b) The complaint is not the type of complaint that the agency has jurisdiction to determine under ORS 701.140;

(c) The complaint was not filed within the time allowed under ORS 701.143;

(d) The complainant failed to pay the complaint processing fee as required under OAR 812-004-1110 and 812-004-1400;

(e) The complaint contains a mediation or arbitration agreement that the complainant has not waived;

(f) The complainant does not comply with the on-site meeting requirements as provided in OAR 812-004-1450(2);

(g) The complainant and respondent settle the complaint as provided in OAR 812-004-1500;

(h) The complainant does not, within 30 days of the date of completion of the settlement agreement, notify the agency whether the terms of the settlement agreement have been fulfilled;

(i) The complainant fails to provide documents to the agency as required by OAR 812-004-1520; or

(j) The agency does not timely receive evidence of a stay or counter-suit on a construction lien complaint, as provided in OAR 812-004-1530.

(2) The agency may close a complaint under section (1) of this rule if the agency notifies the complainant that complainant must provide information or that complainant must comply with an agency rule and that:

(a) Failing to respond to the agency's request may result in closing the complaint; and

(b) Closing the complaint will prevent access to the bond, letter of credit or cash deposit.

(3) The agency may not close the complaint sooner than 14 days after giving the notice required in subsection (2) of this rule.

(4) The agency may, within 60 days after closing a complaint, reopen a complaint closed under section (1) of this rule if the complainant did not

comply with the agency's request or failed to comply with an agency rule due to excusable neglect by the complainant. The agency may reopen the complaint after receiving evidence supporting reopening the complaint.

(5) The agency's determination to close a complaint is an order in other than a contested case.

(6) The agency's determination to close a complaint is subject to judicial review under ORS 183.484.

(7) A party must file a motion for reconsideration of the agency's determination to close a complaint before seeking judicial review of the order.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: SB 939 (2011)

Hist.: CCB 7-2011(Temp), f. & cert. ef. 7-8-11 thru 1-4-12

## 812-004-1300

### Filing Date of Complaint

(1) Except as provided under section (3) of this rule, a complaint filed with the agency under ORS 701.139 is deemed to have been filed when a complaint is received by the agency that:

(a) Meets the requirements of OAR 812-004-1340(1) and (2)(m); and

(b) Contains information sufficient to identify the complainant and respondent.

(2) The agency must return a complaint that does not meet the requirements of section (1) of this rule to the person who submitted the complaint.

(3) If the agency returns a complaint to a person under section (2) of this rule because the person did not meet the requirements of OAR 812-004-1340(2)(m) related to pre-complaint notice, that person may resubmit the complaint with the required evidence. If the resubmitted complaint satisfies the agency that the person met the requirements under OAR 812-004-1340(2)(m) before the agency received the original complaint, the complaint is deemed to have been filed on the date the complaint was first received by the agency.

(4) A complaint that does not fully comply with the requirements of OAR 812-004-1340 is subject to OAR 812-004-1350.

(5) The date of filing of a complaint submitted to the agency for processing under ORS 701.146 is the date when the complainant complies with ORS 701.133(1) and 701.146(2).

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: SB 939 (2011)

Hist.: CCB 7-2011(Temp), f. & cert. ef. 7-8-11 thru 1-4-12

## 812-004-1320

### 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. A surety company or financial institution is only liable for payments 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. A surety company or financial institution is only liable for payments 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 701.021 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;

# ADMINISTRATIVE RULES

(C) Complied with the requirements of ORS 701.035 and OAR 812-003-1250 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 closed 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 or 812-004-1110.

(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.

(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 812-004-1110.

(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: SB 939 (2011)

Hist.: CCB 7-2011(Temp), f. & cert. ef. 7-8-11 thru 1-4-12

## 812-004-1340

### Form of Complaints, Pre-Complaint Notice

(1) A complaint must be submitted on a complaint form provided by the agency. The agency may require the use of the most recent revision of the complaint form.

(2) The complainant must submit the following information on or with the complaint form required under section (1) of this rule if applicable:

(a) The name, address and telephone number of the complainant;

(b) The name, address, telephone number and license number of the respondent;

(c) The amount, if known at the time the complaint is filed, that the complainant alleges is due from the respondent after crediting payments, offsets and counterclaims in favor of the licensee to which the complainant agrees;

(d) Identification of the type of complaint;

(e) The date on which the contract was entered into;

(f) If the contract was in writing, a copy of the contract, including all relevant attachments, if any;

(g) The location of the work at issue in the complaint, described by a postal address or other description sufficient to locate the work site on a map and on the ground;

(h) The beginning and ending date of the work or invoices;

(i) Payments, offsets and counterclaims of the respondent, if known;

(j) Whether the project involves work on a residential, small commercial or large commercial structure;

(k) A certification by the complainant that the information provided on the complaint form is true;

(l) If a court judgment or judgment based on an arbitration award is the basis for the complaint, a copy of the judgment, arbitration award, the original complaint and any answers or counter-suits related to the parties to the complaint filed in the court action or arbitration;

(m) Documents described in section (9) of this rule that are related to the pre-complaint notice requirement in ORS 701.133.

(n) Additional information required under sections (3) through (8) of this rule.

(3) A subcontractor complaint must include copies of each original invoice relating to the complaint.

(4) An employee complaint must include evidence that an employee worked for a contractor and evidence of the amount of unpaid wages or benefits. Evidence may include:

(a) Time cards;

(b) Paycheck stubs;

(c) W-4 forms; or

(d) A sworn affidavit or written declaration under perjury of a third-person stating facts that indicate the employee worked for the contractor. A written declaration under perjury must contain the following statement, "I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury."

(5) An employee trust complaint must include the name of each employee that is the subject of the complaint, the dates that employee worked without payment of employee benefits and the following information for each date and employee:

(a) The hours worked without payment of employee benefits;

(b) The amount of the unpaid benefits;

(c) The address of the job site where the employee worked; and

(d) Whether the structure at the job site is a residential structure, small commercial structure or large commercial structure.

(6) A construction lien complaint must include evidence that the complainant paid the primary contractor, a copy of the notice of right to lien, a copy of the lien bearing the county recorder's stamp and signature, a copy of each invoice or billing constituting the basis of the lien, a copy of the ledger sheet or other accounting of invoices from the lienor, if applicable, and any foreclosure documents.

(7) A material complaint must include recapitulation of the indebtedness showing the job site address, the date of each invoice, each invoice number, each invoice amount and a copy of each original invoice relating to the complaint.

(8) A complaint involving negligent or improper work must include a list of the alleged negligent or improper work. A complaint involving a breach of contract must describe the nature of the breach of contract.

(9) A complaint must include one of the following:

(a) A copy of the pre-complaint notice required under ORS 701.133 and of the certified or registered mail receipt for the pre-complaint notice; or

(b) Written evidence that the respondent had actual notice of the dispute that is the subject of the complaint at least 30 days before the complainant filed the complaint. The agency will only accept evidence under this subsection (9)(b) if it is in one of the following forms:

(A) A return receipt signed by the respondent indicating receipt of a notice of intent to file a complaint sent to the respondent by the complainant; or

(B) A letter signed by the respondent acknowledging receipt of a notice of intent to file a complaint.

(c) Written evidence that the complainant and the respondent are parties to mediation, arbitration or a court action arising from the same contract or issues that are the subject of the complaint. The agency will only accept evidence under this subsection (9)(c) if it is in one of the following forms:

(A) Copies of a complaint or answer in the court action; or

(B) Copies of a document that initiated the mediation or arbitration.

(d) Evidence that the complainant and the respondent are parties to another complaint filed with the agency arising from the same contract or issues that are the subject of the complaint.

(10) Except as provided in subsections (9)(c) and (9)(d), the agency may not accept a statement by the complainant alleging that the respondent



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had actual knowledge of the dispute as written evidence required under section (9) of this rule.

(11) The completed complaint form must be signed by the complainant or an agent of the complainant.

(12) A complaint form submitted to the agency that does not comply with the requirements of this rule is subject to OAR 812-004-1350.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: SB 939 (2011)

Hist.: CCB 7-2011(Temp), f. & cert. ef. 7-8-11 thru 1-4-12

## 812-004-1350

### Procedure if Information on Complaint Form is Incomplete

If the agency receives a complaint form that does not meet the requirements of OAR 812-004-0340, the agency may close the complaint if the complainant does not provide the missing information in response to a written request for the information from the agency. The written request and closure must comply with OAR 812-004-0260.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: SB 939 (2011)

Hist.: CCB 7-2011(Temp), f. & cert. ef. 7-8-11 thru 1-4-12

## 812-004-1360

### Addition of Complaint Items at On-Site Meeting

If the agency holds an on-site meeting, the complainant may add new complaint items up to and through the initial on-site meeting. New items added to a timely filed complaint under this rule are considered timely filed.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: SB 939 (2011)

Hist.: CCB 7-2011(Temp), f. & cert. ef. 7-8-11 thru 1-4-12

## 812-004-1400

### 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 812-004-1340 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;

(2) If the agency makes a preliminary determination under subsection (1)(c) of this rule that it has jurisdiction over the complaint and the agency does not waive the complaint processing fee required under OAR 812-004-1110, the agency must request payment of the complaint processing fee. The agency may suspend processing of the complaint until complainant pays this fee.

(3) If the complainant does not pay the fee required under OAR 812-004-1110 within 14 days of written notification that the fee is due, the agency may close the complaint. The agency may extend the time for payment of the fee upon a showing of good cause by the complainant.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: SB 939 (2011)

Hist.: CCB 7-2011(Temp), f. & cert. ef. 7-8-11 thru 1-4-12

## 812-004-1420

### Processing Owner and Primary Contractor Complaints Together

If an owner complaint based on the same facts and issues is received at any time during the processing of a primary contractor complaint, the two complaints will be processed together.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: SB 939 (2011)

Hist.: CCB 7-2011(Temp), f. & cert. ef. 7-8-11 thru 1-4-12

## 812-004-1440

### Contracts With Arbitration Agreements

(1) If a complaint is based on a contract that contains an agreement by the parties to mediate or arbitrate disputes arising out of the contract, the specific terms of the mediation or arbitration agreement supersede agency rules except as set forth in ORS 701.180.

(2) If the contract requires mediation or arbitration, the agency may notify the complainant in writing that the agency must close the complaint pursuant to OAR 812-004-1260(1)(e) unless, within 40 days, the agency receives:

(a) A written waiver of mediation or arbitration signed by the complainant; or

(b) Evidence that the complainant or respondent initiated mediation or arbitration to resolve the same facts and issues raised in the complaint.

(3) If the agency does not receive the written waiver of mediation or arbitration or evidence that the complainant or respondent initiated mediation or arbitration, the agency may close the complaint.

(4) The agency must inform the respondent by written notice that, if the respondent wants to mediate or arbitrate under the contract, respondent must initiate the mediation or arbitration process under the contract within the time allowed under ORS 701.180 and submit evidence to the agency within 40 days from the date of the agency's written notice that the respondent initiated mediation or arbitration under the contract.

(5) If mediation or arbitration under the contract is timely commenced under ORS 701.180, the agency must suspend processing the complaint until the mediation or arbitration is complete.

(6) Notwithstanding receipt of a notice of intent to file a complaint under ORS 701.133 or any prior communication from the agency referencing a complaint, for purposes of ORS 701.180, a respondent receives notice of a complaint when the agency sends the respondent the notice described under section (4) of this rule.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: SB 939 (2011)

Hist.: CCB 7-2011(Temp), f. & cert. ef. 7-8-11 thru 1-4-12

## 812-004-1450

### On-site Meeting and Telephone Mediation; Attendance of the Complainant

(1) The agency may schedule one or more on-site meetings or telephone mediations among the parties for the purpose of discussing a settlement of a complaint under ORS 701.145. The agency must mail notice of an on-site meeting no less than 14 days before the date scheduled for the meeting. The notice must include notice of the requirements of section (2) and (3) of this rule and must comply with the requirements of OAR 812-004-1260(2).

(2) If the agency schedules an on-site meeting, the following apply:

(a) The complainant must allow access to the property that is the subject of the complaint.

(b) The complainant or an agent of the complainant must attend the meeting. An agent of the complainant must have knowledge of all complaint items included in the complaint and must have authority to enter into a settlement of the complaint.

(c) The complainant must allow the respondent to be present at the on-site meeting as required by ORS 701.145.

(3) If the complainant does not comply with the requirements of section (2) of this rule, the agency may close the complaint. OAR 812-004-1260 applies to closure of a complaint under this section.

(4) Except as provided in subsection (2)(c), the agency may continue to process the complaint if the respondent does not appear at the on-site meeting.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: SB 939 (2011)

Hist.: CCB 7-2011(Temp), f. & cert. ef. 7-8-11 thru 1-4-12

## 812-004-1460

### Agency Recommendation of Resolution

If it appears that the respondent has breached a contract or performed work negligently or improperly, the agency may recommend to the complainant and respondent a resolution consistent with the terms of the contract, generally accepted building practices, and industry standards.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: SB 939 (2011)

Hist.: CCB 7-2011(Temp), f. & cert. ef. 7-8-11 thru 1-4-12

## 812-004-1480

### Resolution by Settlement and Construction of Settlement Agreement

(1) The agency may present a settlement proposal to the complainant and respondent for their consideration and agreement at or after an on-site meeting or telephone mediation conducted under OAR 812-004-0450.

(2) If the complainant and respondent sign a settlement agreement, the agreement shall be binding upon each party unless breached by the other.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: SB 939 (2011)

Hist.: CCB 7-2011(Temp), f. & cert. ef. 7-8-11 thru 1-4-12

## 812-004-1490

### Subsequent On-Site Meetings; Determining Compliance; Closing Complaint

(1) If a dispute arises as to whether the respondent complied with the settlement agreement, the agency may schedule a subsequent on-site meeting.

# ADMINISTRATIVE RULES

(2) If the agency determines that the respondent complied with the terms of the settlement agreement, the agency may close the complaint.

(3) If the agency determines that the respondent did not comply with the terms of the settlement agreement, the complainant must obtain a judgment and submit the judgment to the agency in order to recover under the respondent's bond.

Stat. Auth.: ORS 670.310 & 701.235  
Stats. Implemented: SB 939 (2011)  
Hist.: CCB 7-2011(Temp), f. & cert. ef. 7-8-11 thru 1-4-12

## 812-004-1500

### Closure of Complaint After Settlement

If the complainant and respondent agree to a settlement, within 30 days from the date the settlement agreement requires completion of the terms of the settlement, the complainant must notify the agency in writing whether the terms of the settlement have been fulfilled.

Stat. Auth.: ORS 670.310 & 701.235  
Stats. Implemented: SB 939 (2011)  
Hist.: CCB 7-2011(Temp), f. & cert. ef. 7-8-11 thru 1-4-12

## 812-004-1505

### Complaint Not Settled

(1) For other than a BOLI final order, if the complainant and respondent do not settle the complaint, the complainant must obtain a court judgment, including a judgment on an arbitration award, in order to recover from the respondent's bond.

(2) The agency will process the judgment and issue its determination as to the amount of the judgment that complainant is entitled to recover from respondent's bond.

Stat. Auth.: ORS 670.310 & 701.235  
Stats. Implemented: SB 939 (2011)  
Hist.: CCB 7-2011(Temp), f. & cert. ef. 7-8-11 thru 1-4-12

## 812-004-1510

### Court Judgments, Arbitration Awards and Bureau of Labor and Industries Final Orders

(1) A judgment based on a court action or arbitration award or a Bureau of Labor and Industries (BOLI) final order constitute the basis for a complaint if:

(a) A complaint is filed under OAR 812-004-1300 and 812-004-1340 within the time limit in ORS 701.143; and

(b) All or a portion of the judgment or the BOLI final order is within the jurisdiction of the agency.

(2) A complaint based on a judgment or BOLI final order will be processed under OAR 812-004-1520.

(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: SB 939 (2011)  
Hist.: CCB 7-2011(Temp), f. & cert. ef. 7-8-11 thru 1-4-12

## 812-004-1520

### Processing of Complaint Based on Judgments and Bureau of Labor and Industries Final Orders

(1) The agency may suspend processing a complaint if:

(a) The complainant or respondent submits to a court, arbitrator or BOLI a complaint based on the same facts and issues contained in the complaint filed with the agency; or

(b) The complainant in an owner complaint involving a residential structure submits copies of a notice of defect required under ORS 701.565 and the registered mail receipt for the notice and the notice of defect relates to the same facts and issues contained in the complaint.

(2) Beginning six months after the date that the agency suspends processing the complaint and no less frequently than every sixth month thereafter, the complainant must deliver to the agency a written report describing the current status of the notice of defect or action before the court, arbitrator or BOLI.

(3) The agency may, at any time, demand from the complainant a written report describing the current status of the notice of defect or the action before the court, arbitrator or BOLI. The complainant must deliver a written response to the agency within 30 days from the date the agency mails the demand letter.

(4) Within 30 days from the date of final action by the court or BOLI, the complainant must deliver to the agency a certified copy of the final judgment or BOLI final order. The agency may extend the time in which to submit the final judgment or BOLI final order if it determines there is good cause to do so.

(5) If the complainant does not comply with sections (2), (3) or (4) of this rule, the agency may close the complaint under OAR 812-004-1260(1)(i).

(6) If the agency suspends processing a complaint because respondent filed a court action, the complainant must file its complaint as a countersuit, complaint or counter-claim in the court, arbitration or other proceedings and submit evidence, including a copy of the countersuit, complaint or counter claim, to the agency. The complainant must provide this information within 30 days from the date that the agency suspended processing the complaint, unless the agency determines there is good cause to extend the permissible time period.

(7) If the complainant does to submit the evidence required under subsection (6) of this rule, the agency may close the complaint.

(8) At its discretion and with the agreement of the complainant and respondent, the agency may hold an on-site meeting under OAR 812-004-1450 before suspending complaint processing under section (2) of this rule if the agency finds that an on-site meeting may help the parties to resolve the complaint.

Stat. Auth.: ORS 670.310 & 701.235  
Stats. Implemented: SB 939 (2011)  
Hist.: CCB 7-2011(Temp), f. & cert. ef. 7-8-11 thru 1-4-12

## 812-004-1530

### Construction Lien Complaints

(1) The agency may schedule one or more on-site meetings or telephone mediations among the parties to a construction lien complaint filed under ORS 701.140(2) and processed under ORS 701.145 for the purpose of discussing settlement of the complaint. Notice of the meeting must comply with OAR 812-004-1450(1). The agency may invite the lienor to participate in the settlement discussions. The on-site meeting may be held on the property of the complainant or another mutually agreeable site. OAR 812-004-1450(2), (3) and (4) apply to an on-site meeting held under this section.

(2) If the complaint does not settle, the complainant must:

(a) Join the respondent as a party in an action to foreclose the lien if the lienor has filed such an action; or

(b) File an action against respondent to recover damages caused by respondent's failure to pay for material, rental services, labor or subcontractor services that gave rise to the lien.

(3) The agency will suspend processing the complaint while the complainant complies with section (2) of this rule. If complainant fails, within 60 days from the date of the last on-site meeting or telephone mediation, to comply with section (2) of this rule, the agency may close the complaint. The agency may extend the time to comply with section (2) for good cause.

(4) While the court action described in section (2) is proceeding, the complainant must comply with OAR 812-004-1520.

(5) If a construction lien complaint involves the same facts and issues as any other open complaint, the agency may process the complaints together.

Stat. Auth.: ORS 670.310 & 701.235  
Stats. Implemented: SB 939 (2011)  
Hist.: CCB 7-2011(Temp), f. & cert. ef. 7-8-11 thru 1-4-12

## 812-004-1537

### Standards of Care and Workmanship

(1) For purposes of this rule, "NASCLA Standards" mean the Residential Construction Standards, dated March 20, 2009, as adopted by the National Association of State Contractors Licensing Agencies.

(2) Except as provided in section (3) of this rule, the agency will apply NASCLA standards; to the extent such standards cover the work at issue, in order to determine if construction work performed on a residential structure meets the standards of care and workmanship in the industry.

(3) The agency may apply a standard different than the NASCLA standard if:

(a) The contract between the parties provides for a standard of care and workmanship that differs from the NASCLA standard; or

(b) The work involved installation of a product for which the manufacturer provided installation instructions that establish a standard that differs from the NASCLA standard.

Stat. Auth.: ORS 670.310 & 701.235  
Stats. Implemented: SB 939 (2011)  
Hist.: CCB 7-2011(Temp), f. & cert. ef. 7-8-11 thru 1-4-12

## 812-004-1600

### Payment From Surety Bond, Letter of Credit or Cash Deposit

(1) The agency must notify the surety company or financial institution the agency's determination. The determination is the amount of the judgment that is subject to payment by the surety or financial institution.

# ADMINISTRATIVE RULES

(2) A complaint is ready for payment when there is a court judgment and 30 days have elapsed or there is a BOLI final order and 60 days have elapsed and:

(a) The respondent has not paid the judgment or BOLI order;

(b) A court has not granted a stay of judgment or BOLI has not granted a stay of its final order; and

(c) All other complaints filed against the respondent within the same 90-day filing period under ORS 701.150 are resolved, closed or have reached the same state of processing as the subject complaint.

(3) For purposes of section (2), a BOLI final order is final except that the 60-day period for judicial review has not expired.

(4) Complaints related to a job that are satisfied from a surety bond, letter of credit or cash deposit must be paid as follows:

(a) If a surety bond, letter of credit or cash deposit was in effect when the work period began and that bond, letter of credit or cash deposit was not cancelled more than 14 months before the agency received the complaint, payment must be made from that surety bond, letter of credit or cash deposit.

(b) If no surety bond, letter of credit or cash deposit was in effect when the work period began and that bond, letter of credit or cash deposit was not cancelled more than 14 months before the agency received the complaint, but a surety bond, letter of credit or cash deposit subsequently became effective during the work period of the contract, payment must be made from the first surety bond, letter of credit or cash deposit to become effective after the beginning of the work period.

(c) A surety bond, letter of credit or cash deposit that is liable for a complaint under subsection (4)(a) or (b) of this rule is liable for all complaints related to the job and subsequent surety bonds, letters of credit or cash deposits have no liability for any complaint related to the job.

(5) If during a work period the amount of a surety bond, letter of credit or cash deposit is changed and a complaint is filed relating to work performed during that work period, the complainant may recover from the surety bond, letter of credit or cash deposit up to the amount in effect at the time the contract was entered into.

(6) If the contractor holds a residential surety bond, that bond is available only for payments ordered by the agency involving residential or small commercial structures or for the development of property zoned or intended for use compatible with residential or small commercial structures.

(7) If the contractor holds a commercial surety bond, that bond is available only for payments ordered by the agency involving small or large commercial structures or for development of property zoned or intended for use compatible with small or large commercial structures.

(8) If more than one complaint must be paid from a surety bond, letter of credit or cash deposit under section (4) of this rule and the total amount due to be paid exceeds the total amount available from the surety bond, letter of credit or cash deposit, payment on a complaint must be made in the same proportion that the amount due on that complaint bears to the total due on all complaints that must be paid.

(9) The full penal sum of a bond is available to pay complaints under this rule, notwithstanding that the penal sum may exceed the bond amount required under OAR 812-003-0170 or 812-003-0171.

(10) If two or more respondents are jointly and severally liable for an amount due to a complainant and payment is due from the surety bonds, letter of credit or cash deposit of the respondents, payment must be made in equal amounts from each bond, letter of credit or cash deposit subject to payment. If one or more of the bonds, letters of credit or cash deposits is or becomes exhausted, payment must be made from the remaining bond, letter of credit or cash deposit or in equal amounts from the remaining bonds, letters of credit or cash deposits. If one of the respondents liable on the complaint makes payment on the complaint, that payment shall reduce the payments required from that respondent's bond, letter of credit or cash deposit under this section by an amount equal to the payment made by the respondent.

(11) A surety company or financial institution may not condition payment of a complaint on the execution of a release by the complainant.

(12) Inactive status of the license of the respondent does not excuse payment by a surety company or financial institution required under this rule.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: SB 939 (2011)

Hist.: CCB 7-2011(Temp), f. & cert. ef. 7-8-11 thru 1-4-12

## 812-009-0010

### Application of Rules

Subject to OAR 812-004-0590, contested case hearings on complaints filed before July 1, 2011, arising under ORS 701.139-701.180 are governed

by OAR 812-009-0020 – 812-009-0220 and OAR 137-003-0501 – 137-003-0700.

Stat. Auth.: ORS 670.310, 701.145, 701.235 & OL 1999, Ch. 849, Sec. 8

Stats. Implemented: ORS 183.413 - 183.470 & 701.145

Hist.: CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 6-2002 f. 6-10-02 cert. ef. 7-1-02; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 7-2011(Temp), f. & cert. ef. 7-8-11 thru 1-4-12

## 812-010-0020

### Applicability of Rules; Application of ORS 36.600–36.740

(1) The rules in division 10 of this chapter apply to complaints filed before July 1, 2011, when:

(a) A complaint is referred to the Office of Administrative Hearings for arbitration under OAR 812-004-0590.

(b) The parties to the arbitration agree that the Construction Contractors Board may arbitrate a construction dispute and the agency accepts the dispute for arbitration under ORS 701.148.

(c) A timely complaint is filed relative to work performed under a contract that contains an arbitration clause specifying that the Construction Contractors Board must arbitrate disputes arising from the contract and the agency accepts the dispute for arbitration under ORS 701.148.

(d) Arbitration by the Construction Contractors Board is ordered by a court under ORS 36.600 or 36.625.

(2) Except as otherwise provided in the rules in division 10 of this chapter, an arbitration conducted under this division is governed by ORS 36.600 to 36.740, and sections 3 and 31, chapter 598, Oregon Laws 2003.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 701.235

Stats. Implemented: ORS 36.600 - 36.740, 183, 701.133, 701.139 & 701.148

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 6-2002 f. 6-10-02 cert. ef. 7-1-02; CCB 8-2002, f. & cert. ef. 9-3-02; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 4-2004, f. 5-28-04, cert. ef. 6-1-04; CCB 8-2004, f. & cert. ef. 10-1-04; 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 7-2011(Temp), f. & cert. ef. 7-8-11 thru 1-4-12

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## Department of Administrative Services

### Chapter 125

**Rule Caption:** Revision of rules setting standard, policies, and governance structures for state agency internal audit functions.

**Adm. Order No.:** DAS 1-2011

**Filed with Sec. of State:** 6-23-2011

**Certified to be Effective:** 6-30-11

**Notice Publication Date:** 1-1-2011

**Rules Adopted:** 125-700-0120, 125-700-0125, 125-700-0130, 125-700-0135, 125-700-0140, 125-700-0145, 125-700-0150, 125-700-0155

**Rules Amended:** 125-700-0015

**Rules Repealed:** 125-700-0012, 125-700-0020, 125-700-0025, 125-700-0030, 125-700-0035, 125-700-0040, 125-700-0045, 125-700-0050, 125-700-0055, 125-700-0060

**Subject:** The Oregon Department of Administrative Services is responsible for adopting rules setting standards and policies for internal audit functions within state government according to 2005 Oregon Law, Chapter 373. Revisions to rule 125-700-0015 and adoption of rules 125-700-0120 through 125-700-0155 revise and create policies and governance structures that are recommended for internal audit functions within state government. These rules now align the policies and governance structures more closely with professional auditing standards.

**Rules Coordinator:** Linda Pavis—(503) 378-2349, ext. 325

## 125-700-0015

### Definitions

(1) Agency: "State Agency" means any elected or appointed officer, board, commission, department, institution, branch or other unit of the state government.

(2) Audit: An objective examination of evidence for the purpose of providing an independent assessment on risk management, control, or governance processes for the organization. Examples may include financial, performance, compliance, systems security and due diligence assurance engagements.

(3) Audit Committee: A committee that provides oversight of auditing and internal control for the agency, and helps ensure the independence of the internal audit function. The purpose of the audit committee is to assist agency management in carrying out its oversight responsibilities.



# ADMINISTRATIVE RULES

(4) Chief Audit Executive: Top position within the organization responsible for internal audit activities. Normally, this would be the internal audit director. In the case where internal audit activities are obtained from outside service providers, the chief audit executive is the person responsible for overseeing the service contract and the overall quality assurance of these activities, reporting to senior management and the board regarding internal audit activities, and follow-up of engagement results.

(5) Internal Audit Function: A department, division, team of consultants, or other practitioner(s) that provides independent, objective assurance and consulting services designed to add value and improve an organization's operations.

(6) Internal Auditing: 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.

(7) Professional Auditing Standards: Standards for performing and evaluating internal audits that are consistent with and incorporate commonly recognized industry standards and practices.

(8) Risk: The possibility of an event occurring that will have an impact on the achievement of objectives. Risk is measured in terms of impact (the effect) and likelihood (the probability the event will occur).

(9) Risk Assessment: A process of identifying, analyzing and prioritizing risks to activities of an agency.

(10) 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; Administrative correction 1-25-11; DAS 1-2011, f. 6-23-11, cert. ef. 6-30-11

## 125-700-0120

### Statewide Audit Advisory Committee

(1) The Statewide Audit Advisory Committee (Committee) exists to promote the benefits of professional, standards-based internal auditing services in state government. The Statewide Audit Advisory Committee serves in an advisory capacity to the Director of the Oregon Department of Administrative Services.

(2) The Committee shall be comprised of:

(a) Director of the Oregon Department of Administrative Services, who will serve as Chair;

(b) Director of the Secretary of State Division of Audits (Oregon Audits Division);

(c) Legislative Fiscal Officer;

(d) State Court Administrator;

(e) Two Chief Audit Executives from agencies other than the Department of Administrative Services; and

(f) Not more than nine other persons appointed by the Director of the Oregon Department of Administrative Services representing state, local, non-profit and private sector internal auditing expertise.

(3) Appointed members shall serve two-year terms, and may be reappointed at the discretion of the Committee Chair.

(4) The Committee shall meet regularly to discuss statewide audit matters and issues of interest.

(5) The Committee shall document its full mission, objectives, responsibilities and organization in a formal charter, to be reviewed by the Committee annually. Responsibilities must include:

(a) Reviews and recommends revisions to the Statewide Annual Internal Audit Activity Report prepared by the Department of Administrative Services for Legislative Leadership.

(b) Brings forward for discussion issues impacting the state's internal audit community.

(c) Promotes best practices and training to enhance internal auditing and agency management practices in state government.

(d) Makes recommendations to ensure the independence and objectivity of the internal audit functions within state government.

(e) Reviews reports and other data to make recommendations to improve statewide management in areas that involved recurring or material findings that impact multiple agencies or areas of statewide risk-based concerns.

(f) Provides testimony or presentations to legislative committees, management teams or agency audit committees regarding internal audit, as necessary.

NOTE: Portions of this section previously existed as rule 125-500-0012.

Stat. Auth.: ORS 184.360

Stats. Implemented:

Hist.: DAS 1-2011, f. 6-23-11, cert. ef. 6-30-11

## 125-700-0125

### Internal Auditing Requirements

(1) In every agency that meets one or more of the criteria below, the agency head shall establish, maintain, and fully support a full-time internal audit function or contract for the equivalent, within existing resources. Exceptions may be requested in writing by agencies to the Director of the Department of Administrative Services and will be reviewed by the Committee.

(a) Total biennial expenditures exceed \$100 million;

(b) Number of full-time equivalent employees exceeds 400; or

(c) Dollar value of cash and cash equivalent items received and processed annually exceeds \$10 million.

(2) For agencies not meeting the criteria above, an internal audit function is encouraged. Agencies that have an internal audit function must follow this OAR and are subject to DAS oversight.

NOTE: Portions of this section previously existed as rule 125-500-0020.

Stat. Auth.: ORS 184.360

Stats. Implemented:

Hist.: DAS 1-2011, f. 6-23-11, cert. ef. 6-30-11

## 125-700-0130

### Agency Internal Audit Function Responsibilities

(1) The agency's Chief Audit Executive should coordinate with the agency head, the audit committee, appropriate state or federal oversight boards or commissions (as applicable), and the Oregon Audits Division and serve as the agency representative on audit matters.

(2) The internal audit function shall report to the agency head, applicable agency management and the audit committee on activities and results of their work. Examples of such work include the following:

(a) Governance of agency's processes and organizational structures implemented by the governing board, commission, and management in order to inform, direct, manage, and monitor the activities of the agency toward the achievement of its objectives.

(b) Information technology processes, information criteria, and resource activities, including but not limited to planning and organization, acquisition and implementation, delivery and support, and monitoring. Information criteria should include effectiveness, efficiency, confidentiality, integrity, availability, compliance, and reliability.

(c) Internal controls and compliance with applicable laws, rules, regulations and contract provisions.

(d) Performance audits to determine whether a program makes efficient use of resources and the effectiveness with which operations are carried out and it achieves results.

(3) The internal audit function should incorporate sustainability plan criteria into standards used for conducting agency internal audits, where appropriate.

(4) The agency's internal audit function must follow-up on internal audit report findings and recommendations to determine whether proper corrective action has been completed or that senior management has assumed the risk of not taking the recommended corrective action.

NOTE: Portions of this section previously existed as rule 125-500-0030.

Stat. Auth.: ORS 184.360

Stats. Implemented:

Hist.: DAS 1-2011, f. 6-23-11, cert. ef. 6-30-11

## 125-700-0135

### Agency Internal Audit Function Governance

(1) Agency internal audit functions shall select appropriate professional auditing standards to follow in performing their audit work.

(2) The agency's internal audit function's purpose, authority, and responsibilities shall be formally defined in the agency's Internal Audit Charter. The agency's charter must be consistent with professional auditing standards and approved by the audit committee or board.

(3) The internal audit staff shall have unrestricted access to all systems, processes, operations, functions, and activities within an agency as needed to perform job responsibilities.

(4) Each agency having an internal audit function shall establish and maintain an audit committee.

(a) If the agency has a governing board or commission, the audit committee must include one or more board or commission members. If there is no board or commission, the committee must include senior management officials not directly responsible for the internal audit function.

(b) Agencies are encouraged to include qualified individuals from outside the agency on the audit committee, to enhance public accountability and transparency, and increase independence of the internal audit activity.

# ADMINISTRATIVE RULES

(5) The role and function of the audit committee shall be stated in a formal, written charter that describes the authority, responsibilities, and structure of the audit committee in accordance with professional auditing standards. The charter must be approved and periodically reviewed by the audit committee.

(6) The internal audit function shall report to the agency head, agency management and the audit committee on all internal audit activities.

**NOTE:** Portions of this section previously existed as rule 125-500-0040.  
Stat. Auth.: ORS 184.360  
Stats. Implemented:  
Hist.: DAS 1-2011, f. 6-23-11, cert. ef. 6-30-11

## 125-700-0140

### Planning and Reporting Responsibilities

(1) Each agency's Chief Audit Executive shall prepare an audit plan in accordance with standards. The plan must be reviewed and approved by the agency head and audit committee and submitted to the Oregon Department of Administrative Services. The plan must be:

(a) Risk-based to help ensure priorities of the internal audit activity that are consistent with the organization's goals;

(b) Include significant risks and exposures within the organization;

(c) Include an assessment of the agency's performance measurement system by assessing its integrity and accuracy;

(2) The agency's Chief Audit Executive shall prepare an annual report covering the time period of July 1 through June 30 of the preceding year, in a format approved by the Department of Administrative Services that includes:

(a) The annual risk assessment and audit plan;

(b) All internal audit reports; and

(c) A listing of consulting and other value-added audit activities provided to agency management by the internal audit function.

(3) The annual report must be submitted to the agency head, audit committee, and the Internal Audit Section of the Oregon Department of Administrative Services no later than September 30th of each year.

(4) Information not included in an agency's report must be available for review upon request of the Committee.

**NOTE:** Portions of this section previously existed as rule 125-500-0050.  
Stat. Auth.: ORS 184.360  
Stats. Implemented:  
Hist.: DAS 1-2011, f. 6-23-11, cert. ef. 6-30-11

## 125-700-0145

### External 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.

**NOTE:** Portions of this section previously existed as rule 125-500-0055.  
Stat. Auth.: ORS 184.360  
Stats. Implemented:  
Hist.: DAS 1-2011, f. 6-23-11, cert. ef. 6-30-11

## 125-700-0150

### Internal Audit Independence

(1) The agency's Chief Audit Executive reporting position must be at an administrative level that will maximize objectivity. In most cases, the Chief Audit Executive must report administratively to the agency head or designee, and functionally to the audit committee.

(2) The Chief Audit Executive must have unrestricted access to decision-makers and decision-making bodies and to the information and employees needed to perform internal audit duties and responsibilities.

(3) The internal auditor(s) must be free of undue influence to limit the audit scope and audit assignment schedule.

(4) The Chief Audit Executive must be free to obtain advice and information from sources inside and outside the agency. These sources may include, but should not be limited to professional colleagues, the Oregon

Audits Division, the Oregon Department of Administrative Services, and relevant professional organizations.

(5) The internal audit function must be free of any responsibilities that would impair its ability to make independent reviews of all aspects of the agency's operations.

(6) The agency's Chief Audit Executive must periodically assess whether the purpose, authority, and responsibility, as defined in the audit charter, and resources required to accomplish the work continue to be adequate to enable the internal audit staff to accomplish their objectives. The result of this periodic assessment must be communicated to the audit committee and, if applicable, senior management.

(7) A scope limitation, including resource limitations, placed upon an internal audit function that precludes them from meeting objectives and executing plans must be communicated in writing to the audit committee and, if applicable, agency management, along with its potential effect. The agency's Chief Audit Executive must periodically inform the committee regarding scope limitations that were previously communicated and accepted.

**NOTE:** Portions of this section previously existed as rule 125-500-0045.  
Stat. Auth.: ORS 184.360  
Stats. Implemented:  
Hist.: DAS 1-2011, f. 6-23-11, cert. ef. 6-30-11

## 125-700-0155

### Audit Records and Retention

(1) The agency's internal audit function, must maintain audit work papers and reports in accordance with records retention requirements. The internal audit function should ensure that its records retention schedule will allow it to keep the documents until an external peer review has been performed, and audit findings and recommendations have been appropriately followed-up on. Refer to State Archive requirements and OAR 166-300-0025 for record retention schedules. Records must be kept so they can be retrieved, if necessary.

(2) The agency's Chief Audit Executive must follow appropriate data classification procedures to monitor and control confidential and sensitive internal audit documents. Confidential documents are those designated as confidential by agency policy or covered by ORS 192.496 through 192.505.

**NOTE:** Portions of this section previously existed as rule 125-500-0060.  
Stat. Auth.: ORS 184.360  
Stats. Implemented:  
Hist.: DAS 1-2011, f. 6-23-11, cert. ef. 6-30-11

## Department of Agriculture Chapter 603

**Rule Caption:** Lists Downy Brome as prohibited weed seed in grass seed certified for Oregon Sod Quality.

**Adm. Order No.:** DOA 10-2011(Temp)

**Filed with Sec. of State:** 6-30-2011

**Certified to be Effective:** 7-1-11 thru 12-20-11

**Notice Publication Date:**

**Rules Amended:** 603-056-0145

**Subject:** Oregon's Sod Quality Seed certification program is used as a tool for marketing premium Oregon turf grass seeds. Annually more than 110,000 tags are issued to certify that grass seed meets Oregon Sod Quality seed standards. However, in February 2011 a change was made to the "All States Noxious Weed list" which now allows Downy Brome — *Bromus tectorum*, as a restricted weed seed in Oregon Sod Quality seed lost. The allowance of this contaminate diminishes the value of Oregon Sod Quality certification, as such, the Oregon Seed trade and Oregon Seed Council has requested a change in rule to prohibit Downy Brome.

**Rules Coordinator:** Sue Gooch—(503) 986-4583

## 603-056-0145

### Standards for Sod Quality Certification

(1) The seed lots submitted shall meet all standards for certification by Oregon State University.

(2) The seed standards for "Oregon Sod Quality Seed" of hard fescue, sheep fescue, blue fescue, Kentucky bluegrass, red fescue, chewings fescue, perennial ryegrass, bentgrass and tall fescue shall be as set out in Table 1.

(3) "Noxious Weed" and "Crop and Weed" analyses shall be based on a 20 gram sample for hard fescue, sheep fescue and blue fescue, 25 gram sample for Kentucky bluegrass (except a 10 gram *Poa annua* search), 30 gram sample for red fescue and chewings fescue, 50 gram sample for ryegrass and tall fescue, and a 2-1/2 gram sample for bentgrass. Testing shall

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be discontinued when results of the tests exceed the maximum limits set forth in Table 1.

[ED. NOTE: Tables referenced are available from the agency.]  
Stat. Auth.: ORS 561.190 & 633.520  
Stats. Implemented: ORS 633.680  
Hist.: AD 1040(30-74), f. 8-20-74, ef. 9-11-74; AD 1060(6-75), f. 5-30-75, ef. 6-25-75; AD 2-1979, f. & ef. 1-29-79; AD 9-1982, f. & ef. 9-9-82; AD 3-1990, f. & cert. ef. 3-16-90; AD 1-1991, f. & cert. ef. 1-14-91; DOA 25-2000, f. & cert. ef. 9-15-00; DOA 10-2011(Temp), f. 6-30-11, cert. ef. 7-1-11 thru 12-20-11

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**Department of Agriculture,  
Oregon Fine Fescue Commission  
Chapter 604**

**Rule Caption:** Includes Highland Bentgrass to crops assessed by Fine Fescue Commission; adds a commissioner.

**Adm. Order No.:** CRFC 1-2011(Temp)

**Filed with Sec. of State:** 6-30-2011

**Certified to be Effective:** 6-30-11 thru 11-22-11

**Notice Publication Date:**

**Rules Amended:** 604-010-0005, 604-010-0011, 604-010-0015, 604-030-0010, 604-030-0020

**Subject:** The changes allow the Fine Fescue Commission to incorporate the assessment of Highland Bentgrass seed (*Agrostis castellana*), or any mixture containing at least 50% of Highland Bentgrass seed, pursuant to the authority in SB 946 (2011) and ORS 576. The assessment rate and method of paying assessments remains the same as it was under the Highland Bentgrass Commission, which was dissolved by SB 946 (2011). Further, the Fine Fescue Commission is adding a producer of Highland Bentgrass seed to the commission, bringing the total number of commissioners to nine.

**Rules Coordinator:** Lisa Ostlund—(503) 364-2944

## 604-010-0005

### Definitions

As used in OAR 604-010-0011 and 604-010-0015, unless otherwise required by context:

(1) "Person" means any individual, corporation, association, partnership, and joint stock company.

(2) "Commission" means the Fine Fescue Commission.

(3) "Casual Sale" means any sale or sales of Chewings Fescue seed, Creeping Red Fescue seed or Highland Bentgrass seed, or blend consisting of 50 percent or more of Highland Bentgrass seed, made by the producer direct to the consumer where the total accumulated sales during a calendar year is not more than 100 pounds.

(4) "First Purchaser" means any person who buys Chewings Fescue seed, Creeping Red Fescue seed or Highland Bentgrass seed, or blend consisting of 50 percent or more of Highland Bentgrass seed, from the producer in the first instance, or handler who received the seed in the first instance from the producer for resale or processing.

(5) "Producer" means a person or other legal entity producing Chewings Fescue seed, Creeping Red Fescue seed or Highland Bentgrass seed, or blend consisting of 50 percent or more of Highland Bentgrass seed, for market, whether as landowner, landlord, tenant, sharecropper, or otherwise.

(6) "Handler" means any producer, processor, or distributor, or other person engaged in the handling or marketing of or dealing in Chewings Fescue seed, Creeping Red Fescue seed or Highland Bentgrass seed, or blend consisting of 50 percent or more of Highland Bentgrass seed, whether as an owner, agent, employee, broker, or otherwise.

(7) "Fescue" means Chewings Fescue seed or Creeping Red Fescue seed.

(8) "Highland Bentgrass" means Highland Bentgrass seed (*Agrostis castellana*).

Stat. Auth.: ORS 576, SB 946 (2011)  
Stats. Implemented: ORS 576, SB 946 (2011)  
Hist.: CFC 1, f. 5-1-56, ef. 4-26-56; CFC 3, f. 9-27-57; CRFC 1-2001, f. & cert. ef. 6-12-01; CRFC 1-2011(Temp), f. & cert. ef. 6-30-11 thru 11-22-11

## 604-010-0011

### Assessments

(1) Any person who is a first purchaser (or who otherwise is required to pay an assessment to the Oregon Fine Fescue Commission) for all purchases made on or after April 1, 2002, shall deduct and withhold an assessment of one percent (1%) of the price per pound of seed purchased from the price paid to the producer thereof for all Fescue seed grown in Oregon.

(2) Any person who is a first purchaser (or who otherwise is required to pay an assessment to the Oregon Fine Fescue Commission) shall deduct and withhold an assessment of \$1.75 for each 100 pounds on a clean seed basis from the price paid to the producer thereof, on and after July 1, 2010, for Highland Bentgrass seed or any commodity or mixture which contains more than 50 percent of Highland Bentgrass seed.

Stat. Auth.: ORS 576, SB 946 (2011)  
Stats. Implemented: ORS 576.325 - 576.375, SB 946 (2011)  
Hist.: CFC 6, f. & ef. 11-7-62; CFC 8, f. 4-5-63, ef. 7-1-63; CFC 10, f. 6-18-64; CFC 11, f. 6-25-65, ef. 7-1-65; CFC 12, f. 7-6-70, ef. 7-1-70; CFC 1-1979, f. 6-7-79, ef. 7-1-79; CFC 1-1988, f. 7-1-88, cert. ef. 8-1-88; CFC 1-1989, f. 6-15-89, cert. ef. 7-1-89; CFC 1-1991(Temp), f. 7-30-91, cert. ef. 8-1-91; CFC 1-1995, f. & cert. ef. 11-29-95; CRFC 1-2002, f. 3-25-02, cert. ef. 4-1-02; CRFC 1-2011(Temp), f. & cert. ef. 6-30-11 thru 11-22-11

## 604-010-0015

### Reports and Payment by First Purchaser

(1) First purchasers and handlers, as defined in 604-010-0005(4) and (6), must submit completed and signed assessment reports on commission approved form.

(2) Assessment reports shall include all purchases by or deliveries to a first purchaser or handler of Fescue seed (net paid weight) and all purchases by or deliveries to a first purchaser or handler of Highland Bentgrass seed or any commodity or mixture which contains more than 50 percent of such Highland Bentgrass seed.

(3) Quarterly assessment reports are due in the commission office postmarked on or before the 30th day of the reporting month specified below. Quarterly assessments shall be reported as follows:

(a) January, February, March assessments are reported on or before April 30th;

(b) April, May, June assessments are reported on or before July 30th;

(c) July, August, September assessments are reported on or before October 30th;

(d) October, November, December assessments are reported on or before January 30th.

(4) Within 30 days after the end of each quarter, the first purchaser must forward to this Commission forms furnished by and approved by the Commission. The forms shall be signed by the first purchaser and completely filled out and shall include in addition to all other required information and figures:

(a) The date each transaction is made;

(b) The name of each grower;

(c) The crop year;

(d) The variety (Chewings Fescue seed, Creeping Red Fescue seed or Highland Bentgrass seed or any commodity or any blend consisting of 50 percent or more of Highland Bentgrass seed);

(e) The pounds of cleaned seed;

(f) The price per pound for Chewings Fescue seed and Creeping Red Fescue seed; and

(g) The tax assessment deducted and withheld.

Stat. Auth.: ORS 576, SB 946 (2011)  
Stats. Implemented: ORS 576, SB 946 (2011)  
Hist.: CFC 2, f. 5-29-56; CRFC 1-2001, f. & cert. ef. 6-12-01; CRFC 1-2011(Temp), f. & cert. ef. 6-30-11 thru 11-22-11

## 604-030-0010

### Number of Commissioners, Terms

The Oregon Fine Fescue Commission will consist of nine (9) members appointed by the Director of the Oregon Department of Agriculture for a term of three (3) years or, if for a term following a prior term for that person, ending three (3) years from the date of expiration of any prior term. There shall be no limit on the number of terms a commissioner may serve.

Stat. Auth.: 2003 OL Ch. 604, ORS 576.  
Stats. Implemented: 2003 OL Ch. 604, ORS 576  
Hist.: CRFC 1-2003, f. 11-26-03, cert. ef. 1-1-04; CRFC 1-2011(Temp), f. & cert. ef. 6-30-11 thru 11-22-11

## 604-030-0020

### Qualifications of Commissioners

(1) For purposes of this rule:

(a) A "producer" is a person growing or producing within this state or procuring within the state, its rivers or the offshore waters, but not the Columbia River, for commercial handling within the state, a commodity for market, or receiving a share thereof as landowner, landlord, tenant, sharecropper, boat skipper or otherwise. A producer must have paid the commission assessment on the commodity in each of the preceding three calendar years.

(b) A "handler" is any producer, processor, distributor or other person engaged in handling or marketing of or dealing in the commodity, whether



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as owner, agent, employee, broker or otherwise. A handler must have collected the commission assessment, if any, each of the preceding three calendar years.

(2) Members of the Oregon Fine Fescue Commission will have the following qualifications, which will continue during the term of office of the member:

(a) One member of the commission will be a member of the public with an active interest in the positive economic development, production and/or marketing of the commodity, but who is not associated with the production or handling of Chewings Fescue seed, Creeping Red Fescue seed or Highland Bentgrass seed;

(b) A majority of the members will be producers;

(c) At least one member will be a handler;

(d) Seven members who are not a handler or the public member will be producers; no less than six members will be producers of Chewings Fescue seed or Creeping Red Fescue seed; one member will be a producer of Highland Bentgrass seed.

(3) All members of the Oregon Fine Fescue Commission will serve from the state at large, except that two members of the Commission shall be from Union County, and all members must reside within the State of Oregon.

Stat. Auth.: 2003 OL Ch. 604, ORS 576

Stats. Implemented: 2003 OL Ch. 604, ORS 576

Hist.: CRFC 1-2003, f. 11-26-03, cert. ef. 1-1-04; CRFC 1-2011(Temp), f. & cert. ef. 6-30-11 thru 11-22-11

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**Department of Agriculture,  
Oregon Wheat Commission  
Chapter 678**

**Rule Caption:** Directs the Wheat Commission in the assessment of barley.

**Adm. Order No.:** WHEAT 1-2011(Temp)

**Filed with Sec. of State:** 6-24-2011

**Certified to be Effective:** 7-1-11 thru 12-27-11

**Notice Publication Date:**

**Rules Amended:** 678-010-0010, 678-010-0020, 678-010-0030, 678-010-0040

**Subject:** The changes incorporate the assessment of barley into the wheat commission rules as allowed in the Oregon Wheat Commission statute. The barley assessment rate and assessment payment process will stay the same as it was under the Oregon Grains Commission.

**Rules Coordinator:** Tana Simpson—(503) 229-6665

## 678-010-0010

### Applications of Assessment Rate to Wheat or Barley Mixtures

Any person who is a first purchaser or lien holder as defined by ORS 578.010, shall deduct and withhold the assessment as required by 678-010-0030 on the gross weight of all grain mixtures that contain wheat, or barley, or both that was grown in this state and sold through commercial channels, unless the grain mixture has been certified by the Federal Grain Inspection Service. If the grain mixture has been certified to contain a percentage of wheat, or barley, or both, then the first purchaser or lien holder shall deduct and withhold the assessment as required by OAR 678-010-0030 on the percentage by weight of wheat, or barley, or both that was grown in this state and sold through commercial channels.

Stat. Auth.: ORS 578

Stats. Implemented: ORS 578

Hist.: 1WC 3, f. 6-15-62; 1WC 8, f. & ef. 3-4-77; WHEAT 1-2001, f. & cert. ef. 3-1-01; WHEAT 1-2006, f. & cert. ef. 1-27-06; WHEAT 1-2011(Temp), f. 6-24-11, cert. ef. 7-1-11 thru 12-27-11

## 678-010-0020

### Definitions

(1) "Commercial Channels" means the sale of wheat, or barley, or both for use as food, feed, seed, or any industrial or chemurgic use, when sold to any commercial buyer, dealer, processor, cooperative, or to any person, public or private, who resells any wheat, or barley, or both or product produced from wheat, or barley, or both.

(2) "Commission" means the Oregon Wheat Commission.

(3) "Director" means the Director of the Oregon Department of Agriculture.

(4) "First Purchaser" means any person, corporation, association or partnership that buys wheat from the grower in the first instance, or any lienholder, public or private, who may possess wheat, or barley, or both

from the grower under any lien, or any handler who receives wheat, or barley, or both in the first instance from the grower for resale or processing.

(5) "Grower" means any landowner personally engaged in growing wheat, or barley, or both; a tenant of the landowner personally engaged in growing wheat, or barley, or both; and both the owner and the tenant jointly, and includes a person, partnership, association, corporation, cooperative, trust, sharecropper, and any and all other business units, devices and arrangements.

(6) "Sale" includes any pledge or mortgage of wheat, or barley, or both, after harvest, to any person, public or private.

(7) "Person" means any individual, corporation, association, partnership or joint stock company.

(8) "Handler" means a person or other legal entity handling, marketing, or dealing wheat, or barley, or both whether as owner, agent, employee, broker, or otherwise.

(9) "Net Paid for Weight" means all sales or bartered bushels paid for.

(10) "Independent Third Party" refers to any organization other than the Commission and the Oregon Wheat Growers League.

(11) "Irregular" means less than two quarters per crop year.

Stat. Auth.: ORS 576

Stats. Implemented: ORS 578

Hist.: WC 2-1991, f. & cert. ef. 7-15-91; WHEAT 1-2006, f. & cert. ef. 1-27-06; WHEAT 1-2011(Temp), f. 6-24-11, cert. ef. 7-1-11 thru 12-27-11

## 678-010-0030

### Assessments

(1) Any first purchaser shall deduct and withhold from the grower an assessment of the following amounts for all wheat grown in Oregon as follows:

(a) July 1, 2008 and thereafter — 5 cents per bushel.

(b) 1991 through June 30, 2008 — 3 cents per bushel.

(c) 1981 through 1990 crops — 2 cents per bushel.

(d) 1975 through 1980 crops — 1 cent per bushel.

(e) 1974 and prior years — 1/2 cent per bushel.

(2) Any first purchaser shall deduct and withhold from the grower an assessment of the following amounts for all barley grown in Oregon as follows:

(a) July 1, 2011 and thereafter — 1 dollar per ton.

(3) Any change in the above assessment rates requires approval by the Commission. In determining whether to impose a change in the above assessment rate, the Commission may:

(a) Work jointly with the Oregon Wheat Growers League to educate growers on a county-by-county basis, of the need for a change in the assessment rate;

(b) Work with an independent third party experienced in survey work to poll the growers of the state to determine whether the growers support a proposed change in the assessment rate;

(c) Consider the results of the poll when determining whether to raise the assessment rate.

Stat. Auth.: ORS 578

Stats. Implemented: ORS 578.211

Hist.: WC 2-1991, f. & cert. ef. 7-15-91; WHEAT 1-2006, f. & cert. ef. 1-27-06; WHEAT 2-2008, f. & cert. ef. 7-16-08; WHEAT 1-2011(Temp), f. 6-24-11, cert. ef. 7-1-11 thru 12-27-11

## 678-010-0040

### Reports and Payment of Assessment Monies

(1) First purchasers and handlers must submit completed and signed assessment reports on commission approved forms. Assessment reports shall include all purchases by or deliveries to a first purchaser or handler of wheat, or barley, or both (net paid weight). Assessment collections that total \$100 or more per month must be reported monthly. Assessments of less than \$100 per month may be reported quarterly. Monthly assessment reports are due in the commission office postmarked on or before the 20th day of the month following the calendar month in which the reported wheat, or barley, or both was sold. Quarterly assessment reports are due in the commission office postmarked on or before the 20th day of the reporting month specified below. Quarterly assessments shall be reported as follows:

(a) January, February, March assessments reported on or before April 20th;

(b) April, May, June assessments reported on or before July 20th;

(c) July, August, September assessments reported on or before October 20th; and

(d) October, November, December assessments reported on or before January 20th.

(2)(a) Notwithstanding section (1) of this rule, a first purchaser or handler who purchases or handles wheat, or barley, or both on an irregular

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basis is not required to report assessments on a quarterly or monthly basis provided such person indicates in the space provided on the assessment their next purchase or handling of wheat, or barley, or both subject to these assessments and reporting requirements. Such person will not be required to report or pay assessments until the 20th of the month following the calendar month in which the indicated date falls;

(b) However, if a person who purchases or handles wheat, or barley, or both on an irregular basis purchases or handles wheat before the date indicated on the assessment report, that person must comply with the requirements of section (1) of this rule.

(3) When a first purchaser or handler has completed, signed, and forwarded a report covering the final purchase of wheat, or barley, or both for the crop season, the filer may mark the box on the report that says "FINAL REPORT FOR THIS CROP SEASON." No further reports are necessary by such first purchaser or handler unless or until additional purchases are made.

(4) When a first purchaser lives or has their office in another state, or is a federal or governmental agency, the grower shall report to this Commission all sales made to such purchaser as required by section (1) of this rule and shall pay the assessment directly to the Commission, unless such first purchaser voluntarily makes the proper deduction and remits the proceeds to this Commission.

(5) At the time that reports are due the Commission from the first purchaser or first handler, as required in section (1) of this rule, the first purchaser or first handler shall attach and forward payment to the Commission for the assessment due as set forth in each such report. The forms shall be signed by the first purchaser or handler and completely filled out, and shall include, in addition to all other required information and figures, the name and complete mailing address of each grower, the crop year, the bushels and amount of assessment deducted and withheld.

(6) Any grower who performs the handling or processing functions on all or part of their own production of wheat, or barley, or both, which normally would be performed by another person as the first purchaser thereof, shall report the sale of such wheat, or barley, or both of their own production on forms provided by, and pay the assessment monies directly to the Commission, unless the first purchaser from such grower voluntarily makes proper deduction and remits the proceeds to the Commission. Examples would be the sale by a grower direct to another grower or feed lot. The assessment does not apply where a grower uses their own production for personal use (ie. seeding, feeding livestock, destruction).

Stat. Auth.: ORS 576

Stats. Implemented: ORS 578

Hist.: WC 2-1991, f. & cert. ef. 7-15-91; WHEAT 1-2001, f. & cert. ef. 3-1-01; WHEAT 1-2002, f. & cert. ef. 12-30-02; WHEAT 1-2006, f. & cert. ef. 1-27-06; WHEAT 1-2011(Temp), f. 6-24-11, cert. ef. 7-1-11 thru 12-27-11

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

**Rule Caption:** Establishes specialized inspector training and certifications as required by House Bill 3462 (2009).

**Adm. Order No.:** BCD 15-2011

**Filed with Sec. of State:** 6-30-2011

**Certified to be Effective:** 7-1-11

**Notice Publication Date:** 3-1-2011

**Rules Adopted:** 918-098-1510, 918-098-1520, 918-098-1530, 918-098-1540, 918-098-1550, 918-098-1560, 918-098-1570

**Subject:** HB 3462 (2009) authorized the Building Codes Division to create a program for training, qualifying and certifying individuals as specialized building inspectors authorized to perform inspections and enforce portions of Oregon's specialty codes. These new inspector certifications will cover limited commercial and other multidisciplinary inspections that presently are not independently authorized by the Division's existing inspector certifications.

**Rules Coordinator:** Stephanie Snyder—(503) 373-7438

## 918-098-1510

### Purpose and Scope

(1) The specialized inspector certification program, in OAR 918-098-1510 through 918-098-1570, establishes a program for training, qualifying and certifying individuals as specialized building inspectors authorized to perform inspections and enforce portions of the state building code. Inspector certifications cover limited commercial and other multidisciplinary

inspections that presently are not independently authorized by the division in existing inspector certifications.

(2) Specialized inspectors may, after receiving certification issued under these rules, conduct inspections as provided in these rules. These rules apply to applicants and certificate holders, training providers, and participating jurisdictions for the purposes of administering and enforcing the restrictions and requirements under these rules.

Stat. Auth.: ORS 455.720, 455.730 & 455.735

Stats. Implemented: ORS 455.720, 455.730 & 455.735

Hist.: BCD 10-2011(Temp), f. 4-15-11, cert. ef. 5-1-11 thru 6-30-11; BCD 15-2011, f. 6-30-11, cert. ef. 7-1-11

## 918-098-1520

### Specialized Inspector Qualifications

(1) All applicants for specialized certifications must have:

(a) A valid Oregon Inspector Certification;

(b) A valid Oregon Code Certification to perform inspections, as identified in the rule requirements for the specialized certification sought;

(c) Employment as an inspector and experience performing inspections in Oregon for a minimum of one year in the specialty code area that the applicant is seeking specialized certification.

(2) An applicant for certification as a specialized inspector must:

(a) Submit an application on a division-approved form.

(b) Submit the designated application and training fees.

(c) Identify the certifications sought, the certifications presently held by the applicant, and the applicant's qualifying experience performing inspections.

(3) Incomplete applications or applications submitted without payment will not be processed.

(4) If an application is approved, the applicant will be notified and may begin the specialized inspector certification process.

(5) When an application is not approved by the division, the applicant's training fee will be refunded. The application fee will not be refunded or waived for future applications.

(6) The application and training fee for all specialized inspector certifications is \$200.

Stat. Auth.: ORS 455.720, 455.730 & 455.735

Stats. Implemented: ORS 455.720, 455.730 & 455.735

Hist.: BCD 10-2011(Temp), f. 4-15-11, cert. ef. 5-1-11 thru 6-30-11; BCD 15-2011, f. 6-30-11, cert. ef. 7-1-11

## 918-098-1530

### Training Programs

(1) Approved applicants must complete an appropriate division-approved training program and pass a division-approved examination for the desired specialized certification. Training program requirements are stated in OAR 918-098-1560 for the Specialized Solar Photo-Voltaic Inspector Certification and in OAR 918-098-1570 for the Specialized Plumbing Inspector Certification.

(2) Instructor Qualifications. Specialized certification training course instructors must be approved by the division under these rules.

(a) Training course instructors may apply for approval as part of the course approval process or independent of the course approval process.

(b) Approved training course instructors must be qualified by training, licensure, and experience to teach the subject matter and supervise the corresponding fieldwork training inspections of a specialized inspector certification training program.

(c) Approved fieldwork supervisors must be qualified by training, licensure, and experience to perform the specialized inspector certification fieldwork inspections being performed.

(d) Division staff teaching training courses of supervising related fieldwork in the normal course of their duties are considered approved instructors for the purposes of these rules.

(3) Fieldwork Training. A specialized inspector certification applicant is eligible to perform the required fieldwork training after the applicant has begun the required academic coursework and has been approved by the course instructor to begin fieldwork training.

(4) Fieldwork Supervision. All specialized certification fieldwork training must be supervised and verified by an inspector with a valid Oregon Inspector Certification required to conduct the inspections being performed.

(a) An applicant's fieldwork training must be documented on a division-approved form and signed by the inspector who supervised the inspections.

(b) An inspector supervising and verifying an applicant's fieldwork training may not be qualified to conduct the inspections performed based

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solely on a specialized inspector certification issued according to these rules.

(5) Fieldwork Training Approval. A specialized inspector certification applicant must submit proof of completed fieldwork training to the division for verification and approval, and issuance of specialized inspector certification.

(6) Examination Approval. A specialized inspector certification applicant is eligible to take a certification examination after the division receives proof that the applicant has successfully completed the required academic coursework and fieldwork training.

Stat. Auth.: ORS 455.720, 455.730 & 455.735  
Stats. Implemented: ORS 455.720, 455.730 & 455.735  
Hist.: BCD 10-2011(Temp), f. 4-15-11, cert. ef. 5-1-11 thru 6-30-11; BCD 15-2011, f. 6-30-11, cert. ef. 7-1-11

## 918-098-1540

### Specialized Inspector Examination

(1) Examinations for a specialized inspector certification must be approved by the division.

(2) Applicants for specialized inspector certifications who fail the examination may reapply to retest by submitting a reapplication form and required \$80 fee within 30 days after the failed attempt.

(3) If an applicant fails to take a specialized inspector certification examination within 60 days of being approved to do so, the applicant must reapply to the division to take the examination by submitting a reapplication form and required \$80 fee.

(4) An applicant who reapplies is not required to requalify for the examination or provide qualification information in addition to the exam application unless the specialized certification requirements have changed since the applicant originally applied for certification.

Stat. Auth.: ORS 455.720, 455.730 & 455.735  
Stats. Implemented: ORS 455.720, 455.730 & 455.735  
Hist.: BCD 10-2011(Temp), f. 4-15-11, cert. ef. 5-1-11 thru 6-30-11; BCD 15-2011, f. 6-30-11, cert. ef. 7-1-11

## 918-098-1550

### Specialized Inspector Certification Issuance and Expiration

(1) Upon receiving proof of completion of all requirements listed in these rules, the division may issue the appropriate specialized inspector certification.

(2) All specialized certifications remain valid until January 2, 2018, if the holder maintains a current Oregon Inspector Certification. Should the holder fail to maintain a valid Oregon Inspector Certification, all certifications, including any specialized certification issued under this rule, become invalid and the holder may not conduct any inspections until the Oregon Inspector Certification is again valid.

Stat. Auth.: ORS 455.720, 455.730 & 455.735  
Stats. Implemented: ORS 455.720, 455.730 & 455.735  
Hist.: BCD 10-2011(Temp), f. 4-15-11, cert. ef. 5-1-11 thru 6-30-11; BCD 15-2011, f. 6-30-11, cert. ef. 7-1-11

## 918-098-1560

### Specialized Solar Photo-Voltaic Inspector Certification

(1) Specialized solar photo-voltaic (PV) inspectors may, upon receipt of this certification, conduct inspections of the structural and electrical systems for solar PV installations up to 25 Kw that follow the "prescriptive installation" provisions in section 305.4 of the **Oregon Solar Installation Specialty Code**.

(2) As a condition of entering a training program, an applicant must:

(a) Hold a valid Oregon Code Certification as either an electrical code inspector or residential electrical inspector;

(b) Have been employed as an inspector and performed inspections as an electrical code inspector or residential electrical inspector for a minimum of one year prior to applying for Specialized Solar PV Inspector Certification;

(c) Complete a specialized solar PV inspection training program that meets the minimum requirements established by the division, consisting of:

- (A) Instructional coursework; and
- (B) Supervised fieldwork inspections; and
- (d) Pass a division-approved examination.

Stat. Auth.: ORS 455.720, 455.730 & 455.735  
Stats. Implemented: ORS 455.720, 455.730 & 455.735  
Hist.: BCD 10-2011(Temp), f. 4-15-11, cert. ef. 5-1-11 thru 6-30-11; BCD 15-2011, f. 6-30-11, cert. ef. 7-1-11

## 918-098-1570

### Specialized Plumbing Inspector Certification

(1) Specialized plumbing inspectors may inspect plumbing and piping systems conveying potable water, storm, or domestic sanitary sewage in

buildings less than 75 feet above grade in height as defined in the **Oregon Structural Specialty Code** and containing a building water service less than two inches in nominal interior diameter.

(2) A specialized plumbing inspector may not conduct inspections in new structures with plumbing or piping systems containing any of the items in (a) through (g):

(a) Installation or alteration of a medical gas and vacuum system for health care facilities;

(b) Installation or alteration of chemical drainage, waste and vent systems containing chemical agents potentially detrimental to the integrity of a plumbing system;

(c) Installation or alteration of waste water pre-treatment systems for building sewers;

(d) Installation of vacuum drainage, waste and vent systems;

(e) Installation or alteration of reclaimed water systems;

(f) Installation of a commercial booster pump system needed to maintain minimum residual water pressure in a structure supplied by a municipal source; or

(g) Food service plumbing systems.

(3) Existing structures with plumbing systems containing any of the items in 2(a) through (g) may be inspected by specialized plumbing inspectors. But specialized plumbing inspectors may not inspect any of the items in 2(a) through (g).

(4) As a condition of entering a training program, an applicant must:

(a) Hold valid Oregon Code Certification as a one- and two-family or residential plumbing inspector;

(b) Have been employed as an inspector and performed inspections as a one- and two-family or residential plumbing inspector for a minimum of one year prior to applying for Specialized Plumbing Inspector Certification.

(c) Complete a specialized plumbing inspection training program that meets the minimum requirements established by the division, consisting of:

- (A) Instructional coursework; and
- (B) Supervised fieldwork inspections.
- (d) Pass a division-approved examination.

Stat. Auth.: ORS 455.720, 455.730 & 455.735  
Stats. Implemented: ORS 455.720, 455.730 & 455.735  
Hist.: BCD 10-2011(Temp), f. 4-15-11, cert. ef. 5-1-11 thru 6-30-11; BCD 15-2011, f. 6-30-11, cert. ef. 7-1-11

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**Rule Caption:** Adopts the 2011 Oregon Reach Code.

**Adm. Order No.:** BCD 16-2011

**Filed with Sec. of State:** 6-30-2011

**Certified to be Effective:** 7-1-11

**Notice Publication Date:** 6-1-2011

**Rules Adopted:** 918-465-0010, 918-465-0020, 918-465-0030, 918-465-0040, 918-465-0070

**Subject:** These rules implement a portion of Senate Bill 79 (2009) requiring the director of the Department of Consumer and Business Services to adopt a code separate from the state building code that is a set of optional construction standards designed to increase the energy efficiency of buildings above the mandatory statewide code. These rules adopt the 2011 Oregon Reach Code. Specifically, these rules adopt the commercial provisions of the Reach Code by adopting the November 2010 International Green Construction Code (IGCC) second public version with significant Oregon specific amendments including provisions from the 2012 International Energy Conservation Code and ASHRAE 90.1.

**Rules Coordinator:** Stephanie Snyder—(503) 373-7438

## 918-465-0010

### Reasonable Notice to Interested Parties

Prior to the adoption, amendment or repeal of any rule, relating to the Oregon Reach Code, the Building Codes Division shall provide notice of the proposed adoption, amendment or repeal:

(1) In the Secretary of State's Oregon Bulletin referenced in ORS 183.360, at least 21 days prior to the effective date of the proposed adoption, amendment or repeal; and

(2) By making the notice available to persons as established under ORS 183.335(8).

[Publications: Publications referenced are available for review at the agency.]

Stat. Auth.: ORS 183.335, 455.020 & 455.496  
Stat. Implemented: ORS 183.335  
Hist.: BCD 16-2011, f. 6-30-11, cert. ef. 7-1-11



# ADMINISTRATIVE RULES

## 918-465-0020

### Scope

The Oregon Reach Code is adopted to provide optional standards for the effective use of energy and the utilization of renewable energy technologies in the construction and design of buildings to provide approaches and techniques for achieving effective energy use and reducing negative impacts of the built environment.

Stat. Auth.: ORS 455.020, 455.496 & 455.500  
Stat. Implemented: ORS 455.020 & 455.500  
Hist.: BCD 16-2011, f. 6-30-11, cert. ef. 7-1-11

## 918-465-0030

### Adopted the Oregon Reach Code

Effective July 1, 2011, the 2011 Oregon Reach Code is based on the November 2010 International Green Construction Code public version 2.0 and further amended by the Division.

[Publications: Publications referenced are available for review at the agency.]  
Stat. Auth.: ORS 455.020, 455.496 & 455.500  
Stat. Implemented: ORS 455.020 & 455.500  
Hist.: BCD 16-2011, f. 6-30-11, cert. ef. 7-1-11

## 918-465-0040

### Amendments to the Oregon Reach Code

The Oregon Reach Code is adopted and amended pursuant to OAR chapter 918, division 8. Amendments to the Oregon Reach Code are placed in this rule, with the section reference, a descriptive caption, and a short explanation of the amendment.

[Publications: Publications referenced are available for review at the agency.]  
Stat. Auth.: ORS 185.335, 455.020, 455.496 & 455.500  
Stat. Implemented: ORS 185.335, 455.020 & 455.500  
Hist.: BCD 16-2011, f. 6-30-11, cert. ef. 7-1-11

## 918-465-0070

### Fees for Plan Review and Permits

Fees for plan review and permits issued by the Division for construction, alteration and repair of prefabricated structures and of buildings and other structures as established by these rules and authorized by ORS 455.210, shall be determined in accordance with 918-460-0030, 918-440-0050, and 918-309-0030 through 918-309-0070 as appropriate.

[ED. NOTE: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 455.210  
Stat. Implemented: ORS 455.210  
Hist.: BCD 16-2011, f. 6-30-11, cert. ef. 7-1-11

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**Rule Caption:** Wineries can use the Agricultural Building Exemption in ORS 455.315.

**Adm. Order No.:** BCD 17-2011

**Filed with Sec. of State:** 6-30-2011

**Certified to be Effective:** 7-1-11

**Notice Publication Date:** 6-1-2011

**Rules Adopted:** 918-460-0100

**Subject:** ORS 455.068 states in part that any construction standard adopted by the Department of Consumer and Business Services shall be applicable to all wineries producing wine. ORS 455.315 exempts certain structures used in the operation of a farm from the provisions of the Oregon Structural Specialty Code. This rule clarifies that the requirement for equal applicability of construction standards to all wineries does not affect the ability of a winery to use the exemption for agricultural buildings as long as other requirements of ORS 455.315 are met.

**Rules Coordinator:** Stephanie Snyder—(503) 373-7438

## 918-460-0100

### Applicability of Agricultural Building Exemption to Wineries

The uniform applicability of construction standards to wineries required by ORS 455.068, allows application of an exemption from construction standards for a winery structure.

Stat. Auth.: ORS 455.030  
Stat. Implemented: ORS 455.068, 455.315  
Hist.: BCD 17-2011, f. 6-30-11, cert. ef. 7-1-11

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**Rule Caption:** Abolishing Temporary Apprenticeship Licenses (180 Day Rule).

**Adm. Order No.:** BCD 18-2011

**Filed with Sec. of State:** 6-30-2011

**Certified to be Effective:** 7-1-11

**Notice Publication Date:** 6-1-2011

**Rules Amended:** 918-282-0270

**Rules Repealed:** 918-282-0280

**Subject:** The previous rule allowed an electrical apprentice from another state that is party to the state apprenticeship reciprocal agreement to receive a temporary apprentice license to work in Oregon for a period not to exceed 180 days. The rule allowed an apprentice to work on a single project up to 180 days. This license could not be renewed.

This rule would abolish OAR 918-282-0280, Temporary Apprentice Licenses, which imposes the 180-day time limit, single project, and non-renewal restrictions. The rule would add provisions for reciprocal apprentices in OAR 918-282-0270, Apprentices, and clarify that a reciprocal apprentice may work under indirect supervision if they meet the requirements for an indirect supervision card. This rule makes permanent what is currently in effect as a temporary rule.

**Rules Coordinator:** Stephanie Snyder—(503) 373-7438

## 918-282-0270

### Apprentices

(1) An apprentice:

(a) Shall meet the following minimum requirements:

(A) General journeyman, Class A limited energy technician and Class

B limited energy technician:

(i) Be 17 years of age to apply, 18 years of age to be registered;

(ii) Have a high school diploma, GED, or international equivalency;

and

(iii) Have one-year high school algebra, integrated math 2 or its equivalent, with a grade of "C" or better, or equivalent community college mathematics placement test results.

(B) Limited journeyman manufacturing plant, limited maintenance, limited journeyman sign, limited journeyman stage and limited renewable energy technician:

(i) Be 17 years of age to apply, 18 years of age to be registered;

(ii) Have a high school diploma, GED or international equivalency;

and

(iii) Have one-year high school mathematics with a passing grade, or equivalent community college mathematics placement test results;

(C) Limited residential:

(i) Be 17 years of age to apply, 18 years of age to be registered;

(ii) Have a high school diploma, GED, or international equivalency;

and

(iii) Have one-year high school algebra, integrated math 2 or its equivalent, with a grade of "C" or better, or one-year high school math and completion of an algebra course as part of an approved apprenticeship program, with a grade of "C" or better, or equivalent community college mathematics placement test results.

(b) Shall be licensed;

(c) May assist an appropriately licensed electrician on the same job site and the same shift in performing electrical work authorized in the trade, or branch of the trade, in which the licensee is registered; and

(d) Shall not perform electrical work under a person holding a letter of authority card issued to State of Oregon employees.

(2) Apprentice licenses issued under sections (3)(a), (4), or (5) of this rule are issued and renewed by the Oregon Bureau of Labor and Industries according to standards established in this rule and the guidelines established by the Bureau of Labor and Industries and the Building Codes Division.

(3) Electrical apprentice licenses:

(a) Shall be issued to individuals registered in formal electrical apprenticeship programs recognized by the board and the Oregon Bureau of Labor and Industries under ORS Chapter 660; and

(b) May be issued to trainees enrolled in individually approved, employer-sponsored training programs leading to the limited journeyman license in OAR 918-282-0190. Individuals enrolled in these programs may be issued an electrical apprentice license only if the employer's program is approved by the board.

(4) Reciprocal electrical apprentice licenses shall be issued to individuals currently registered in an approved apprenticeship program outside Oregon in a state that is party to the state apprenticeship reciprocal agreement.

(5) Notwithstanding subsection (1)(c) of this rule, a final period apprentice licensed under sections (3)(a) or (4) of this rule that meets the requirements of this section and the Bureau of Labor and Industries may be issued an indirect supervision electrical apprentice license, allowing the

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apprentice to work under indirect supervision at the discretion of the responsible supervisor. A license under this section may be issued to:

(a) A final period apprentice in an 8,000 hour apprenticeship program with at least 6,500 hours of on-the-job training, allowing the apprentice to work under indirect supervision on projects not exceeding eight hours duration and limited to 300 volts phase to phase or phase to ground; or

(b) A final period apprentice in a 6,000 hour apprenticeship program with at least 5,000 hours of on-the-job training, allowing the apprentice to work under indirect supervision on projects not exceeding eight hours duration that are otherwise within the scope of the apprentice's license.

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730

Hist.: DC 15-1987, f. & ef. 5-15-87; Renumbered from 814-022-0980; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; Renumbered from 918-320-0190; BCD 23-2000, f. 9-29-00, cert. ef. 10-1-00; BCD 23-2001(Temp), f. 12-28-01, cert. ef. 1-1-02 thru 6-29-02; BCD 9-2002, f. 3-29-02, cert. ef. 4-1-02; BCD 23-2002, f. 9-13-02 cert. ef. 10-1-02; BCD 2-2008, f. 2-21-08, cert. ef. 4-1-08; BCD 8-2011, f. 3-30-11, cert. ef. 4-1-11; BCD 9-2011(Temp), f. 3-30-11, cert. ef. 4-1-11 thru 6-30-11; BCD 18-2011, f. 6-30-11, cert. ef. 7-1-11

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**Rule Caption:** Expands scope of work that may be performed under mechanical minor installation label programs.

**Adm. Order No.:** BCD 19-2011

**Filed with Sec. of State:** 6-30-2011

**Certified to be Effective:** 7-1-11

**Notice Publication Date:** 6-1-2011

**Rules Amended:** 918-100-0020, 918-100-0040

**Subject:** These rule changes relate to OAR Chapter 918, Division 100, which contain the Department of Consumer and Business Services Building Codes Division's rules relating to optional mechanical minor installation label programs. Under these programs, a local building department may, but is not required to, allow certain minor mechanical construction work to be performed under a minor installation label. Under the previous rules, mechanical minor installation labels could only be used in commercial and industrial buildings. These rule changes will permit mechanical minor installation labels to be used in residential occupancies. The changes will also expand the scope of work allowed under mechanical minor installation labels to include the addition of air conditioning units to pre-existing ductwork. Finally, the new rules will clarify that only contractors licensed by the Construction Contractors Board may purchase and use mechanical minor installation labels for residential occupancies.

**Rules Coordinator:** Stephanie Snyder—(503) 373-7438

## 918-100-0020

### Scope of Minor Installation Label Programs

(1) The statewide minor installation label program is a mandatory statewide program for which labels are sold by the division and used within any jurisdiction.

(a) The division administers the residential, commercial, and industrial plumbing and electrical minor installation label program. Local jurisdictions are required to participate in the program by performing inspections on behalf of the division on a percentage of minor installation labels used by contractors.

(b) Work performed under this program shall conform to the **Oregon Electrical Specialty Code**, the **Oregon Plumbing Specialty Code** and the **Oregon Residential Specialty Code**. The scope of work allowed under this program is defined in OAR 918-309-0220 for electrical installations and OAR 918-780-0140 for plumbing installations.

(2) Jurisdictions may file a request for delegation of optional minor installation programs. Use of a minor installation label by an appropriate person include:

(a) Work performed under the structural commercial and industrial minor label program shall be to the **Oregon Structural Specialty Code**. The scope of work allowed under this program includes:

(A) Alteration, replacement, or repair of up to 100 linear feet of non-bearing, walls and partitions that are not fire resistive and that are not part of the building shell, an exit, or an exit passageway;

(B) Window and door replacements or relocations not part of an exit or exit passageway and fit within existing openings. Replacement windows and doors shall comply with the requirements of current state codes, including but not limited to safety glazing requirements;

(C) Light weight interior awnings under 100 pounds total weight;

(D) Removal and replacement of acoustical ceiling tiles in ceilings not fire-rated of less than 1,000 square feet. Replacement of supporting grid is not included; and,

(E) Minor roofing repairs not exceeding ten percent of the roofing area.

(b) Work performed under the mechanical minor label program shall be to the **Oregon Mechanical Specialty Code** and the **Oregon Residential Specialty Code**. The scope of work allowed under this program includes:

(A) Moving or replacing duct work not involving fire dampers or penetrations of fire walls, fire assemblies or floors;

(B) Moving grills in duct work; or,

(C) Replacing existing heating, cooling and ventilation equipment; or,

(D) Adding a central air conditioning unit to existing ductwork in one- and two-family dwellings; or,

(E) Installing a mechanical exhaust fan for radon mitigation systems in one- and two-family dwellings.

(3) The minor label program does not include:

(a) New construction, except as allowed under OAR 918-309-0220(3)(a) and (b) or Subsection (2)(b)(D) of this rule;

(b) Accessibility retrofit;

(c) Major roof repairs, constituting more than ten percent of roofing area, and reroofing;

(d) Work on fire extinguishing or smoke evacuation systems;

(e) Chemical or industrial liquid waste and vent piping; or

(f) Combination waste and vent systems.

(4) The elevator minor label program is a statewide program for which labels are sold by the division and used within any jurisdiction.

(a) The division administers the elevator minor installation label program. The division shall perform inspections on a percentage of minor installation labels used by contractors.

(b) Work performed under this program shall conform to the **Oregon Elevator Specialty Code**. The scope of work allowed under this program is defined in 918-400-0675.

(5) No more than one minor label for each specialty area or one elevator minor label shall be used on any single project per job site. For the purpose of this rule, a job site means work at the same address.

(6) A minor label is only required when the work otherwise requires a permit. No new permit requirements are created.

(7) If a jurisdiction chooses not to offer the optional minor label program, permits and individual inspections shall continue to be required in each program.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 447.072, 447.076, 455.144, 455.627, 460.085, 479.540 & 479.570

Stats. Implemented: ORS 447.072, 447.076, 455.627, 460.085, 479.540 & 479.570

Hist.: BCD 27-1994, f. & cert. ef. 11-15-94; BCD 4-2002, f. 3-8-02, cert. ef. 4-1-02; BCD 22-2004, f. & cert. ef. 10-1-04; BCD 17-2008, f. 9-26-08, cert. ef. 10-1-08; BCD 19-2011, f. 6-30-11, cert. ef. 7-1-11

## 918-100-0040

### Issuance of Minor Labels

The following persons are eligible to purchase minor labels:

(1) Commercial and industrial structural and mechanical minor labels. Building owners, the owner's agent or the contractor doing the work, who holds a Construction Contractors Board license.

(2) Residential mechanical minor labels. A contractor licensed by the Construction Contractors Board.

(2) Plumbing minor labels. Plumbing contractors authorized by OAR 918-780-0130.

(3) Electrical minor labels. Electrical contractors authorized by OAR 918-309-0210.

(4) Elevator minor labels. Elevator contractors authorized by OAR 918-400-0333.

Stat. Auth.: ORS 447.072, 447.076, 455.154, 455.627, 460.085, 479.540 & 479.570

Stats. Implemented: ORS 447.072, 447.076, 455.627, 460.085, 479.540 & 479.570

Hist.: BCD 27-1994, f. & cert. ef. 11-15-94; BCD 4-2002, f. 3-8-02, cert. ef. 4-1-02; BCD 22-2004, f. & cert. ef. 10-1-04; BCD 17-2008, f. 9-26-08, cert. ef. 10-1-08; BCD 19-2011, f. 6-30-11, cert. ef. 7-1-11

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**Rule Caption:** Clarifying Reach Code Plan Review and Inspections.

**Adm. Order No.:** BCD 20-2011(Temp)

**Filed with Sec. of State:** 7-12-2011

**Certified to be Effective:** 7-12-11 thru 12-31-11

**Notice Publication Date:**

**Rules Amended:** 918-098-1000

**Subject:** This rule clarifies which certifications are required for inspecting buildings under the Oregon Reach Code. The Oregon Reach Code does not alter any of the existing certification rules. The Oregon Reach Code builds off of the existing specialty codes. This

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rule clarifies that individuals certified to inspect particular specialty codes may also inspect the corresponding provisions of the Reach Code.

**Rules Coordinator:** Stephanie Snyder—(503) 373-7438

## 918-098-1000

### Purpose and Scope

(1) These rules establish minimum training, experience, certification, and certification renewal requirements for building officials and persons who perform specialty code plan review and inspections in this state.

(a) The certification requirements for commercial plumbing and electrical inspectors are located in OAR 918-695-0400 through 918-695-0410 and 918-281-0000 through 918-281-0020.

(b) Plan review and inspections required under the Oregon Reach Code are to be performed by individuals who, in accordance with these rules, OAR 918-281, or OAR 918-695, are certified to conduct plan review or inspections under the specialty code that corresponds to the Reach Code provision.

(2) Nothing in these rules is intended to allow a person to violate statute or rule or change certification and licensing requirements set forth in statute.

(3) Nothing in these rules prevents the director from waiving procedural requirements in the rare circumstance where substantial compliance is impracticable.

Stat. Auth.: ORS 455.720 & 455.500  
Stats. Implemented: ORS 446.250, 455.622, 455.720 & 455.500  
Hist.: 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 18-2006, f. 12-29-06, cert. ef. 1-1-07; BCD 6-2010, f. 5-14-10, cert. ef. 7-1-10; BCD 7-2011, f. & cert. ef. 3-11-11; BCD 20-2011(Temp), f. & cert. ef. 7-12-11 thru 12-31-11

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

**Rule Caption:** Suspend banking rules governing charging off real estate assets.

**Adm. Order No.:** FCS 4-2011(Temp)

**Filed with Sec. of State:** 6-30-2011

**Certified to be Effective:** 7-1-11 thru 12-28-11

**Notice Publication Date:**

**Rules Suspended:** 441-505-1135

**Subject:** ORS 705.590 has required an Oregon chartered bank to reduce the value of real estate they own by 5% of its original book value each year, beginning the year the title is vested with the bank. This write down continues until either the bank disposes of the real estate or 15 years, whichever is first. To address concerns from Oregon banks about this law, the Division of Finance and Corporate Securities adopted rules in December 2010 (FCS 11-2010) to clarify that the charge-off must occur within 12 months of the vesting of the property, rather than within the calendar year of this date.

In the 2011 Legislative Session, the Oregon Bankers Association introduced and passed House Bill 2614 (2011 Or Laws ch. 478). It allows an Oregon chartered bank to immediately charge off the entire book value of the real estate when the bank gets the property's title. As adopted, it also requires that real estate owned by the bank must always be valued and recorded in the bank's records in accordance with Generally Acceptable Accounting Principals (GAAP) and that an Oregon bank can hold the real estate to 10 years effective with real estate taken by the bank on or after the effective date of the bill.

Because the regulation of the write down of the value of bank-owned real estate currently in rule no longer matches the statutory requirement for write downs, the inconsistency needs to be eliminated. The Division finds that there would be serious prejudice to Oregon chartered banks if these temporary rules are not adopted immediately.

**Rules Coordinator:** Shelley Greiner—(503) 947-7484

## 441-505-1135

### Charging Off Real Estate Assets

Effective December 1, 2010, an institution that owns or holds real estate pursuant to ORS 708A.175(3) or (4) shall reduce the real estate's book value pursuant to ORS 708.590(2) by not less than five percent of its

original book value within 12 months from the date title to the real estate is vested and by not less than an additional five percent of the original book value during every 12-month period thereafter. ORS 708.195(2) states that title is deemed vested on "the date the institution is first entitled to receive a deed to the real estate."

Stat. Auth.: ORS 706.790  
Stats. Implemented: ORS 708A.590(2); 708A.175(3), (4), 708.195(2)  
Hist.: FCS 11-2010, f. 11-29-10, cert. ef. 12-1-10; Suspended by FCS 4-2011(Temp), f. 6-30-11, cert. ef. 7-1-11 thru 12-28-11

**Rule Caption:** Modifies fees for mortgage banker, mortgage broker and mortgage loan originator licenses.

**Adm. Order No.:** FCS 5-2011(Temp)

**Filed with Sec. of State:** 6-30-2011

**Certified to be Effective:** 7-1-11 thru 12-28-11

**Notice Publication Date:**

**Rules Amended:** 441-860-0101, 441-880-0400

**Subject:** In 2009, the Director of the Department of Consumer and Business Services adopted fees for licensing mortgage bankers and mortgage brokers, including branch offices, and mortgage loan originators (see FCS 12-2009) effective January 1, 2010. Under ORS 291.050 et seq., all fees adopted by state agencies are automatically rescinded after the next regular legislative session unless adopted by the Legislature through enabling legislation. During the 2011 regular legislative session, the Legislature reduced the licensing fees for mortgage bankers and mortgage brokers, including branch offices, and mortgage loan originators. This rulemaking reflects the fee reductions as approved by the Legislature.

Because of this discrepancy between the fees as they currently exist in rule and the legislatively-approved fee amounts, the department finds that serious prejudice to existing and prospective mortgage lending licensees will result if the department does not adopt temporary rules immediately.

**Rules Coordinator:** Shelley Greiner—(503) 947-7484

## 441-860-0101

### Fees Payable to the Director

In addition to any fees required to participate in the National Mortgage Licensing System and Registry, a mortgage banker or a mortgage broker shall pay to the director the following fees at the time of application:

(1) A nonrefundable application fee for a mortgage banker or mortgage broker license of \$960 plus a \$330 nonrefundable application fee for each branch the mortgage banker or mortgage broker establishes in Oregon.

(2) A nonrefundable renewal application fee for a mortgage banker or mortgage broker license of \$480 plus a \$165 nonrefundable application fee for each branch the mortgage banker or mortgage broker maintains in Oregon.

Stat. Auth.: ORS 86A.136  
Stat. Implemented: ORS 86A.106, 2011 HB 5014  
Hist.: FCS 12-2009, f. 12-2-09, cert. ef. 1-1-10; FCS 5-2011(Temp), f. 6-30-11, cert. ef. 7-1-11 thru 12-28-11

## 441-880-0400

### Fees Payable to the Director

(1) In addition to any fees required to participate in the National Mortgage Licensing System and Registry, a person applying for a mortgage loan originator license shall pay to the director a nonrefundable fee of \$80 for the issuance of a mortgage loan originator license.

(2) In addition to any fees required to participate in the National Mortgage Licensing System and Registry, a person renewing a mortgage loan originator license shall pay to the director a nonrefundable fee of \$65 for the renewal of a mortgage loan originator license.

Stat. Auth.: ORS 86A.242  
Stat. Implemented: ORS 86A.136, 86A.206, 2011 HB 5014  
Hist.: FCS 12-2009, f. 12-2-09, cert. ef. 1-1-10; FCS 5-2011(Temp), f. 6-30-11, cert. ef. 7-1-11 thru 12-28-11

**Rule Caption:** Revision of fees for master trustees and certified providers.

**Adm. Order No.:** FCS 6-2011(Temp)

**Filed with Sec. of State:** 6-30-2011

**Certified to be Effective:** 7-1-11 thru 12-28-11

**Notice Publication Date:**

**Rules Amended:** 441-930-0270



# ADMINISTRATIVE RULES

**Subject:** In 2010, the Division of Finance and Corporate Securities, Department of Consumer and Business Services, conducted a rule-making to revise administrative rules related to the regulation of master trustees and certified providers. As part of that rulemaking, the Division adopted increased fees for both regulated entities. (FCS 14-2010). Under ORS 291.050 et seq., all fees adopted by state agencies are automatically rescinded after the next regular legislative session unless they are adopted by the Legislature. The 2011 Legislature recommended reductions in the increases of licensing fees for master trustees and certified providers (House Bill 5014). To comply, the Department is proposing these rules to conform the fees in administrative rules for master trustees and certified providers to this legislation.

Because the fees currently in rule do not match the legislatively approved fees, the Division finds that there would be serious prejudice to existing and prospective master trustees and certified providers if these temporary rules are not adopted immediately.

**Rules Coordinator:** Shelley Greiner—(503) 947-7484

## 441-930-0270

### Fees Assessed to Certified Providers and Registered Master Trustees

The director shall annually assess the following fees for each registered master trustee, certified provider, or applicant:

- (1) Certification Fee — \$390 per certified provider. Each location is a separate entity for purposes of this fee.
- (2) Registration Fee — \$390 per master trustee.
- (3) Limited Operations Fee — \$80.
- (4) Exam Fees — \$75 per hour for each examiner, plus costs of an examination.
- (5) If the books and records are located outside Oregon, the certified provider or master trustee must pay travel and per diem expenses.

Stat. Auth.: ORS 97.926, 97.933 & 97.935

Stats. Implemented: ORS 97.933, 97.935, 2011 HB 5014

Hist.: DO 1-2002, f. & cert. ef. 1-10-02; Renumbered from 440-300-0270; FCS 3-2004, f. & cert. ef. 9-30-04; FCS 7-2004, f. 12-14-04, cert. ef. 1-1-05; FCS 3-2005, f. & cert. ef. 9-6-05; FCS 2-2006, f. & cert. ef. 2-22-06; FCS 8-2008, f. & cert. ef. 8-28-08; FCS 14-2010, f. 12-30-10, cert. ef. 1-1-11; FCS 6-2011(Temp), f. 6-30-11, cert. ef. 7-1-11 thru 12-28-11

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

**Rule Caption:** Adoption of Rules to Implement Children's Reinsurance Program.

**Adm. Order No.:** ID 10-2011

**Filed with Sec. of State:** 7-5-2011

**Certified to be Effective:** 7-5-11

**Notice Publication Date:** 6-1-2011

**Rules Adopted:** 836-100-0011, 836-100-0016, 836-100-0025, 836-100-0030, 836-100-0035, 836-100-0040, 836-100-0045

**Rules Repealed:** 836-100-0015

**Rules Ren. & Amend:** 836-100-0010 to 836-100-0020

**Subject:** This rulemaking establishes a Children's Reinsurance Program to promote health insurance coverage of children under the age of 19 in Oregon. This program would spread the risk of enrolling high-risk children in the commercial individual market on a guaranteed issue basis with no pre-existing condition exclusion period as now required under federal law. The rules establish the requirements and procedures for a carrier to cede coverage for a child under the age of 19 to the Children's Reinsurance Program.

**Rules Coordinator:** Sue Munson—(503) 947-7272

## 836-100-0011

### Purpose and Statutory Authority

(1) The purpose of OAR 836-100-0011 to 836-100-0045 is to assure that children have affordable health care coverage options in Oregon's individual health insurance market and the Healthy KidsConnect program with guaranteed issue and no pre-existing condition period through the establishment of a Children's Reinsurance Program.

(2) OAR 836-100-0011 to 836-100-0045 are adopted pursuant to the authority of the Department of Consumer and Business Services under ORS 731.244 to carry out the purposes of ORS 743.731 and chapter 131, Oregon Laws 2011 (Enrolled Senate Bill 514) to encourage the availability

of individual health benefit plans and Healthy KidsConnect coverage for individuals under the age of 19 who are not enrolled in employer-sponsored group health plans.

Stat. Auth.: ORS 731.244 & 743.731

Stats Implemented: ORS 743.731 & 2011 OL Ch. 131 (Enrolled SB 514)

Hist.: ID 10-2011, f. & cert. ef. 7-5-11

## 836-100-0016

### Definitions

As used in OAR 836-100-0011 to 836-100-0045:

(1) "Applicant" means a child under the age of 19 or the parent or adult representative of a child who is applying for coverage under an individual health benefit plan or under a Healthy KidsConnect health benefit plan, either as a child-only or as a member of a family policy.

(2) "Carrier" means an insurance company or health care service contractor holding a valid certificate of authority from the Director of the Department of Consumer and Business Services that authorizes the transaction of health insurance.

(3) "Claim" includes a request for payment under the terms of an individual health benefit plan or under a Healthy KidsConnect health benefit plan, or the costs of utilization or for an encounter between a provider and a child covered by the Children's Reinsurance Program.

(4) "DCBS" or "department" means the Department of Consumer and Business Services or any entity or agency administering the Children's Reinsurance Program on behalf of the Department of Consumer and Business Services.

(5) "Healthy KidsConnect" means a health benefit plan established pursuant to ORS 414.231.

(6) "Standard Health Statement" means the Oregon Standard Health Statement described in OAR 836-053-0510.

Stat. Auth.: ORS 731.244 & 743.731

Stats Implemented: ORS 743.731 & 2011 OL Ch. 131 (Enrolled SB 514)

Hist.: ID 10-2011, f. & cert. ef. 7-5-11

## 836-100-0020

### Non-grandfathered Individual and Healthy KidsConnect Health Insurance Enrollment for Persons Under 19 Years of Age

(1) A carrier that issues a non-grandfathered individual or Healthy KidsConnect health benefit plan may not limit, exclude, or deny health insurance coverage under a non-grandfathered individual or Healthy KidsConnect health insurance policy based on health status or preexisting condition of a person under the age of 19 years. However, a carrier may cede to the Children's Reinsurance Program the risk of a person under the age of 19 years in accordance with OAR 836-100-0011 to 836-100-0045.

(2) Coverage under a health benefit plan:

(a) Ceded under OAR 836-100-0011 to 836-100-0045 shall be effective on the date the insurer normally makes coverage effective under the benefit plan selected.

(b) Must be effective from the moment of birth for a newly born child of the insured in accordance with ORS 743A.090.

(c) Must be effective upon placement for adoption for an adopted child of the insured in accordance with ORS 743A.090.

(3) A carrier that issues a non-grandfathered individual health benefit plan need not provide coverage to an applicant if the applicant previously had coverage with the carrier during the 12 months prior to the application for coverage and that coverage was terminated:

(a) For conduct that constituted the basis for a legally valid rescission;

(b) For failing to abide by the terms and conditions of the insurance contract, including but not limited to the failure to pay premiums in a timely manner; or

(c) By the policyholder.

Stat. Auth.: ORS 731.244 & 743.773

Stats Implemented: ORS 743.731, 743A.090, 743.769 & 2011 OL Ch. 131 (Enrolled SB 514)

Hist.: ID 19-2010(Temp), f. & cert. ef. 9-23-10 thru 3-21-11; ID 3-2011, f. & cert. ef. 2-10-11; Renumbered from 836-100-0010, ID 10-2011, f. & cert. ef. 7-5-11

## 836-100-0025

### Eligible Carriers and Plans

(1) A carrier that issues an individual or Healthy KidsConnect health benefit plan in Oregon to children under 19 years of age must issue the plan on a guaranteed issue basis with no pre-existing conditions.

(2) A carrier may consider information provided on the standard health statement or other internally available health records or data of the carrier for the purpose of determining whether to cede a risk.

(3) A carrier:

(a) May cede to the Children's Reinsurance Program under OAR 836-100-0011 to 836-100-0045 the risk of an applicant accepted for coverage

# ADMINISTRATIVE RULES

under any individual health benefit plan offered by the carrier in Oregon on or after August 1, 2011.

(b) May not cede a risk for a person under the age of 19 who enrolls in a portability health benefit plan as defined in ORS 743.760, unless the applicant is currently ceded with the carrier.

(c) Shall notify DCBS if the carrier decides to cede the risk. At the time the carrier notifies the department, the carrier must provide the following to the department:

- (A) Information about the plan that the applicant selected;
- (B) An explanation of the basis for the premium for the applicant;
- (C) Demographic information in accordance with application materials provided by the program.

(4) If a child insured under a health benefit plan provided by a carrier and not ceded by the carrier under the Children's Reinsurance Program subsequently applies with the same carrier for coverage under a health benefit plan that provides more comprehensive coverage, the carrier may exercise the option to cede the risk at the time the child changes health benefit plans. The carrier shall comply with the same time limits for exercising the option to cede as set forth in OAR 836-100-0040.

(5) A carrier participating in the Healthy Kids program may cede risks acquired under that program only if the carrier first receives the enrollment notification from the Healthy KidsConnect office on or after August 1, 2011;

Stat. Auth.: ORS 731.244 & 743.731  
Stats Implemented: ORS 743.731 & 2011 OL Ch. 131 (Enrolled SB 514)  
Hist.: ID 10-2011, f. & cert. ef. 7-5-11

## 836-100-0030

### Role of Carrier that Cedes Risk

(1) When a carrier cedes risk to the Children's Reinsurance Program:

(a) The carrier shall continue to administer and manage the policy for the insured in accordance with the policy terms including but not limited to managing the risk to reduce costs.

(b) The carrier may not retain any portion of the premium.

(2) A designation as a ceded risk will last until January 1, 2014. If a child attains an age of 19 or older before January 1, 2014, the child shall remain in the program as a ceded risk as long as the child remains with the same carrier. If a child changes carriers, the new carrier may make a new determination about whether to cede the risk in accordance with OAR 836-100-0025.

(3) Each carrier shall submit to DCBS a report for risks ceded to the Children's Reinsurance Program for which the carrier continues to manage and provide administrative support. The report shall be submitted in accordance with a schedule agreed upon by the department and the carrier and shall include for each insured:

- (a) Identification;
- (b) Reported claims;
- (c) Reported paid claims; and
- (d) Premium received or earned.

Stat. Auth.: ORS 731.244 & 743.731  
Stats Implemented: ORS 743.731  
Hist.: ID 10-2011, f. & cert. ef. 7-5-11

## 836-100-0035

### Administrative Costs and Variable Expenses under Children's Reinsurance Program

For health benefit plan coverage provided by a carrier participating in the Children's Reinsurance Program, a carrier may not retain a premium for:

(1) Child only policies for which the risk is ceded to the Children's Reinsurance Program.

(2) Any portion of a family or subscriber and children policy ceded to the program. For a family policy or a subscriber and children policy, the total premium allocated to a child for whom coverage is ceded shall be calculated by determining the total premium due for all children on the policy, divided by the number of children on the policy.

Stat. Auth.: ORS 731.244 & 743.731  
Stats Implemented: ORS 743.731 & 2011 OL Ch. 131 (Enrolled SB 514)  
Hist.: ID 10-2011, f. & cert. ef. 7-5-11

## 836-100-0040

### Health Assessment Period

(1) Except as provided in section (2) of this rule, the carrier shall determine whether to cede a risk to the Children's Reinsurance Program within 105 days after the effective date of coverage. The Healthy KidsConnect carrier shall determine whether to cede a risk to the Children's Reinsurance Program within 105 days after the effective date of coverage.

(2) If a carrier opts not to cede a risk within the first 105 days from the effective date of coverage, the carrier may retroactively cede the risk within six months after for the effective date of coverage if:

- (a) The carrier identifies an error in the standard health statement; and
- (b) The error is such that, had the carrier known about the condition to which the error pertains within the 105 days allowed to determine whether to cede the risk, the carrier would have ceded the risk.

(3) The ceding of a risk under this rule shall be retroactive to the insured's effective date of coverage.

Stat. Auth.: ORS 731.244 & 743.731  
Stats Implemented: ORS 743.731 & 2011 OL Ch. 131 (Enrolled SB 514)  
Hist.: ID 10-2011, f. & cert. ef. 7-5-11

## 836-100-0045

### Claims and Premium Reconciliation

(1) A carrier shall submit the report required by the Children's Reinsurance Program to obtain reimbursement of claims paid on a ceded life.

(2) Any adjustments for third party liabilities recovered by a health carrier shall be adjusted and reconciled according to the reporting and reconciliation schedule of the Children's Reinsurance Program.

(3) A carrier may retain pharmacy rebates.

(4) Commercial reinsurance recoveries shall be adjusted and reconciled according to the reporting and reconciliation schedule of the Children's Reinsurance Program.

(5) Premiums received in excess of claims submitted will be retained by the Children's Reinsurance Program to apply toward payment of future claims incurred by ceded lives.

(6) Claims incurred during an active period of coverage for a ceded life must be filed within 12 months of the date of service and no later than December 31, 2014 to be eligible for reimbursement through the Children's Reinsurance Program.

Stat. Auth.: ORS 731.244 & 743.731  
Stats Implemented: ORS 743.731 & 2011 OL Ch. 131 (Enrolled SB 514)  
Hist.: ID 10-2011, f. & cert. ef. 7-5-11

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**Rule Caption:** Amending rules related to appeals procedures for health benefit plans to comply with federal law.

**Adm. Order No.:** ID 11-2011(Temp)

**Filed with Sec. of State:** 7-7-2011

**Certified to be Effective:** 7-7-11 thru 12-21-11

**Notice Publication Date:**

**Rules Amended:** 836-053-1030, 836-053-1100, 836-053-1310, 836-053-1340, 836-053-1342, 836-053-1350

**Subject:** This rule makes five minor changes to our existing appeals and grievances rules for health benefit plans, in accordance with guidance we have received from the federal government about what will be considered when our compliance with federal law is being considered in July. Specifically, this rule:

- Requires that insurers provide summary information relating to internal appeals and external review processes in the policy or other "evidence of coverage" and gives guidance about what information relating to external review must be provided;

- Clarifies that when either party submits information to an independent review organization (IRO) for consideration by the IRO, the IRO must forward that information to the other party within one business day of the IRO;

- Requires IROs to be accredited by a nationally recognized private accrediting organization;

- Disallows insurers from requiring enrollees complete an internal appeal process or expedited internal appeal process before requesting and receiving expedited external review. Also allows insurers to waive internal appeals process for any reviewable adverse benefit determination, allowing consumer to skip to external review in those situations. These provisions were previously industry practice, but law and rule were unclear;

- Requires IROs to keep records of a review for at least three years after the review is conducted.

These changes resolve the specific concerns of the federal officials who have contacted us. We believe that adoption of these temporary rules will allow Oregon to be "deemed compliant" upon review of our appeals process this month.

**Rules Coordinator:** Sue Munson—(503) 947-7272

# ADMINISTRATIVE RULES

## 836-053-1030

### Written Information to Enrollees

(1) Each insurer must furnish the written general information to policyholders that is required by ORS 743.804, including but not limited to information relating to enrollee rights and responsibilities, including the right to appeal adverse benefit determinations; services, access thereto and related charges and scheduling; and access to external review, as provided in this rule. An insurer:

(a) Must furnish the information regarding an individual health insurance policy to each policyholder; and

(b) Must furnish the information regarding a group health insurance policy to the group policyholder for distribution to enrollees of the group policy.

(2)(a) The written general information referred to in section (1) of this rule must be included either in the policy or in other evidence of coverage that is delivered to the individual policyholder by the insurer, or in the case of a group health insurance policy, that is delivered by the insurer to the group policyholder for distribution to enrollees.

(b) The information required under subsection (a) of this section must include:

(A) A description of the external review process, including when external review is available and how to request external review. The description must include the phone number of the Oregon Insurance Division.

(B) A disclosure that when filing a request for an external review the covered person will be required to authorize the release of any medical records of the covered person that may be required to be reviewed for the purpose of reaching a decision on the external review.

(3) The written general information must disclose the following in relation to referrals for specialty care, behavioral health services, hospital services and other services, in addition to other relevant information regarding referrals:

(a) If applicable, how gatekeeping or access controls apply to referrals and whether and how the controls differ for specialty care, behavioral health services and hospital services; and

(b) Any limitation on referrals if a plan has a defined network of participating providers and if referrals for specialty care may be limited to a portion of the network, such as to those specialists who contract with an enrollee's primary care group.

(4) The written general information must include the information required by ORS 743.699, relating to coverage of emergency medical conditions and obtaining emergency services, including a statement of the prudent layperson standard for an emergency medical condition, as that term is defined in 743.801. An insurer may meet the requirement of providing information in 743.699 by providing adequate disclosure in the written general information required by 743.804(5) and this rule. An insurer may use the following statement regarding the use of the emergency telephone number 9-1-1, or other wording that appropriately discloses its use: If you or a member of your family needs immediate assistance for a medical emergency, call 9-1-1 or go directly to an emergency room.

(5) The written general information must include information regarding the use of the insurer's grievance process, including the assistance available to enrollees in filing written grievances in accordance with OAR 836-053-1090 and the utilization review appeal procedures required by ORS 743.807(2)(c). The information must be contained in a separate section of the written information and captioned in a manner that clearly indicates that the section addresses grievances and appeals.

(6) The written general information must include a notice that states the right to file a complaint with or seek assistance from the Director of the Department of Consumer and Business Services. An insurer may use the following statement or other appropriate wording for this purpose:

You have the right to file a complaint or seek other assistance from the Oregon Insurance Division. Assistance is available:  
By calling (503) 947-7984 or the toll free message line at (888) 877-4894;  
By writing to the Oregon Insurance Division, Consumer Protection Unit, 350 Winter Street NE, Salem, OR 97301-3883;  
Through the Internet at <http://www.insurance.oregon.gov/consumer/tomake.html>; or  
By e-mail at: [cp.ins@state.or.us](mailto:cp.ins@state.or.us).

(7) The written general information for an insurance policy providing managed health care must include a description of the procedures by which enrollees, purchasers and providers may participate in the development and implementation of insurer policy and operation.

(8) The portion of the written general information that describes how an insurer makes decisions regarding coverage and payment for treatment or services must include a notice to enrollees that they may request an additional written summary of information that the insurer may consider in its utilization review of a particular condition to the extent the insurer main-

tains such criteria. The notice to enrollees must include the name and telephone number of the administrative section of the insurer that handles enrollee requests for information.

(9) If a plan has a defined network of participating providers, the written general information must include a list of all primary care providers and direct access providers, and may also include a list of all specialty care providers. For the purposes of this section, a primary care provider or direct access provider is a participating provider under the terms of the plan who an enrollee may designate as the primary care provider for the enrollee or from whom an enrollee may obtain services without referral. The list of providers must include for each provider the provider's name, professional designation, category of practice and the city in which the practice of the provider is located. If the information does not list participating specialty care providers, the information must state that fact and must disclose the manner in which an enrollee may obtain information about participating specialty care providers.

(10) If a plan includes risk-sharing arrangements with physicians or other providers, the written general information must contain a statement to that effect, including a brief description of risk-sharing in general, and must notify enrollees that additional information is available upon request. For the purpose of this requirement, a risk-sharing arrangement does not include a fee-for-service arrangement or a discounted fee-for-service arrangement. An insurer may use the following statement to describe risk-sharing, or other appropriate wording: This plan includes "risk-sharing" arrangements with physicians who provide services to the members of this plan. Under a risk-sharing arrangement, the providers that are responsible for delivering health care services are subject to some financial risk or reward for the services they deliver. An example of a risk sharing arrangement is a contract between an insurer and a group of heart surgeons in which the surgeons agree to provide all of the heart operations needed by plan members and the insurer agrees to pay a fixed monthly amount for those services.

(11) If the insurer of a plan uses a mandatory closed formulary, the written general information for that plan must prominently disclose and explain the formulary provision. The disclosure and explanation must be in boldfaced type or otherwise emphasized.

(12) The written general information must include a notice disclosing that additional information is available to enrollees upon request to the insurer. The notice must include the name and telephone number of the insurer's administrative section that handles enrollee requests for information. For the notice required in the written general information disclosing information available from the Department of Consumer and Business Services, an insurer may use the following statement, or other appropriate wording:

The following information regarding the health benefit plans of (insurer's name) is available from the Oregon agency:

- (1) An annual summary of grievances and appeals;
- (2) (If applicable) An annual summary of utilization review policies;
- (3) (If applicable) An annual summary of quality assessment activities;
- (4) (If applicable) The results of all publicly available accreditation surveys;
- (5) (If applicable) An annual summary of the insurer's health promotion and disease prevention activities;
- (6) (If applicable) An annual summary of scope of network and accessibility of services.

This information is available:

By calling (503) 947-7984 or the toll free message line at (888) 877-4894;

By writing to the Oregon Insurance Division, Consumer Protection Unit, 350 Winter Street NE, Salem, OR 97301-3883;

Through the Internet at <http://www.insurance.oregon.gov/consumer/tomake.html>; or

By e-mail at: [cp.ins@state.or.us](mailto:cp.ins@state.or.us).

Stat. Auth.: ORS 731.244 & 2011 OL Ch. 500 (Enrolled SB 89)

Stats. Implemented: ORS 743.699, 743.804 & 743.807

Hist.: ID 1-1998, f. & cert. ef. 1-15-98; ID 5-2000, f. & cert. ef. 5-11-00; ID 11-2011(Temp), f. & cert. ef. 7-7-11 thru 12-21-11

## 836-053-1100

### Time Requirements for Grievance Review

(1) The minimum standards for timeliness of response by an insurer to grievances and appeals by its enrollees, for purposes of the system of resolving grievances and appeals required by ORS 743.804 are as follows:

(a) An insurer shall acknowledge receipt of an initial grievance or the first or second appeal from an enrollee not later than the seventh day after receiving the grievance or the first or second appeal;

(b) An insurer shall make a decision on the initial grievance or the first or second appeal not later than the 30th day after receiving notice of the initial grievance or the appeal. In the event of an initial grievance, the insurer may have an additional 15 days to resolve the issue if before the 30th day the insurer gives a notice of delay to the enrollee or representative of the enrollee that includes a specific reason for the delay.



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(2) An otherwise applicable standard for timeliness in section (1) of this rule does not apply when:

(a) The period of time is too long to accommodate the clinical urgency of the situation;

(b) The enrollee does not reasonably cooperate; or

(c) Circumstances beyond the control of a party prevent that party from complying with the standard, but only if the party who is unable to comply gives notice of the specific circumstances to the other party when the circumstances arise.

(3) An insurer shall treat an appeal from a decision by a medical consultant or peer review committee pursuant to OAR 836-053-1140(1)(b) as a second appeal under the insurer's grievance procedures under ORS 743.804(3).

(4) For adverse benefit determinations eligible for external review pursuant to ORS 743.857, an insurer may waive its internal appeals process at any time. If the insurer waives its internal appeals process, the internal appeals process is deemed exhausted for the purposes of qualifying for external review.

Stat. Auth.: ORS 731.244

Stats. Implemented: ORS 743.804

Hist.: ID 1-1998, f. & cert. ef. 1-15-98; ID 5-2000, f. & cert. ef. 5-11-00; ID 11-2011(Temp), f. & cert. ef. 7-7-11 thru 12-21-11

## 836-053-1310

### Contracting Requirements

(1) To be considered for contracting with the Director as an independent review organization under ORS 743.858 for the purpose of providing independent review under 743.857, an independent review organization must submit to the Director a response to the Director's request for proposal according to its requirements. The response must include:

(a) For an independent review organization that is publicly held, the name of each stockholder or owner of more than five percent of any stock or options;

(b) The name of any holder of bonds or notes of the independent review organization that exceed \$100,000;

(c) The name and type of business of each corporation or other organization that the independent review organization controls or is affiliated with and the nature and extent of the affiliation or control;

(d) The name and a biographical sketch of each director, officer and executive of the independent review organization and any entity listed under subsection (c) of this section and a description of any relationship the named individual has with:

(A) An insurer;

(B) A utilization review agent;

(C) A nonprofit or for-profit hospital or other health care corporation;

(D) A doctor of medicine or osteopathy, a provider or other health care professional;

(E) A drug or device manufacturer; or

(F) A group representing any of the entities described by paragraph

(A) to (E) of this subsection;

(e) The percentage of the independent review organization's revenues that the independent review organization anticipates will be derived from reviews conducted under ORS 743.862;

(f) A description of the areas of expertise of the medical reviewers making review determinations for the independent review organization, as well as policies and standards of the independent review organization that address qualifications, training and assignment of all types of medical reviewers and that are compliant with requirements of OAR 836-053-1317;

(g) The procedures that the independent review organization will use in making review determinations regarding reviews conducted under ORS 743.862;

(h) Attestations that all requirements will be met;

(i) Evidence of accreditation by a nationally recognized private accrediting organization;

(j) Other documentation, including but not limited to legal and financial information, policies and procedures, and data that are pertinent to requirements of ORS 743.862 and OAR 836-053-1315; and

(k) Any other requirements established by the Director that demonstrate the independent review organization's ability to meet all requirements for contracting as an independent review organization in this state.

(2) In order to enable the Director to consider the response of an independent review organization under section (1) of this rule:

(a) The independent review organization must authorize release of information from primary sources, including full reports of site visits, inspections and audits; and

(b) The Director may require the independent review organization to indicate which documents demonstrate compliance with specific statutory requirements under ORS 743.862 and OAR 836-053-1315.

(3) Investigation and verification activities of the Director regarding the independent review organization may include, but are not limited to:

(a) Review of the response of the independent review organization to the request for proposals and its filings for completeness and compliance with standards;

(b) On-site survey or examination;

(c) Primary-source verification with accreditation or regulatory bodies of compliance with requirements that are used to demonstrate compliance with applicable standards established in ORS 743.862 and OAR 836-053-1315; and

(d) Other means of determining regulatory and accreditation histories.

Stat. Auth.: ORS 731.244, 743.858 & 2011 OL Ch. 500 (Enrolled SB 89)

Stats. Implemented: ORS 743.858

Hist.: ID 10-2002(Temp), f. & cert. ef. 4-5-02 thru 9-27-02; ID 19-2002, f. 9-27-02, cert. ef. 9-28-02; ID 11-2011(Temp), f. & cert. ef. 7-7-11 thru 12-21-11

## 836-053-1340

### Timelines and Notice for Dispute That is Not Expedited

(1) An insurer shall give the Director notice of an enrollee's request for independent review by delivering a copy of the request to the Director not later than the second business day of the insurer after the insurer receives the request for the independent review.

(2) If an insurer reverses its final adverse determination before expiration of the deadline for sending the notice to the Director under section (1) of this rule, the insurer must notify the enrollee not later than the next business day of the insurer after its reversal. The notice to the enrollee may be given electronically, by facsimile or by telephone, followed by a written confirmation.

(3) Not later than the next business day of the Department after the Director has received a request for independent review from an insurer, the Director shall assign the review to one of the independent review organizations with whom the Director has contracted. The Director shall notify the insurer in writing of the name and address of the independent review organization to which the request for the independent review should be sent. If sending written notice will unduly delay notification, the Director shall give the notice electronically, by facsimile or by telephone, followed by a written confirmation.

(4) The Director shall notify the enrollee, not later than the second business day of the Department after the Director gave notice under section (3) of this rule of the assignment of the request. The notice must include a written description of the independent review organization selected to conduct the independent review and information explaining how the enrollee may provide the Director with documentation regarding any potential conflict of interest of the independent review organization as described in OAR 836-053-1320.

(5) Not later than the third calendar day following receipt of notice from the Director under section (4) of this rule, or the subsequent business day of the Department if any of the days is not a normal business day of the Department, the enrollee may provide the Director with documentation regarding a potential conflict of interest of the independent review organization. The documentation shall be sent in written form. If sending written documentation will unduly delay the process, the enrollee shall give the notice electronically, by facsimile or by telephone, followed by a written confirmation. If the director determines that the independent review organization presents a conflict of interest as described in OAR 836-053-1320, the Director shall assign another independent review organization not later than the next business day of the Department. The Director shall notify the insurer of the new independent review organization to which the request for the independent review should be sent. The Director shall also notify the enrollee of the Director's determination regarding the potential conflict of interest and the name and address of the new independent review organization.

(6) Not later than the sixth business day of the insurer after the date on which the insurer received notice from the Director under section (3) of this rule, the insurer shall deliver to the assigned independent review organization the following documents and information considered in making the insurer's final adverse decision, including the following:

(a) Information submitted to the insurer by a provider or the enrollee in support of the request for coverage under the health benefit plan's procedures.

(b) Information used by the health benefit plan during the internal appeal process to determine whether the course or plan of treatment is:

(A) Medically necessary;

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- (B) Experimental or investigational; or
- (C) An active course of treatment for purposes of continuity of care.
- (c) A copy of all denial letters issued by the plan concerning the case under review.

(d) A copy of the signed waiver form, or a waiver, authorization or consent that is otherwise permitted under the federal Health Insurance Portability and Accountability Act or other state or federal law, authorizing the insurer to disclose protected health information, including medical records, concerning the enrollee that is pertinent to the independent review.

- (e) An index of all submitted documents.

(7) Not later than the second business day of the independent review organization after receiving the material specified in section (6) of this rule, the independent review organization shall deliver to the enrollee the index of all materials that the insurer has submitted to the independent review organization. The insurer shall provide to the enrollee, upon request, all relevant information supplied to the independent review organization that is not confidential or privileged under state or federal law concerning the case under review.

(8) After receipt of the notice from the Director under section (4) of this rule, the enrollee, the insurer, or a provider acting on behalf of the enrollee or at the enrollee's request may submit additional information to the independent review organization. In accordance with OAR 836-053-1325(3)(b) the independent review organization must consider this additional information if the information is related to the case and relevant to statutory criteria. The independent review organization is not required to consider this information if the information is submitted after the seventh calendar day following the receipt of notice from the Director under section (4) of this rule, or the subsequent business day of the independent review organization if any of the seven days is not a normal business day of the independent review organization. Upon receiving information under this section the independent review organization must:

(a) Forward any information provided by the insurer to the enrollee within one business day after the independent review organization receives the information.

(b) Forward any information provided by the enrollee or a provider acting on behalf of the enrollee or at the enrollee's request to the insurer within one business day after the independent review organization receives the information.

(9) The independent review organization shall notify the enrollee, the provider of the enrollee and the insurer of any additional medical information required to conduct the review after receipt of the documentation under section (7) of this rule. Not later than the fifth business day of such a request, the enrollee or the provider of the enrollee shall submit the additional information or an explanation of why the additional information is not being submitted to the independent review organization. If the enrollee or the provider of the enrollee fails to provide the additional information or the explanation of why additional information is not being submitted within the timeline specified in this subsection, the assigned independent review organization shall make a decision based on the information submitted by the insurer as required by section (6) of this rule. Except as provided in this section, failure by the insurer to provide the documents and information within the time specified in section (6) of this rule shall not delay the conduct of the independent review.

(10) An independent review organization must provide notice to enrollees and the insurer of the result and basis for the determination as provided in OAR 836-053-1325 not later than the fifth day after the independent review organization makes a determination in a regular, nonexpedited case.

Stat. Auth.: ORS 731.244, 743.858, 743.862 & 2011 OL Ch. 500 (Enrolled SB 89)  
Stats. Implemented: ORS 743.858 & 743.862  
Hist.: ID 10-2002(Temp), f. & cert. ef. 4-5-02 thru 9-27-02; ID 19-2002, f. 9-27-02, cert. ef. 9-28-02; ID 11-2011(Temp), f. & cert. ef. 7-7-11 thru 12-21-11

## 836-053-1342

### Timelines and Notice for Expedited Decision-Making

(1) When an insurer expedites an enrollee's case under ORS 743.857(4), the insurer shall inform the Director and the independent review organization that the referral is expedited. If information on whether a referral is expedited is not provided to the independent review organization, the independent review organization may presume that the referral is not an expedited review, but the independent review organization may request clarification from the insurer.

(2) An insurer shall expedite external review of cases pursuant to ORS 743.857(4) when an enrollee requests external review before exhausting internal reviewing, including when an enrollee simultaneously requests expedited internal and expedited external reviews.

(3) An independent review organization shall make its decision in each expedited case within a time period that is appropriate for accommodating the clinical urgency of the particular case, but in any event not exceeding the maximum time period specified in ORS 743.862(3).

(4) In an expedited case, an independent review organization shall immediately provide notice to enrollees and the insurer of the result and basis for the determination as provided in OAR 836-053-1325.

Stat. Auth.: ORS 731.244, 743.858, 743.862 & 2011 OL Ch. 500 (Enrolled SB 89)  
Stats. Implemented: ORS 743.858 & 743.862  
Hist.: ID 10-2002(Temp), f. & cert. ef. 4-5-02 thru 9-27-02; ID 19-2002, f. 9-27-02, cert. ef. 9-28-02; ID 11-2011(Temp), f. & cert. ef. 7-7-11 thru 12-21-11

## 836-053-1350

### Ongoing Requirements for Independent Review Organizations

(1) An independent review organization shall file an annual statistical report with the Director, on a form specified by the Director, that summarizes reviews conducted. The report shall include, but need not be limited to, volumes, types of cases, compliance with timelines for expedited and nonexpedited cases, determinations, number and nature of complaints and compliance with conflict of interests rules.

(2) An independent review organization shall submit updated information to the Director if at any time there is a material change in the information included in the response of the independent review organization to the Director's request for proposals.

(3) An independent review organization shall maintain records of all materials, including materials submitted by all parties, notifications, documents relied upon, and the independent review organization's ultimate decision for a period of not less than three years after any review. The independent review organization shall provide copies of any of these documents to the Director of the Department of Consumer and Business Services at the Director's request.

Stat. Auth.: ORS 731.244, 743.858, 743.862 & 2011 OL Ch. 500 (Enrolled SB 89)  
Stats. Implemented: ORS 743.858 & 743.862  
Hist.: ID 10-2002(Temp), f. & cert. ef. 4-5-02 thru 9-27-02; ID 19-2002, f. 9-27-02, cert. ef. 9-28-02; ID 11-2011(Temp), f. & cert. ef. 7-7-11 thru 12-21-11

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**Rule Caption:** Adoption of Oregon Companion Guide for Health Care Eligibility Benefit Inquiry and Response.

**Adm. Order No.:** ID 12-2011

**Filed with Sec. of State:** 7-15-2011

**Certified to be Effective:** 7-15-11

**Notice Publication Date:** 5-1-2011

**Rules Adopted:** 836-100-0100, 836-100-0105, 836-100-0110, 836-100-0115, 836-100-0120

**Subject:** This rule will adopt uniform standards for administrative simplification of health insurance developed by the Office of Oregon Health Policy and Research pursuant to the provisions of Section 1193, Chapter 595, Oregon Laws 2009. Section 2, chapter 130, Oregon Laws 2011 (replacing Section 1192, Chapter 595, Oregon Laws 2009\*) requires the Department of Consumer and Business Services to adopt these standards by rule. The standards adopted by this rulemaking pertain to health care benefit eligibility inquiries and responses and are set forth in the "Oregon Companion Guide for the Implementation of the ASC X12N/005010X279, Health Care Eligibility Benefit Inquiry and Response (270/271)."

Senate Bill 94 was enacted into law before the public hearing, so the final rules encompass the changes necessary to reflect the provisions of Senate Bill 94.

\*Sections 1192 and 1193 of chapter 595, Oregon Laws 2009 were replaced by sections 2 to 5, chapter 130, Oregon Laws 2011 (Enrolled Senate Bill 94) during the 2011 Legislative Session. The authority to adopt rules and the directives to the Office of Oregon Health Policy and Research and the Department of Consumer and Business Services did not change except to extend that authority to require additional entities to comply with the uniform standards.

**Rules Coordinator:** Sue Munson—(503) 947-7272

## 836-100-0100

### Authority; Purpose; Scope

(1) OAR 836-100-0100 to 836-100-0120 are adopted by the Director of the Department of Consumer and Business Services pursuant to section 2, chapter 130, Oregon Laws 2011 (Enrolled Senate Bill 94). The purpose of OAR 836-100-0100 to 836-100-0120 is to establish the uniform administrative standards that health insurers and health care entities are required

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to comply with under section 2, chapter 130, Oregon Laws 2011 (Enrolled Senate Bill 94). The uniform standards have been developed by the Office for Oregon Health Policy and Research in consultation with stakeholders pursuant to section 3, chapter 130, Oregon Laws 2011 (Enrolled Senate Bill 94).

(2) The uniform standards adopted under OAR 836-100-0100 to 836-100-0120 apply to all health insurers and health care entities in Oregon as specified in each companion guide.

Stat. Auth.: ORS 731.244 & 2011 OL Ch. 130 Sec. 2 (Enrolled SB 94)  
Stats. Implemented: 2011 OL Ch. 130 Sec. 2 (Enrolled SB 94)  
Hist.: ID 12-2011, f. & cert. ef. 7-15-11

## 836-100-0105

### Definitions

(1) "Electronic transaction" means to conduct a transaction:

(a) Through the use of a computer program or an electronic or other automated means independently to initiate an action or respond to electronic records or performances in whole or in part, without review or action by an individual; or

(b) Through the use of a web portal or the internet.

(2) "Health care entity" includes:

(a) A health care service contractor as required under ORS 750.055;

(b) A multiple employer welfare arrangement as required under ORS 750.333;

(c) A prepaid managed care health services organization as defined in ORS 414.736;

(d) Any entity licensed as a third party administrator under ORS 744.702;

(e) Any person or public body that either individually or jointly established a self-insurance plan, program or contract, including but not limited to persons and public bodies that are otherwise exempt from the Insurance Code under ORS 731.036;

(f) A health care clearinghouse or other entity that processes or facilitates the processing of health care financial and administrative transactions from a nonstandard format to a standard format; and

(g) Any other person identified by the department that processes health care financial and administrative transactions between a health care provider and an entity described in this subsection.

(3) "Health insurer" means any insurer authorized to transact health insurance in Oregon.

(4) "Oregon Companion Guide for Health Care Eligibility Benefit Inquiry and Response" means the document of that name posted on the Oregon Insurance Division's website.

(5) "Oregon Companion Guide Oversight Committee" means the committee appointed jointly by the Department of Consumer and Business Services and the Oregon Health Authority to carry out the responsibilities under OAR 836-100-0120.

(6) "Provider" means a health care provider that provides health care or medical services within Oregon for a fee and is eligible for reimbursement for these services.

Stat. Auth.: ORS 731.244 & 2011 OL Ch. 130 Sec. 2 (Enrolled SB 94)  
Stats. Implemented: 2011 OL Ch. 130 Sec. 2 (Enrolled SB 94)  
Hist.: ID 12-2011, f. & cert. ef. 7-15-11

## 836-100-0110

### Adoption of Standards

(1) All health insurers and health care entities must conduct eligibility benefit inquiry and response transactions with health care providers as electronic transactions that conform to the uniform standards developed by the Office for Oregon Health Policy and Research pursuant to section 3, chapter 130, Oregon Laws 2011 (Enrolled Senate Bill 94) as set forth in the Oregon Companion Guide for Health Care Eligibility Benefit Inquiry and Response.

(2) The requirements of section (1) of this section apply to transactions with health care providers:

(a) On January 1, 2012 for those health care providers that submit the inquiry electronically on the effective date of these rules.

(b) On October 1, 2012, for all inquiries from all health care providers.

Stat. Auth.: ORS 731.244 & 2011 OL Ch. 130 Sec. 2 (Enrolled SB 94)  
Stats. Implemented: 2011 OL Ch. 130 Sec. 2 (Enrolled SB 94)  
Hist.: ID 12-2011, f. & cert. ef. 7-15-11

## 836-100-0115

### Waiver for Hardship

(1) Until January 1, 2014, the Director of the Department of Consumer and Business Services may grant a waiver to a health insurer or health care entity subject to OAR 836-100-0110 that demonstrates that the

health insurer or health care entity is unable to comply with its provisions, or for whom compliance would be an undue hardship. A health insurer or health care entity requesting a waiver must submit a letter of need to the director. If the health insurer or health care entity requires an extension of the waiver, the health insurer or health care entity may apply to the Director of the Department of Consumer and Business Services for a temporary waiver of some or all of the provisions of the applicable Oregon Companion Guide. The waiver request must:

(a) Specify the name of the Oregon Companion Guide for which the waiver is requested;

(b) Indicate whether the waiver is for the entire Oregon Companion Guide or for specific provisions in the Oregon Companion Guide for which a waiver is requested.

(c) Explain the reasons the health insurer or health care entity is unable to comply or for which compliance would cause undue hardship, including systemic or structural impediments, financial hardship, and any other factors the health insurer or health care entity believes pertinent to the request.

(d) Specify the period of time for which the waiver is requested. After January 1, 2014, an insurer or health care entity may not request a waiver for a period longer than twelve months. An insurer or entity may request a waiver for an additional twelve months as previous waivers lapse.

(e) Include the insurer's or entity's plan for coming into compliance with the provisions of OAR 836-100-0110 during the time granted by the waiver.

(2)(a) After considering a request for a waiver submitted under section (1) of this rule, and at the director's discretion, the director may grant or deny the request.

(b) In considering whether to allow a waiver requested pursuant to section (1) of this rule, the director shall consider the efforts of the health insurer or health care entity to comply with federal requirements contained in Section 1104 of the Patient Protection and Affordable Care Act.

Stat. Auth.: ORS 731.244 & 2011 OL Ch. 130 Sec. 2 (Enrolled SB 94)  
Stats. Implemented: 2011 OL Ch. 130 Sec. 2 (Enrolled SB 94)  
Hist.: ID 12-2011, f. & cert. ef. 7-15-11

## 836-100-0120

### Review and Update of Standards

(1) The Department of Consumer and Business Services and the Oregon Health Authority shall jointly appoint an Oregon Companion Guide Oversight Committee. The members appointed to the committee must demonstrate knowledge of the transactions subject to the Oregon Companion Guides, financial knowledge, operational industry or business expertise, or knowledge of the technology necessary to implement the requirements of the companion guides.

(2) The Oregon Companion Guide Oversight Committee shall meet as needed to review the implementation of the administrative standards encompassed by the Oregon Companion Guides. The committee shall address issues identified by the Department of Consumer and Business Services and the Oregon Health Authority, including but not limited to:

(a) Consider and make recommendations to Oregon Health Authority and Department of Consumer and Business Services about needed changes to the guides in order to keep the guide up to date with industry and federal government driven changes.

(b) Provide reports to Department of Consumer and Business Services and Oregon Health Authority regarding health insurer and provider participation, successes and areas for improvement.

(c) Review any proposed changes developed by Oregon Health Authority to the standards or companion guides.

(d) Review any proposed changes developed by Department of Consumer and Business Services to the rules requiring compliance with the companion guides.

Stat. Auth.: ORS 731.244 & 2011 OL Ch. 130 Sec. 2 (Enrolled SB 94)  
Stats. Implemented: 2011 OL Ch. 130 Sec. 2 (Enrolled SB 94)  
Hist.: ID 12-2011, f. & cert. ef. 7-15-11

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

**Rule Caption:** Payment for orthotic and prosthetic services under the workers' compensation medical fee schedule.

**Adm. Order No.:** WCD 4-2011(Temp)

**Filed with Sec. of State:** 6-30-2011

**Certified to be Effective:** 7-5-11 thru 12-31-11

**Notice Publication Date:**



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**Rules Amended:** 436-009-0080

**Subject:** This temporary rule amendment reverses the April 1, 2011 changes to OAR 436-009-0080, affecting maximum payments for orthotic and prosthetic services. Effective April 1, this rule limited payment in certain cases to "140 percent of the actual cost to the provider for the item as documented on a receipt of sale." After consulting with stakeholders, the agency has determined that payment based on material and device costs is inadequate for orthotic and prosthetic services, and has amended the relevant rule to require payment at the provider's usual rate, unless otherwise provided by a contract.

**Rules Coordinator:** Fred Bruyns—(503) 947-7717

## 436-009-0080

### Durable Medical Equipment and Medical Supplies

(1) Durable medical equipment (DME) is equipment that is primarily and customarily used to serve a medical purpose, can withstand repeated use, could normally be rented and used by successive patients, is appropriate for use in the home, and not generally useful to a person in the absence of an illness or injury. For example: Transcutaneous Electrical Nerve Stimulation (TENS), MicroCurrent Electrical Nerve Stimulation (MENS), home traction devices, heating pads, reusable hot/cold packs, etc. Unless otherwise provided by contract, fees for durable medical equipment shall be paid as follows:

(a) The insurer shall pay for the purchase of all compensable DME that are ordered and approved by the physician, at 85 percent of the manufacturer's suggested retail price (MSRP). If no MSRP is available or the provider can demonstrate that 85 percent of the MSRP is less than 140 percent of the actual cost to the provider, the insurer must pay the provider 140 percent of the actual cost to the provider for the item as documented on a receipt of sale.

(b) The DME provider is entitled to payment for any labor and reasonable expenses directly related to any subsequent modifications other than those performed at the time of purchase, or repairs. A subsequent modification is one done other than as a part of the initial set-up at the time of purchase. The insurer shall pay for labor at the provider's usual rate.

(c) The provider may offer a service agreement at an additional cost.

(d) Rental of all compensable DME shall be billed at the provider's usual rate. Within 90 days of the beginning of the rental, the insurer may purchase the DME or device at the fee provided in this rule, with a credit for rental paid up to 2 months.

(2) A prosthetic is an artificial substitute for a missing body part or any device aiding performance of a natural function. For example: hearing aids, eye glasses, crutches, wheelchairs, scooters, artificial limbs, etc. Notwithstanding OAR 436-009-0040, unless otherwise provided by contract, the insurer must pay the fee for a prosthetic at the provider's usual rate.

(3)(a) Testing for hearing aids must be done by a licensed audiologist or an otolaryngologist.

(b) Based on current technology, the preferred types of hearing aids for most workers are programmable BTE, ITE, and CIC multi channel. Any other types of hearing aids needed for medical conditions will be considered based on justification from the attending physician or authorized nurse practitioner.

(c) Without approval from the insurer or director, the payment for hearing aids may not exceed \$5000 for a pair of hearing aids, or \$2500 for a single hearing aid.

(4) An orthosis is an orthopedic appliance or apparatus used to support, align, prevent or correct deformities, or to improve the function of a moveable body part. For example: brace, splint, shoe insert or modification, etc. Notwithstanding OAR 436-009-0040, unless otherwise provided by contract, the insurer must pay the fee for an orthosis at the provider's usual rate.

(5) Medical supplies are materials that may be reused multiple times by the same person, but a single supply is not intended to be used by more than one person, including, but not limited to incontinent pads, catheters, bandages, elastic stockings, irrigating kits, sheets, and bags. Unless otherwise provided by contract, the insurer must pay 80 percent of the provider's usual rate for medical supplies.

(6) The worker may select the service provider, except for claims enrolled in a managed care organization (MCO) when service providers are specified by the MCO contract.

(7) Except as provided in subsection (2)(c) of this rule, this rule does not apply to a worker's direct purchase of DME and medical supplies, and

does not limit a worker's right to reimbursement for actual out-of-pocket expenses under OAR 436-009-0025.

(8) DME, medical supplies and other devices dispensed by a hospital (inpatient or outpatient) shall be billed and paid according to OAR 436-009-0020.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.248

Hist.: WCD 9-1999, f. 5-27-99, cert. ef. 7-1-99; WCD 2-2001, f. 3-8-01, cert. ef. 4-1-01; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 3-2006, f. 3-14-06, cert. ef. 4-1-06; WCD 2-2007, f. 5-23-07, cert. ef. 7-1-07; WCD 5-2008, f. 12-15-08, cert. ef. 1-1-09; WCD 1-2011, f. 3-1-11, cert. ef. 4-1-11; WCD 4-2011(Temp) f. 6-30-11, cert. ef. 7-5-11 thru 12-31-11

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## Department of Corrections

### Chapter 291

**Rule Caption:** Agency Certification of Employees to Provide Mental Health Services to Inmates in DOC Facilities.

**Adm. Order No.:** DOC 12-2011(Temp)

**Filed with Sec. of State:** 6-16-2011

**Certified to be Effective:** 6-16-11 thru 12-13-11

**Notice Publication Date:**

**Rules Adopted:** 291-124-1000, 291-124-1010, 291-124-1020, 291-124-1030, 291-124-1040, 291-124-1050

**Subject:** These temporary rules are necessary to establish the Department of Corrections' standards for certifying DOC employees (mental health specialists) that provide mental health services to inmates as qualified mental health professionals or qualified mental health associates. Mental health specialists must be certified under these rules to provide mental health services to inmates in DOC facilities.

**Rules Coordinator:** Janet R. Worley—(503) 945-0933

### 291-124-1000

#### Purpose and Policy

(1) Purpose: The purpose of these rules OAR 291-124-1000 through -1040 is to establish standards for the Department of Corrections to certify employees that provide mental health services to inmates in DOC facilities as qualified mental health professionals or qualified mental health associates.

(2) Policy: It is the policy of the Department of Corrections that employees providing mental health services to inmates meet the standards established in these rules and be certified accordingly by the department.

Stat Auth: ORS 179.040, 423.020, 423.030, 423.075, SB 423 (2011)

Stats. Implemented: ORS 179.040, 423.020, 423.030, 423.075, SB 423 (2011)

Hist.: DOC 12-2011(Temp), f. & cert. ef. 6-16-11 thru 12-13-11

### 291-124-1010

#### Definitions for Rules OAR 291-124-1000 through OAR 291-124-1040

(1) Behavioral Health Services Administrator: The person responsible for the overall organization and delivery of mental health services to inmates.

(2) Behavioral Health Services (BHS): A Health Services unit with primary responsibility for the assessment and treatment of inmates with mental illness and developmental disabilities.

(3) Case Management: Delivery of mental health services to inmates. Case management activities include:

(a) Identifying, screening and evaluating inmates to determine their eligibility for services;

(b) Implementing individualized service plans, assistance in applying for financial benefits;

(c) Coordinating release planning services with other agencies and resources,

(d) Participating in case staffing;

(e) Providing emotional support and counseling;

(f) Crisis intervention for immediate safety concerns; and

(g) Daily structure, support, supervision, and skills training;

(4) Clinical Director: The person responsible to monitor clinical operations statewide who reports to the Behavioral Health Services Administrator. The clinical director must have a minimum of eight years of experience providing mental health services, a Master's degree, two years of post graduate clinical supervision and licensure in the State of Oregon.

(5) Clinical Supervisor: The Behavioral Health Services program manager that supervises mental health treatment services provided by mental health specialists to inmates. The clinical supervisor must meet the requirements of a qualified mental health professional and have a minimum

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of five years of experience providing mental health services, with at least one year that includes supervision of staff.

(6) **Crisis:** An urgent or emergency situation that occurs when an inmate's stability or functioning is disrupted and there is an immediate need to resolve the situation to prevent serious deterioration or self injury.

(7) **Diagnosis:** A diagnosis consistent with the current "Diagnostic and Statistical Manual of Mental Disorders (DSM)" published by the American Psychiatric Association.

(8) **Mental Health Assessment:** A process in which an inmate's need for mental health services is determined through an evaluation of the inmate's strengths, goals, needs, and current level of functioning.

(9) **Mental Status Examination:** An overall assessment of an inmate's mental functioning and cognitive abilities.

(10) **Mental Health Specialist:** A Behavioral Health Services employee responsible for the delivery of mental health services to inmates.

Stat Auth: ORS 179.040, 423.020, 423.030, 423.075, SB 423 (2011)  
Stats. Implemented: ORS 179.040, 423.020, 423.030, 423.075, SB 423 (2011)  
Hist.: DOC 12-2011(Temp), f. & cert. ef. 6-16-11 thru 12-13-11

## 291-124-1020

### Credentialing and Certification Process

(1) The clinical director is responsible for credentialing employees hired as mental health specialists.

(2) A mental health specialist must meet the requirements established in OAR 291-124-1030 as a qualified mental health associate (QMHA) or qualified mental health professional (QMHP).

(3) The clinical director shall review the employee's education, experience and competencies to determine if the employee can be certified as meeting the professional standards of a qualified mental health associate or qualified mental health professional.

(4) **Personnel Documentation:** A copy of transcripts, academic degrees, licenses, certifications, and a verification form used to record the credentialing and certification information shall be retained in the employee's personnel file.

(5) The employee will be provided with a position description that includes a description of duties that a qualified mental health associate or qualified mental health professional are certified to provide.

Stat Auth: ORS 179.040, 423.020, 423.030, 423.075, SB 423 (2011)  
Stats. Implemented: ORS 179.040, 423.020, 423.030, 423.075, SB 423 (2011)  
Hist.: DOC 12-2011(Temp), f. & cert. ef. 6-16-11 thru 12-13-11

## 291-124-1030

### Qualified Mental Health Associate and Qualified Mental Health Professional Standards

(1) A qualified mental health associate (QMHA) must meet the following minimum qualifications:

- (a) Bachelor's degree in a behavioral sciences field; or
- (b) A combination of at least three years relevant work, education, training or experience; and

(c) Demonstrate the competency necessary to communicate effectively; understand mental health assessment, treatment and service terminology and apply these concepts; provide psychosocial skills development; implement interventions as assigned on an individual plan of care; and provide behavior management and case management duties.

(2) A qualified mental health professional (QMHP) is a licensed medical practitioner or any other person who holds any of the following educational degrees and meets the following minimum qualifications:

- (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, music, or art therapy
- (f) Bachelor's degree in occupational therapy and licensed by the State of Oregon; and

(g) Whose education and experience demonstrate the competency to identify precipitating events; gather histories of mental and physical disabilities, alcohol and drug use, past mental health services and criminal justice contacts; assess family, social and work relationships; conduct a mental status examination; document a multi-axial DSM diagnosis; write and supervise an individual plan of care; conduct a mental health assessment and provide individual, family or group therapy within the scope of their training.

Stat Auth: ORS 179.040, 423.020, 423.030, 423.075, SB 423 (2011)  
Stats. Implemented: ORS 179.040, 423.020, 423.030, 423.075, SB 423 (2011)  
Hist.: DOC 12-2011(Temp), f. & cert. ef. 6-16-11 thru 12-13-11

## 291-124-1040

### Supervision of Qualified Mental Health Associates and Qualified Mental Health Professionals

(1) A qualified mental health associate shall deliver mental health services to inmates under the direct supervision of a qualified mental health professional.

(2) A qualified mental health professional shall deliver mental health services to inmates under the direct supervision of a clinical supervisor.

(3) **Clinical Supervisor:** A clinical supervisor shall demonstrate the competency to oversee and evaluate the mental health treatment services provided by qualified mental health professionals and qualified mental health associates.

Stat Auth: ORS 179.040, 423.020, 423.030, 423.075, SB 423 (2011)  
Stats. Implemented: ORS 179.040, 423.020, 423.030, 423.075, SB 423 (2011)  
Hist.: DOC 12-2011(Temp), f. & cert. ef. 6-16-11 thru 12-13-11

## 291-124-1050

### Variations

(1) The Behavioral Health Services Administrator has the authority to grant a variance to the criteria used to determine the status of a qualified mental health professional or a clinical supervisor.

(2) The clinical director must document the reason for the variance and propose a timeline for the duration of the variance.

(3) Signed documentation from the Behavioral Health Services Administrator indicating support of the proposed variance shall be retained in the employee's personnel file.

Stat Auth: ORS 179.040, 423.020, 423.030, 423.075, SB 423 (2011)  
Stats. Implemented: ORS 179.040, 423.020, 423.030, 423.075, SB 423 (2011)  
Hist.: DOC 12-2011(Temp), f. & cert. ef. 6-16-11 thru 12-13-11

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**Rule Caption:** Transfer of Offenders Between Community Corrections Agencies.

**Adm. Order No.:** DOC 13-2011

**Filed with Sec. of State:** 7-15-2011

**Certified to be Effective:** 7-15-11

**Notice Publication Date:** 4-1-2011

**Rules Amended:** 291-019-0110, 291-019-0130, 291-019-0150

**Rules Repealed:** 291-019-0047

**Subject:** Modification of these rules is necessary for to include low risk offenders in a practice that previously only addressed limited risk offenders. Other changes are necessary for housekeeping purposes.

**Rules Coordinator:** Janet R. Worley—(503) 945-0933

## 291-019-0110

### Definitions

(1) **County of Residence:** County in which the offender lives and sleeps.

(2) **Emergency Reporting:** For sex offender cases, reporting instructions provided by the receiving county when a documented emergency exists requiring an expedited transfer. Parameters for emergency reporting are a documented immediate threat to victim(s) or offender or documented "other" emergency.

(3) **EPR:** The probation/parole record on the Law Enforcement Data System (LEDS).

(4) **Offender:** Any person under the supervision of local community corrections who is on parole, post prison supervision, or probation status.

(5) **New Case:** A new case is any case where the offender has been supervised for less than 30 working days by the county of conviction and where the offender is not being supervised in any other jurisdiction at the time of conviction. This includes offenders who have been sentenced to probation and released from incarceration with no pending criminal issues. New cases that fail to appear for intake and are closed to abscond can only be transferred through formal transfer processes after violation procedures have been initiated and all reports have been submitted.

(6) **Officer:** A probation and parole officer employed by or under the direction of the court, the county, or the state.

(7) **Releasing Authority:** Department of Corrections, courts, and Board of Parole and Post Prison Supervision, or supervising authority.

(8) **Receiving Office:** The county community corrections agency being requested to accept the supervision of an offender.

(9) **Sending Office:** The county community corrections agency requesting to transfer the supervision of an offender to another jurisdiction.

(10) **Residence:** For the purposes of this rule, a residence is where the offender is currently residing and where he/she expresses a desire to remain. This includes transient living quarters, fishing boats, and other non-

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traditional situations, providing that the offender has the ability to remain in those living quarters for a minimum of 30 days.

(11) Transfer: An offender is considered to be transferred when responsibility for his/her supervision is accepted by the receiving county. Assignment of a case to a different parole or probation officer within the same county by administrative action is not a transfer.

(12) Temporary Supervision: The short-term supervision of offenders agreed upon by the two community corrections agencies for the purpose of information gathering or investigation.

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

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

Hist.: CD 27-1997, f. & cert. ef. 11-26-97; DOC 11-2001, f. & cert. ef. 4-5-01; DOC 13-2011, f. & cert. ef. 7-15-11

## 291-019-0130

### Transfers of Supervision Between Community Corrections Agencies: Standards for Request and Acceptance

(1) Requests:

(a) Except for sex offender cases, whenever an officer has given an offender permission to relocate to a different county, within 30 days, the officer shall submit a transfer investigation request to the receiving county on all cases including misdemeanors.

(A) If the purpose of the change of residence is for residential treatment and a return is anticipated, no transfer is necessary.

(B) For low and limited supervision and low and limited risk offenders, the county of supervision will notify the county of residence in writing that the offender now resides in their county. The receiving county may review the offender's history in the Corrections Information System to determine whether they wish to assume supervision. The decision to investigate and accept supervision shall be at the discretion of the county of residence.

(C) Under no circumstances shall a probation or parole officer allow a sex offender to move to a new county without first applying for and receiving emergency reporting instructions. If parameters for emergency reporting do not apply, then the offender must remain in the sending county until a full transfer investigation is completed.

(b) Transfer Investigation: In all cases involving the transfer of the supervision responsibility for an offender, the sending county shall assure that the following information is up to date and accurate in the offender's ISIS (computer integrated system) file prior to making the investigation request:

(A) Name: Last, first, and middle;

(B) Date of birth;

(C) SID Number: If none is available, the sending office shall submit a fingerprint card to the State Identification Bureau prior to transfer;

(D) Crime(s);

(E) County(ies);

(F) Sentencing data including county, docket numbers, expiration date, and judge's name for each case;

(G) History/risk score according to the Oregon Case Management System;

(H) Date of request to transfer;

(I) Special Conditions: List all special conditions including specific dollar amounts for restitution, court costs, fines and fees as well as community service hours and any other conditions requiring specificity;

(J) Residence: Provide a complete address; rural addresses should include specific directions on location of the residence as well as a description; and

(K) Conformance: Note any non-compliance with either the general or special conditions of supervision. Reflect the exact amount of any financial obligations owed to date and any other pertinent information.

(c) Sex Offenders: A transfer packet must be sent to the receiving county. The transfer packet shall include:

(A) Court orders/parole or post-prison supervision order;

(B) Sex offender evaluation (if available);

(C) Presentence investigation or police reports;

(D) Completed sex offender risk assessment; and

(E) Most recent treatment progress report or treatment discharge report.

(2) Acceptance/Rejection:

(a) If a sex offender meets the documented parameters for emergency reporting, the sending county must provide emergency reporting information to the receiving county. The receiving county has up to five days to reply. Once the receiving county has accepted the offender on an emergency basis, a rule transfer packet must be sent to the receiving county.

(b) The receiving county must complete the investigation and respond to the sending county within 30 days.

(c) The transfer request must be accepted if the offender has a job or other legitimate source of income, a residence and the means to comply with the special conditions of his/her supervision unless:

(A) The only active supervision is for a misdemeanor and the receiving county is unable to provide supervision based on misdemeanor status, due to county policy and/or resource limitations; or

(B) Public safety would be compromised by the transfer (e.g., a child molester residing in a dwelling where children are present; a proposed residence provider supporting sex offender's denial or noncompliance; a drug offender residing in a known drug house; an arson offender residing in a boarding house); or

(C) The supervision is for a low and limited supervision or low and limited risk offender, whereas the decision to accept supervision is at the discretion of the county of residence.

(d) Neither non-compliance (except for sex offender cases) nor outstanding misdemeanor warrants shall be grounds for rejection. Felony warrants and warrants involving active cases for which an offender is under formal supervision shall be resolved prior to the transfer process.

(e) Supervision of a misdemeanor must be accepted if there is concurrent felony supervision.

(f) Outstanding Warrants and Pending Criminal Charges/Violations: Prior to transfer, the sending office shall:

(A) Make reasonable efforts to resolve any warrants;

(B) Remove any individual county requirements outside of usual practice;

(C) Report all non-compliance/violations to the releasing authority; and

(D) Be responsible for resolving all pending non-compliance/violations. The sending county should collaborate with the receiving county to determine an appropriate response to pending violations.

(g) When a transfer is rejected in the interest of public safety, the offender shall be directed by the receiving county to return to the sending county or to secure a suitable residence elsewhere, except for sex offenders who have been granted emergency reporting instructions, who shall be directed to return to the sending county and to initiate any further transfer requests from the sending county. Failure of the offender to do so is a violation and may be grounds for revocation. The reason for rejection needs to be specified and reviewed by the unit supervisor.

(h) During the transfer investigation, if an officer from the receiving office observes a violation or has reason to believe that a violation has occurred, that officer shall immediately report the alleged violation to the sending office for appropriate response.

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

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

Hist.: CD 27-1997, f. & cert. ef. 11-26-97; DOC 11-2001, f. & cert. ef. 4-5-01; DOC 6-2009 f. & cert. ef. 5-22-09; DOC 13-2011, f. & cert. ef. 7-15-11

## 291-019-0150

### Dispute Resolution

Dispute Resolution: It is a matter of policy that the offender should be supervised by the agency serving the offender's county of residence and, with exception of sex offenders, regardless of whether or not the offender is in compliance with conditions. However, if the goals of public safety are clearly compromised by the transfer, rejection is appropriate. The Assistant Director of Transitional Services for the Department of Corrections or designee shall be consulted whenever a transfer issue cannot be resolved at the local manager/director level.

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

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

Hist.: CD 27-1997, f. & cert. ef. 11-26-97; DOC 11-2001, f. & cert. ef. 4-5-01; DOC 13-2011, f. & cert. ef. 7-15-11

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**Rule Caption:** Research Proposals.

**Adm. Order No.:** DOC 14-2011

**Filed with Sec. of State:** 7-15-2011

**Certified to be Effective:** 7-15-11

**Notice Publication Date:** 5-1-2011

**Rules Adopted:** 291-035-0011

**Rules Amended:** 291-035-0005, 291-035-0010, 291-035-0015

**Subject:** Modification and adoption of these rules is necessary to establish procedures for submitting research proposals to the department and update the process that such proposals are reviewed and



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approved. These rules have not been modified since 1994; and the department is updating the rules to align with current practices.

**Rules Coordinator:** Janet R. Worley — (503) 945-0933

## 291-035-0005

### Authority, Purpose and Policy

(1) Authority: The authority for this rule is granted to the Director of the Department of Corrections in accordance with ORS 179.040, 423.020, 423.030, and 423.075.

(2) Purpose: The purpose of this rule is to establish a uniform process for review and approval of proposals for research conducted within the Department of Corrections.

(3) Policy: It is the policy of the Department of Corrections to conduct research that will yield information to help the department improve its effectiveness. Research may be conducted by department staff, contract services, or by students and others with interest in correctional services.

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

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

Hist.: CD 27-1978, f. 9-13-78, ef. 9-15-78; CD 29-1983(Temp), f. & ef. 9-1-83; CD 35-1983, f. & ef. 10-14-83; CD 12-1985, f. & ef. 7-31-85; CD 14-1986, f. & ef. 6-30-86; CD 2-1994, f. 1-13-94, cert. ef. 2-1-94; DOC 14-2011, f. & cert. ef. 7-15-11

## 291-035-0010

### Definitions

(1) Institutional Review Board: As defined and discussed in 45 CFR Part 46, an independent body whose purpose is to review research proposals that involve human subjects to assure that the rights, safety, and well-being of research subjects are protected, that informed consent for their participation is obtained, and that all benefits of the research are commensurate with or outweigh the risks involved. Institutional review boards are usually associated with universities, colleges, or other agencies that are not affiliated with the department or any of its institutions.

(2) Research: The systematic design and implementation of appropriate methods to collect, analyze, and disseminate data to answer to specific questions or test scientific theory.

(a) Internal Research: Internal research includes, but is not limited to, research that is initiated or conducted by the department's Research and Evaluation Unit or other functional units or department staff.

(b) External Research: External research includes, but is not limited, to research that is initiated or conducted by colleges, universities, government or private agencies and organizations, or other researchers outside the department.

(3) Research Committee: A committee comprised of two or more Department of Corrections employees selected by the Director of Research and Evaluation and one rotating member from the department's Policy Group. The purpose of the Research Committee is to promote, recruit, screen and monitor external research, and guide researchers through the process of conducting research with inmates or department staff.

(4) Researcher(s): Any person or persons who submit one or more proposals to the Research Committee to conduct research with inmates or department staff.

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

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

Hist.: CD 27-1978, f. 9-13-78, ef. 9-15-78; CD 12-1985, f. & ef. 7-31-85; CD 2-1994, f. 1-13-94, cert. ef. 2-1-94; DOC 14-2011, f. & cert. ef. 7-15-11

## 291-035-0011

### General

(1) The Department of Corrections will consider proposals to conduct research with inmates, community corrections, or department staff. All research proposals must be reviewed by the Research Committee before they begin.

(2) The purpose of the Research Committee is to promote, screen, and monitor external research, and guide investigators through the process of conducting research with inmates, community corrections, or department staff.

(a) Note that the Research Committee does not function as an institutional review board for the protection of human subjects.

(b) The role of the Research Committee is to determine whether the goals and design of research proposals are appropriate for a correctional setting and whether they meet the needs of the department.

(c) Researchers should provide evidence of human subjects review from their university or organization institutional review board. Any research involving incarcerated individuals must pass before an institutional review board that includes an inmate representative to insure that the use of inmates as research subjects meets federal guidelines.

(3) The Research Committee is comprised of two or more Department of Corrections employees selected by the Director of Research and Evaluation and one rotating member from the department's Policy Group.

(a) Permanent Research Committee members are trained in research design and methods, as well as ethical issues regarding the inclusion of human subjects in research.

(b) The Research Committee recruits other appropriate stakeholders, content experts, administrators, or functional units within the department on a case-by-case basis to serve as temporary Research Committee advisors depending on the content of each research proposal.

(4) The Research Committee will, if necessary, review research proposals within four weeks of the department's receiving the proposal.

(5) The Research Committee, after consultation with administrators whose units are affected by the research, may directly approve the proposal when all parties have reached mutual understanding regarding the purpose and design of the research as well as the timeline, responsibilities, expectations, data sharing requirements, and dissemination of results.

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

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

Hist.: DOC 14-2011, f. & cert. ef. 7-15-11

## 291-035-0015

### Procedures for Submitting a Research Proposal

(1) The Research Committee will:

(a) Review all external research proposals conducted with inmates, department staff, inmate families, or community corrections where department resources are required, ensuring that:

(A) The proposed research benefits inmates, community corrections, department staff, the Department of Corrections, or the State of Oregon;

(B) The research design is sufficient to test stated hypotheses;

(C) Disruptions to institutions are minimized;

(D) The department's research interests are integrated and considered as enhancements to the proposed research where appropriate; and

(E) The proposed research has been reviewed and approved by an institutional review board including an inmate representative if applicable.

(b) Coordinate research activities conducted within the department and research conducted in cooperation with government or private agencies, individuals, or institutions.

(2) Ordinarily, the Research Committee will be amenable to proposals that:

(a) Cause minimal disruption in department tasks;

(b) Require minimal department resources;

(c) Are of short duration;

(d) Are proposed by a college or university student who is under the supervision of a faculty advisor;

(e) Are proposed by government or private agencies, institutions, and individuals who have training and knowledge in research methods, statistical analysis, and the dissemination of findings;

(f) Benefit inmates, community corrections, the department, the State of Oregon, or adds to the general knowledge; and

(g) Propose a research design that is sufficient to test stated hypotheses.

(3) In its review of each research proposal, the Research Committee will consider:

(a) If the research question is relevant and of importance to inmates, community corrections, department staff, the Department of Corrections, the State of Oregon, or the field of corrections;

(b) If the research is in line with the goals and mission of the department;

(c) If the research proposal presents an adequate background and review of relevant literature;

(d) If the research proposal presents reasonable goals and measurable objectives;

(e) If the research proposal presents an understandable and adequate methodology, including participant selection, identification of experimental variables, data collection, data analysis, and data presentation; and

(f) What expenses or utilization of resources, if any, will be borne by the department; and

(g) If the department resources required to implement the research are balanced with its potential benefits.

(4) Researchers may be asked to make formal presentations to the Research Committee.

(5) Administrators whose units are directly affected by the proposed research will be consulted by the Research Committee before approval of the research proposal.

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(6) Functional unit managers will ordinarily arrange for implementation of approved research proposals.

(7) Proposals requiring department policy decisions will be referred to the department Assistant Directors, as appropriate.

(8) Records shall be kept documenting each proposal review, committee decision, and the conditions of proposal acceptance.

(9) Researchers are required to return all data collected as part of the research to the Research Committee in format acceptable to the department unless an exemption is made by the Research Committee. Exemptions must be discussed and finalized prior to the approval of research proposals.

(10) All sensitive data concerning inmates, department staff, inmate families, or community corrections must be protected while in the possession of the researchers. Researchers will be responsible for complying with statutory requirements regarding information security in accordance with ORS 182.122 and 646A.600, and other applicable statutes and laws.

(11) Researchers are required to provide a copy of all research reports and related manuscripts to the Research Committee for their records.

(12) Data collected may be used only for the proposed purpose(s) of the approved proposal. Additional use of the data, including but not limited to additional analyses, reporting, and dissemination must be preapproved by the Research Committee.

(13) While the department does not forbid the researcher from distributing accurate data, the department may insist on including a disclaimer if it believes assumptions about the data or conclusions drawn by the researcher(s) are flawed.

(14) A research proposal may be denied if the proposed research:

(a) Exposes any inmate, offender, or staff member, with or without informed consent, to involvement in medical, genetic, psychiatric, or psychological experimentation or research within the meaning of ORS 421.085 or other applicable statutes and laws;

(b) Requires the disclosure of information protected by the provisions of ORS 192.502, 179.505, or other applicable statutes and laws;

(c) Poses appreciable hazard to the life or health of any human being, to state property, to the security, sound order, or discipline of any institution, or to the mission of the Department of Corrections or any of its functional units;

(d) Is not approved by an institutional review board;

(e) Does not benefit inmates, community corrections, department staff, the Department of Corrections, or the State of Oregon;

(f) Does not consider the integration of the department's research needs where appropriate;

(g) Does not include a research design which is sufficient to test stated hypotheses;

(h) Poses more than minimal disruption to the operation of institutions or offices;

(i) Does not provide a balance between required department resources and the potential benefits of the research; or

(j) Does not align with the goals and mission 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.: CD 27-1978, f. 9-13-78, ef. 9-15-78; CD 29-1983(Temp), f. & ef. 9-1-83; CD 35-1983, f. & ef. 10-14-83; CD 12-1985, f. & ef. 7-31-85; CD 14-1986, f. & ef. 6-30-86; CD 2-1994, f. 1-13-94, cert. ef. 2-1-94; DOC 14-2011, f. & cert. ef. 7-15-11

## Department of Energy Chapter 330

**Rule Caption:** Providing flexibility to approve loans to school districts as part of the Governors School Initiative.

**Adm. Order No.:** DOE 4-2011(Temp)

**Filed with Sec. of State:** 6-20-2011

**Certified to be Effective:** 6-20-11 thru 12-17-11

**Notice Publication Date:**

**Rules Adopted:** 330-105-0017

**Subject:** The rule allows the department to approve specific loans as part of the Governors School Initiative pilot program without prior review of the Committee, if these loans meet standards set in rule. Standards relate to the size, purpose and security on the loan, and the type of borrower.

**Rules Coordinator:** Kathy Stuttaford—(503) 373-2127

### 330-105-0017

#### Governors School Initiative Pilot

(1) In addition to the allowances provided under 330-105-0015 (2) the department may, without prior review of the Committee, approve loans that are:

(a) Part of the Governor's School Initiative pilot program;

(b) Under \$5 million;

(c) For measures in K-12 facilities;

(d) Issued to school districts; and

(e) To be secured for their full loan amount by a resolution by the governing body of the borrower.

(2) Any approvals made by the department under the provisions of this section shall be presented at the next scheduled meeting of the Committee.

Stat. Auth.: ORS 470.080

Stats. Implemented: ORS 470.080

Hist.: DOE 4-2011(Temp), f. & cert. ef. 6-20-11 thru 12-17-11

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**Rule Caption:** Modifies program requirements to align with industry standards and provide flexibility.

**Adm. Order No.:** DOE 5-2011

**Filed with Sec. of State:** 6-27-2011

**Certified to be Effective:** 6-27-11

**Notice Publication Date:** 3-1-2011

**Rules Adopted:** 330-130-0025

**Rules Amended:** 330-130-0010, 330-130-0020, 330-130-0030, 330-130-0040, 330-130-0050, 330-130-0055, 330-130-0060, 330-130-0070, 330-130-0080, 330-130-0090, 330-130-0100

**Subject:** The rule amendments provide additional clarity and flexibility in the State Energy Efficient Design (SEED) program. They include new definitions for "Highly efficient facility" and Leadership in Energy Efficient Design (LEED) certification. The process for SEED rules is streamlined to allow LEED certification, Oregon Reach Code or other substantially equivalent standard exemption from duplicative SEED processes and establishes criteria which must be met to demonstrate energy efficiency standards have been achieved.

**Rules Coordinator:** Kathy Stuttaford—(503) 373-2127

### 330-130-0010

#### Purpose

These rules prescribe procedures to promote the design, construction and renovation of highly energy efficient buildings owned and operated by state agencies by:

(1) Minimizing energy use by incorporating the Optimum Energy Conservation Measures Package as defined in these rules into the final building design; and

(2) Reducing agency energy use by 20 percent in existing buildings by the year 2015 compared to the year 2000.

Stat. Auth.: ORS 276.900 - 276.915, Ch. 26, OL 2008 HB 3612

Stats. Implemented: ORS 469

Hist.: DOE 1-1990, f. & cert. ef. 4-2-90; DOE 1-1998, f. & cert. ef. 3-26-98; DOE 4-2001, f. 11-5-01, cert. ef. 11-15-01; DOE 5-2008, f. 7-29-08, cert. ef. 8-1-08; DOE 5-2011, f. & cert. ef. 6-27-11

### 330-130-0020

#### Definitions

(1) "Agency" means the authorized state agency, board, commission, department or division which has the authority to enter contracts, finance the construction, purchase, renovation, or leasing of buildings or other structures for use by the State of Oregon.

(2) "Agency contact" means a lead person appointed by the agency who is responsible to coordinate all State Energy Efficient Design related business with the Oregon Department of Energy, such as project notifications, interagency agreements, invoice and payment, project coordination, guideline updates and advisory recommendations.

(3) "Baseline building" means the basic building conceived by the agency and the design team. The baseline building incorporates the standard design features of typical buildings of the same usage and meets the prescriptive or performance requirements of the Oregon Energy Efficiency Specialty Code according to criteria established in the State Energy Efficient Design Program Guidelines.

(4) "Benefit-to-Cost Ratio (BCR)" means the present value of Energy Conservation Measure benefits divided by the present value of incremental Energy Conservation Measure costs.

(a) The Energy Conservation Measure benefit is the difference between the present values of the operating cost of the baseline building and the operating cost of the baseline building with the Energy Conservation Measure added.

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(b) The incremental Energy Conservation Measure cost is the difference between the present values of the capital cost of the baseline building and the capital cost of the baseline building with the Energy Conservation Measure added.

(5) "Biennial report" means the report summarizing the progress toward achieving the goals of ORS 276.900 through ORS 276.915.

(6) Building Class:

(a) "Class 1 Building" means all:

(A) New buildings, additions, or renovations of 10,000 or more square feet of heated or cooled floor area; and

(B) Building additions that increase the size of an existing building to 10,000 or more square feet of heated or cooled floor area and renovations to buildings of 10,000 or more square feet of heated or cooled floor area, which significantly affect:

(i) The existing mechanical or control system; or

(ii) At least two of the following energy systems: interior lighting, building envelope, domestic hot water, or special equipment.

(iii) Only those systems identified in (i) and (ii) that are significantly affected are subject to procedures outlined in 330-130-0040.

(b) "Class 2 Building" means all new buildings or renovations of less than 10,000 square feet of heated or cooled floor area except for new buildings, structures, or facilities of any size which have no energy using systems.

(7) "Building model" means a computer model, which calculates annual building energy use. The Oregon Department of Energy shall approve hourly building models, simplified hourly building models and the approach to modeling Energy Conservation Measure energy savings above the baseline building as established in the State Energy Efficient Design Program Guidelines. The building model for all Class 1 Buildings must be an hourly building model, except for certain Class 1 buildings as approved by the Oregon Department of Energy where simplified hourly building modeling or prescriptive packages established in the State Energy Efficient Design Program Guidelines may be used.

(8) "Capital construction cost" means the cost of current and future building investments including construction, design, administration, major replacement, and salvage values. Costs of compliance with these rules may also be included.

(9) "Commissioning agent" is an individual or firm that has demonstrated experience commissioning Heating, Ventilating, and Air Conditioning (HVAC) mechanical systems and HVAC control systems, commercial and industrial mechanical technologies, lighting controls, and testing and balancing of air and water systems.

(10) "Contracting agency" means the agency entering into a contract for facility construction or renovation.

(11) "Department" means the Oregon Department of Energy.

(12) "Design team" means the architect(s), engineer(s), and other professionals who are responsible for the design of the new building or renovation.

(13) "Director" means the director of the department.

(14) "Energy Use Index (EUI)" is a calculated index that describes a building's energy use in relation to a metric, generally square feet, such as kBtu/ft<sup>2</sup>-yr or kWh/ft<sup>2</sup>-yr.

(15) "Energy analysis report" means a report prepared by an energy analyst, under the direction of a professional engineer or licensed architect, recommending an Optimum Energy Conservation Measure Package for a Class 1 building. The report must include:

(a) Department State Energy Efficient Design forms;

(b) A summary of recommendations;

(c) A baseline building description;

(d) Energy Conservation Measure descriptions with analysis results;

(e) Energy Conservation Measure savings calculations; and

(f) Energy Conservation Measure cost estimates.

(16) "Energy analyst" means the individual who prepares the building energy analysis and the energy analysis report under the direction of a professional engineer or licensed architect who reports to the project architect or agency.

(17) "Energy auditor" is an individual or firm that has demonstrated experience performing comprehensive analysis of a building's energy using systems, and performs benefit to cost analysis of energy efficiency measures.

(18) "Energy Conservation Measure (ECM)" means a measure designed to reduce energy use, including alternative energy systems which replace conventional fuels with renewable resources. ECMs must not conflict with applicable codes and other professional standards.

(19) "ECM Package" means two or more ECMs combined for analysis.

(20) "Energy Service Company (ESCO)" means a company, firm or other legal person with the demonstrated technical, operational, financial and managerial capabilities to design, install, construct, commission, manage, measure and verify, and otherwise implement ECMs and other work in building systems or building components that are directly related to the ECMs in existing buildings and structures.

(21) "Energy Services Performance Contract (ESPC)" means a public improvement contract between a contracting agency and a qualified energy service company for the identification, evaluation, recommendation, design, and construction of ECMs, including a Design Build Contract, that guarantees the energy savings performance.

(22) "Energy systems performance verification plan" means a plan that outlines how the building's energy systems are to be tested during the construction phase and how the building's performance is to be verified with long-term monitoring during occupancy.

(23) "Highly efficient facility" means a facility that is designed, built and operated according to these State Energy Efficient Design rules, that makes use of renewable energy resources where practical, that incorporates all cost-effective energy efficiency measures, and exceeds the requirements of the Oregon Energy Efficiency Specialty Code.

(24) "Leadership in Energy Efficient Design (LEED)" is an internationally recognized green building certification system, providing third-party verification that a building or community was designed and built using strategies intended to improve performance in metrics such as energy savings, water efficiency, greenhouse gas emissions reduction, improved indoor environmental quality, and stewardship of resources and sensitivity to their impacts.

(25) "Measurement and verification (M&V)" means, as used in ESPC Procurement, the examination of installed ECMs using the International Performance Measurement and Verification Protocol or process, to monitor and verify the operation of energy using systems pre-installation and post-installation.

(26) "Net Present Value Savings (NPVS)" means the difference between the present values of the capital and operating costs of the baseline building and the capital and operating costs of the baseline building with the ECM added.

(27) "OEESC" means the Oregon Energy Efficiency Specialty Code adopted pursuant to OAR 918-460-0500.

(28) "Operating cost" means the costs for energy, fuel, annual and periodic maintenance, supplies, consumables, and other operating items associated with ECMs, such as water and sewer, during the life of the building.

(29) "Optimum ECM Package" means the ECM package which incorporates all reasonable cost-effective ECMs and which meets the following conditions:

(a) Each ECM included in the package has a BCR greater than 1.0 when modeled independently.

(b) The ECM package has a BCR greater than 1.0.

(c) The ECM Package has the highest NPVS of the analyzed ECM packages.

(30) "Oregon Reach Code" is a set of construction standards adopted under ORS 455.490 to 455.595.

(31) "Present value" means the value of a financial cost or benefit, discounted to current dollars using discounting factors and methods approved by the department.

(32) "Renewable energy resource" includes, but is not limited to, on-site generation of energy for use in the building from the following sources:

(a) Straw, forest slash, wood waste or other wastes from farm or forest land, nonpetroleum plant or animal based biomass, ocean wave energy, solar energy, wind power, water power or geothermal energy; or

(b) A hydroelectric generating facility that obtains all applicable permits and complies with all state and federal statutory requirements for the protection of fish and wildlife and:

(A) That does not exceed 10 megawatts of installed capacity; or

(B) Qualifies as a research, development or demonstration facility.

(c) The purchase of renewable energy certificates does not qualify as a renewable energy resource.

(33) "SEED" means State Energy Efficient Design Program as defined in ORS 276.900 through ORS 276.915 under the heading State Agency Facility Energy Design.

(34) "SEED Program Guidelines" are guidelines developed by the department with assistance from an advisory committee that consists of



# ADMINISTRATIVE RULES

representatives from interested agencies, design professionals, consulting engineers and utilities.

(35) "Simple payback" means the estimated ECM cost divided by the estimated first year ECM energy, operating, and maintenance savings.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 276.900 - 276.915

Stats. Implemented: ORS 469

Hist.: DOE 1-1990, f. & cert. ef. 4-2-90; DOE 1-1998, f. & cert. ef. 3-26-98; DOE 4-2001, f. 11-5-01, cert. ef. 11-15-01; DOE 5-2008, f. 7-29-08, cert. ef. 8-1-08; DOE 5-2011, f. & cert. ef. 6-27-11

## 330-130-0025

### Alternate Compliance Paths

(1) If an agency intends to seek LEED certification, or build to the Oregon Reach Code or build to some other substantially equivalent national standard for a building project the following shall apply:

(a) The agency must notify the department in writing of their intention to seek LEED certification, or build to the Oregon Reach Code or build to a substantially equivalent national standard. When an agency wishes to build to a substantially equivalent national standard, the department must agree and certify in writing that the standard is "substantially equivalent" before the agency can proceed.

(b) The agency must comply with energy consumption analysis and review requirements of the SEED Program Guidelines;

(c) The agency must provide documentation to the department throughout the design, construction and post-occupancy phases to verify that all SEED requirements are met as specified in the SEED Program Guidelines; and

(d) Agencies following the LEED path must achieve a minimum of 12 points in the Energy and Atmosphere Credit Number 1 Category (Optimize Energy Performance).

(2) A donated building is exempt from the SEED rules until the agency assumes the title to the building.

Stat. Auth.: ORS 276.900 - 276.915

Stats. Implemented: ORS 276.900 - 276.915

Hist.: DOE 5-2011, f. & cert. ef. 6-27-11

## 330-130-0030

### Notification

When the building class has been determined during the pre-design or programming phase of a building project, the following procedures shall be followed:

(1) Class 1 Buildings. Before the design team is selected, the agency and the department may enter into an interagency agreement which outlines the procedures as shown in OAR 330-130-0040, the hourly rates to be charged by the department and the related statement of work. The agency contact shall coordinate with the department to set-up the initial meeting early in the pre-design or programming phase of a building project. The interagency agreement may include expanded services under OAR 330-130-0040(9).

(2) Class 2 Buildings. The agency shall contact the department for consultation and request a list of recommended ECMs and services applicable to the building.

Stat. Auth.: ORS 276.900 - 276.915

Stats. Implemented: ORS 469

Hist.: DOE 1-1990, f. & cert. ef. 4-2-90; DOE 1-1998, f. & cert. ef. 3-26-98; DOE 4-2001, f. 11-5-01, cert. ef. 11-15-01; DOE 1-2003, f. & cert. ef. 1-10-03; DOE 5-2008, f. 7-29-08, cert. ef. 8-1-08; DOE 5-2011, f. & cert. ef. 6-27-11

## 330-130-0040

### Procedures for Class 1 Buildings

(1) The SEED process follows typical design process steps as the organizing principle. If the agency is accustomed to using different phases or terminology, or if the project does not fit the suggested steps, an alternative plan may be developed between the department and the agency.

(2) Meetings in this section of these rules may be eliminated or combined with other meetings as deemed appropriate by the department.

(3) Pre-Design or Programming Phase. The purpose of the SEED process is to ensure early involvement so energy efficiency is an integral part of the building design.

(a) Initial Meeting. Early in the pre-design or programming phase, the agency and the department shall meet to:

(A) Discuss the scope of the project;

(B) Define the role of the department including, but not limited to, the level of involvement, decision authority on behalf of the owner, and relationship with contractors. The department shall be notified of all meetings where significant review of or final decisions about energy systems are anticipated.

(C) Develop the request for proposal (RFP) and contract. The RFP and the contract's statement of work must include a reference to building a "highly efficient facility" as defined in these rules and to the SEED process. The department may develop language the agency may use to include energy efficient design in the request for proposals and the contract for architectural and engineering services. Upon request, the department will review or comment on the RFP, contract or energy qualifications of proposals as an expanded service under section (9).

(D) The agency must hire an energy analyst as described in OAR 330-130-0090(2)(a).

(b) Schematic Design Phase:

(A) Energy Planning Session. Early in the Schematic Design Phase, the agency, design team, department and energy analyst shall meet to further define the items in the list below:

- (i) Project design;
- (ii) Construction schedule;
- (iii) Energy goals of the project
- (iv) Design criteria;
- (v) Integrated energy design approach;
- (vi) Energy systems performance verification plan; and
- (vii) Modeling approach.

(B) Preliminary Investigation. Working with the agency and the design team, the energy analyst must prepare a comprehensive list of ECMs to capture significant opportunities for building energy savings. Two weeks before the scoping process (under section (2)(c)), the agency must deliver to the department the following items:

- (i) Description of the baseline building and its energy-using systems;
- (ii) List of proposed ECMs;
- (iii) Approach and tools for modeling;
- (iv) Initial plans;
- (v) Design intent;
- (vi) Description of operating criteria; and
- (vii) Results of preliminary modeling effort, if any.

(c) Scoping Process. The department, the agency, the design team, and the energy analyst shall select the ECMs for analysis. If needed, further refinement of the modeling effort may be discussed and decided upon.

(4) Design Development Phase:

(a) Baseline and individual ECM analysis. The energy analyst shall use the building model for baseline building analysis and individual ECM analysis. The energy analyst may use fully documented manual calculations for simple, non-interactive ECMs and may eliminate potential ECMs with preliminary estimates of costs and savings if the simple payback is greater than the equipment life.

(b) Metering Plan. The agency, in consultation with the energy analyst, the design team and the department, must specify what types of utility meters are to be installed and what system is to be used to monitor the building's energy use. Where practical, sub-metering shall be provided on major energy-using equipment or systems. This Metering Plan must be incorporated in the energy systems performance verification plan.

(c) Interim Submittal and Review. Two weeks before the ECM Review Meeting, the agency must submit to the department the preliminary energy analysis report. The department must review the preliminary energy analysis report and provide its written or verbal comments and recommendations to the agency prior to the ECM review meeting. The following items must be submitted as part of the preliminary energy analysis report:

(A) Narrative describing the baseline building and the proposed ECMs;

(B) Tables showing energy use for the baseline building and the building with proposed ECMs;

(C) Baseline building model input and output;

(D) List of eliminated ECMs and calculations;

(E) Analysis results for individual ECMs; and

(F) Metering plan.

(d) ECM Review Meeting. The department, the agency, the design team, and the energy analyst shall meet to review and agree on the results in the preliminary energy analysis report.

(5) Construction Documents Phase:

(a) Implementation of Cost-Effective Measures. The agency must incorporate the Optimum ECM Package into the final building design.

(b) Submittal of Construction Documents. The agency shall provide the department with construction documents in sufficient detail to verify that the Optimum ECM Package will be included in the final construction documents and specifications no later than at 90 percent design completion. This submittal must also include the preliminary energy systems performance verification plan.

# ADMINISTRATIVE RULES

(c) The department shall review this submittal and forward its written findings and recommendations to the agency within 10 working days after receiving the documents, if practicable.

(6) Construction Phase:

(a) Contractor Submittals and Substitutions. The design firm shall ensure that contractor equipment submittals, requests for substitutions and change orders adhere to the ECM design intent. The design firm must send any substitutions or submittals that differ from the ECM design intent to the department for review.

(b) Final Report Submittal. The agency shall deliver the final energy analysis report containing the Optimum ECM Package and projected energy use to the department for review.

(c) Delivery of the department findings. The department shall review the report and forward its written findings and recommendations to the agency within 10 working days after receiving the report, if practicable.

(d) Site Inspections. To verify that ECMs are installed correctly and operating efficiently, the department or its representative may make walk-through site inspections during the installation of ECMs.

(e) Performance verification. The energy systems performance verification plan must be carried out and a copy of the test reports must be submitted to the department.

(f) Training. It is recommended that instruction on the design intent and operation of the building as a system be offered to the owners and operators of the new facility. This may be part of the energy systems performance verification plan. The training should parallel the operations manual prepared for the owner.

(7) Occupancy Phase:

(a) Monitoring. At completion of functional testing (approximately two months after occupancy begins), a meeting may be held between the agency, building operator, general contractor, commissioning agent, and energy analyst to review building energy use. Actual building operation will be compared with assumptions made in the final design phase energy analysis. If significant differences in schedules, equipment, operation, etc. exist, a calibrated energy model must be submitted at the discretion of the department (if actual energy use is outside five percent (+/-) of predicted energy use). During the first 18 months into occupancy, energy use by the building systems must be monitored and compared with the modeling results. If significant differences between the actual energy use and the model predictions result, the agency must investigate to find the cause, so that:

(A) An adjustment can be made to the operation of the building; or

(B) An explanation for the difference can be found that is acceptable to the agency and the department. The agency must send its finding to the department.

(b) Non-compliance. If, after monitoring the building for 18 months, the building's performance does not meet the projected energy use because of reasons reported under (7)(a), the agency shall submit an energy conservation plan to the department within 90 days after reporting the non-compliance. This plan will outline the modifications to be made until monitoring shows that the building meets the projected energy use, or all reasonable attempts to reduce the energy use have been made. A report of these remedial actions must be submitted to the department.

(c) SEED Award. The department shall give the SEED Award to the agency if the building complies with these SEED rules, is a "highly efficient facility," and meets the criteria for the SEED award as determined in the SEED Program Guidelines.

(8) Waiver. The director of the department may waive part of these rules when an agency cannot comply due to extenuating circumstances such as a conflict with federal requirements, for health or safety reasons, or the building has been designated a historic site.

(9) Expanded Services. Expanded services are services provided by the department that are outside the scope of OAR 330-130-0010 through 330-130-0100. Such services may include, but are not limited to:

(a) Acting as the owner's agent on energy issues;

(b) Modeling during various phases of the design process and when the building is occupied;

(c) Participating on design teams and providing services for building projects following an alternate compliance path as specified in OAR 330-130-0025;

(d) Building commissioning; and

(e) Providing resource conservation management assistance and training as needed or requested by the agency.

Stat. Auth.: ORS 276.900 - 276.915

Stats. Implemented: ORS 469

Hist.: DOE 1-1990, f. & cert. ef. 4-2-90; DOE 1-1998, f. & cert. ef. 3-26-98; DOE 4-2001, f. 11-5-01, cert. ef. 11-15-01; DOE 1-2003, f. & cert. ef. 1-10-03; DOE 5-2011, f. & cert. ef. 6-27-11

## 330-130-0050

### Procedures for Class 2 Buildings

(1) Role of the agency. The agency shall determine that the design incorporates all required prescriptive ECMs or all reasonable cost-effective ECMs. ECMs or ECM packages with a Simple Payback shorter than equipment life shall be considered cost-effective for Class 2 Buildings.

(2) Role of the department. The department has accepted the Oregon Reach Code as a prescriptive package of measures deemed to result in the definition of a highly efficient facility for Class 2 Buildings. The department shall also be available to the agency to advise or suggest potential energy saving measures.

(3) Project Reporting. The agency shall provide the department with the list of all measures or packages installed in the building.

Stat. Auth.: ORS 276.900 - 276.915

Stats. Implemented: ORS 469

Hist.: DOE 1-1990, f. & cert. ef. 4-2-90; DOE 1-1998, f. & cert. ef. 3-26-98; DOE 4-2001, f. 11-5-01, cert. ef. 11-15-01; DOE 1-2003, f. & cert. ef. 1-10-03; DOE 5-2008, f. 7-29-08, cert. ef. 8-1-08; DOE 5-2011, f. & cert. ef. 6-27-11

## 330-130-0055

### Procedure for Leased Buildings

The department, in consultation with the agencies, shall establish guidelines for incorporating energy efficiency requirements into lease agreements of 10 years or more to be phased in as current leases expire or as agencies enter into new agreements.

Stat. Auth.: Ch. 26, OL 2008 HB 3612

Stats. Implemented: ORS 276.900 - 276.915

Hist.: DOE 5-2008, f. 7-29-08, cert. ef. 8-1-08; DOE 5-2011, f. & cert. ef. 6-27-11

## 330-130-0060

### Service Charges

Charges to the agency by the department for services shall be as follows:

(1) Class 1 Buildings:

(a) The charges by the department to the agency will be based on an hourly rate for the actual hours worked on the project. Hourly rates charged by the department and invoiced to the agency will include salary, other payroll expenses, the federally allowed indirect rate for the department, staff travel expenses, other service or supply costs, and administrative costs. Invoices may be submitted to the agency by the department monthly commencing one month after notification. Invoices will provide the hours of service and the hourly rate. The maximum charge shall be calculated at \$0.002 for each dollar of capital construction cost unless otherwise agreed to in writing by the agency and the department.

(b) The department will invoice the agency for all final charges within 60 days following the completion of its work as described in these rules. To ensure the agency receives the final invoice prior to closing their construction accounts, the department may invoice in advance for final building inspections and post-occupancy energy use tracking.

(2) Class 2 Buildings. No charge unless the agency chooses to enter into an interagency agreement with the department.

(3) Charges do not include design team or energy analyst services. The agency must obtain these services directly. Charges include all services provided by the department or their representative in fulfilling the requirements described in these rules. Charges do not include services such as described in section 330-130-0040(9) "Expanded Services" provided by the department.

(4) The director may waive charges for special circumstances including, but not limited to, demonstration or pilot projects.

(5) All charges are subject to review and adjustment by the director of the department.

Stat. Auth.: ORS 276.900 - 276.915

Stats. Implemented: ORS 469

Hist.: DOE 1-1990, f. & cert. ef. 4-2-90; DOE 1-1998, f. & cert. ef. 3-26-98; DOE 4-2001, f. 11-5-01, cert. ef. 11-15-01; DOE 1-2002, f. 5-8-02, cert. ef. 5-13-02; DOE 1-2003, f. & cert. ef. 1-10-03; DOE 5-2008, f. 7-29-08, cert. ef. 8-1-08; DOE 5-2011, f. & cert. ef. 6-27-11

## 330-130-0070

### Department Administrative Procedures

(1) The department shall provide information and administer the program to ensure the program is in accordance with these rules.

(2) Under special circumstances, the director may waive certain requirements under these rules, provided the intent of the program as described in statute is maintained.

(3) The department has developed guidelines, which contain recommended procedures, instructions, and information relating to these rules. The department shall solicit agency comments on the guidelines on a biennial basis and revise the guidelines as appropriate.

# ADMINISTRATIVE RULES

(4) The department shall compile information about agency participation and ECM implementation into a database. The department shall make database information available to agencies and use the data in evaluating agency compliance with the objectives of ORS 276.900 through ORS 276.915.

(5) The department, the Oregon Department of Administrative Services and the Oregon University System shall jointly prepare a biennial report to the legislature on January 1 of every odd-numbered year.

Stat. Auth.: ORS 276.900 - 276.915

Stats. Implemented: ORS 469

Hist.: DOE 1-1990, f. & cert. ef. 4-2-90; DOE 1-1998, f. & cert. ef. 3-26-98; DOE 4-2001, f. 11-5-01, cert. ef. 11-15-01; DOE 5-2008, f. 7-29-08, cert. ef. 8-1-08; DOE 5-2011, f. & cert. ef. 6-27-11

## 330-130-0080

### Procedures for Monitoring the Reduction in Energy Use by State Agencies

In order to review whether an agency meets the requirement to reduce the amount of use of energy by at least 20 percent from the amount used by the agency in the 2000 calendar year or the first 12 month period for which reliable energy use data exists, the following rules for tracking energy use apply.

(1) Energy use shall be tracked on a monthly basis using billing data. Electricity and heating fuels shall be tracked separately. The use of standard commercially available software for uniform tracking is recommended.

(2) Agencies must report and enter energy use on an annual basis into the State Energy Use Database <http://saec.wesd.org>.

(3) Energy use per square foot of conditioned space shall be tracked, where applicable. Where square footage is not applicable, another metric by which to compare annual energy use must be used in consultation with the Department.

(4) Weather adjustments relative to the base year 2000 are allowed if:

(a) The adjustments follow a standard process developed by the department through the SEED Program Guidelines; and

(b) Both the raw and revised usage is reported.

(5) When significant changes of facility size or use takes place, adjustments to the baseline energy consumption may be made.

(6) It is recommended that sub-metering of buildings and/or major energy consuming equipment is added where advisable and feasible in order to get better data on energy use and facilitate better energy management of the facilities.

(7) To assure that the 20 percent energy use reduction by 2015 goal is met, interim energy reduction goals shall apply:

(a) 10 percent reduction in energy use by the agency by December 31, 2010; and

(b) 15 percent reduction in energy use by the agency by December 31, 2012.

(8) If an agency fails to achieve and maintain the required percent reduction by the dates in (7)(a) and (7)(b), the following rules apply:

(a) The agency must notify the department that it failed to achieve or maintain the required percent energy savings by June 30th of each subsequent year.

(b) Within 90 days of such notification, the agency must submit to the department a corrective plan to reduce energy use by the required percent. The plan must:

(A) Outline all modifications, procedures, and changes that need to be introduced until the target is met and maintained; and

(B) The plan shall be in a format described in the SEED Program Guidelines.

(c) The agency may request the department to provide technical assistance in developing this corrective plan. In the event that the agency requests assistance, the agency must compensate the department's costs for assistance in preparation or review of the plan.

(d) The agency must implement the corrective plan within six months from the date of approval by the department. The agency shall monitor progress, report to the department, and modify the plan as necessary every six months, until the target reduction is achieved.

(e) This conservation plan and the results of remedial action(s) must be included in the biennial report to the legislature, to be jointly prepared by the department, the Oregon Department of Administrative Services and the Oregon University System.

Stat. Auth.: ORS 276.900 - 276.915

Stats. Implemented: ORS 469

Hist.: DOE 4-2001, f. 11-5-01, cert. ef. 11-15-01; DOE 1-2003, f. & cert. ef. 1-10-03; DOE 5-2008, f. 7-29-08, cert. ef. 8-1-08; DOE 5-2011, f. & cert. ef. 6-27-11

## 330-130-0090

### Pre-qualification for persons performing Energy Analysis and Energy Savings Performance Contracting Services

(1) The department shall establish criteria to prequalify persons or firms to execute the provisions of this bill. Agencies must only select persons or firms that have been prequalified by the department to perform energy analysis and energy savings performance contracting services.

(2) Agencies that wish to hire a person or firm that has not been previously prequalified by the department must request approval from the department for exemption from this requirement. Only licensed professional architects and engineers are considered eligible for exemption from pre-qualification.

(a) Energy analyst

(A) The department shall establish a list of pre-qualified energy analysts through an open RFP process that uses qualifications-based scoring criteria to determine a person's ability to perform building energy analysis.

(B) An agency may hire an energy analyst not on the approved list provided the energy analyst is a licensed engineer or architect and meets the qualifications of the energy analyst described in the SEED Program Guidelines. All energy analysis reports must be stamped by a licensed engineer or architect.

(b) ESCO

(A) A qualifying firm will have demonstrated expertise in the following areas:

(i) A prior record of successfully performing ESPCs on projects involving existing buildings and structures that are comparable to the project under consideration by the contracting agency; and

(ii) The financial strength to effectively guarantee energy savings and performance under the ESPC for the project in question, or the ability to secure necessary financial measures to effectively guarantee energy savings under an ESPC for that project.

(B) Pre-qualification process: The department must utilize a Request for Qualifications (RFQ) process as the first step in a two-part process to pre-qualify energy service companies to perform energy savings performance contracting services.

(C) RFQ proposal evaluation process: For ESPC proposal evaluations, the department shall establish qualifications-based evaluation factors that outweigh price-related factors, due to the fact that the RFQ process is the first step of a two-step process used to establish a list of pre-qualified firms that a contracting agency must choose from for distribution of RFPs.

(3) Agencies must adhere to the following requirements for ESPC projects:

(a) Only select persons or firms that have been pre-qualified by the department to provide energy savings performance contracting services.

(b) The agency must use the department's template contract documents for all phases of the ESPC contract.

(c) Only utilize ESPC for comprehensive facility retrofits that include energy efficiency projects for two or more energy using systems. These systems must contribute to at least 50 percent of a facility's total energy use.

(d) Only use ESPC for projects that save energy and water resources.

(e) Only use ESPC for existing buildings that are two or more years old.

(f) Limit eligible contracting phases to:

(A) Phase I parts A and B for the technical energy audit and project development plan;

(B) Phase II Design Build contract; and

(C) Phase III for the energy savings guarantee and measurement and verification contract.

(g) Not combine service agreements with an ESPC contract. All service agreement contracts must be mutually exclusive.

(h) Advertise a simplified RFP as the second step of a two-step process for final selection of an ESCO for ESPC services.

(i) Only distribute RFPs to ESCOs that have been pre-qualified by the department.

(j) At a minimum, the RFP must include a technical facility profile, mandatory pre-proposal walk-through, and an interview process.

(k) Select qualifications-based evaluation factors that outweigh price factors.

(l) Contract with a third party for commissioning and measurement and verification services.

(m) Select a pre-qualified ESCO for third party commissioning or measurement and verification services associated with the ESPC project.

Stat. Auth.: Ch. 26, OL 2008 HB 3612

Stats. Implemented: ORS 276.900 - 276.915

Hist.: DOE 5-2008, f. 7-29-08, cert. ef. 8-1-08; DOE 5-2011, f. & cert. ef. 6-27-11



# ADMINISTRATIVE RULES

## 330-130-0100

### Pre-qualification for persons performing Energy Commissioning, Auditing, and Performance Verification Services

(1) The department shall establish criteria to pre-qualify persons or firms to execute the provisions of this bill. Agencies may select persons or firms that have been pre-qualified by the department to perform auditing, commissioning, and performance verification services for energy systems.

#### (2) Energy Auditor:

(a) The department shall maintain a list of pre-qualified energy auditing firms. This list must be established through an open RFP process using a qualification-based scoring criteria to determine a person's or firm's ability to perform energy audits in existing buildings.

(b) A qualifying firm must demonstrate expertise in the following areas:

(A) Commercial and industrial technology;

(B) Energy auditing equipment, heating, ventilating, and air conditioning systems;

(C) Lighting design;

(D) Energy efficiency technology; and;

(E) Preventative maintenance procedures.

(c) Agencies may use the department's list of pre-qualified energy auditors for the selection of a person or firm to perform energy conservation measure analysis of existing buildings.

#### (3) Commissioning Agent

(a) The department maintains a list of pre-qualified commissioning firms. This list will be established through an open RFP process that uses a qualifications-based scoring criteria to determine a person's or firm's ability to perform commissioning of energy using systems in new and existing buildings.

(b) At least one individual employed by the firm must be a member of a building commissioning professional association such as Building Commissioning Association (BCA), National Environmental Balancing Bureau (NEBB), or Associated Air Balance Council (AABC).

(c) Agencies may use the department's list of pre-qualified commissioning agents for the selection of a person or firm to perform commissioning services for energy efficiency projects in new and existing buildings.

#### (4) Measurement and verification.

(5) Agencies may select from the list of pre-qualified ESCOs described in OAR 330-130-0090(2)(b) or the list of commissioning agents described in OAR 330-130-0100(3) for the measurement and verification of implemented energy efficiency measures.

Stat. Auth.: Ch. 26, OL 2008 HB 3612

Stats. Implemented: ORS 276.900 - 276.915

Hist.: DOE 5-2008, f. 7-29-08, cert. ef. 8-1-08; DOE 5-2011, f. & cert. ef. 6-27-11

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## Department of Environmental Quality Chapter 340

**Rule Caption:** Temporary Rule Adoption for Small Biomass Boilers.

**Adm. Order No.:** DEQ 7-2011(Temp)

**Filed with Sec. of State:** 6-24-2011

**Certified to be Effective:** 6-24-11 thru 12-19-11

**Notice Publication Date:**

**Rules Amended:** 340-200-0020, 340-210-0100, 340-210-0110, 340-210-0120, 340-212-0140, 340-228-0140, 340-228-0020, 340-228-0210, 340-262-0450, 340-262-0600

**Subject:** DEQ's Heat Smart Program is designed to reduce air pollution from residential wood heating, including woodstoves and small-scale with a heat output equal to or less than 1 million Btu per hour outdoor residential and commercial wood-fired boilers. The Heat Smart rules prohibit the sale of all small solid fuel burning devices unless they are certified by DEQ, using EPA certification standards. Currently, EPA does not certify small-scale commercial, industrial and institutional biomass boilers. The Oregon Department of Environmental Quality (DEQ) is exempting such boilers from the Heat Smart regulations because these boilers are subject to other existing state and federal particulate and air toxics standards and do not need to be regulated under the Heat Smart rules. The temporary rules also require registration and clarify existing state and federal particulate and air toxics rule requirements applicable to small-scale

commercial, industrial and institutional solid fuel-burning boilers with a heat output under 10 million Btu per hour.

**Rules Coordinator:** Maggie Vandehey — (503) 229-6878

## 340-200-0020

### General Air Quality Definitions

As used in divisions 200 through 268, unless specifically defined otherwise:

(1) "Act" or "FCAA" means the Federal Clean Air Act, 42 U.S.C.A. 7401 to 7671q.

(2) "Activity" means any process, operation, action, or reaction (e.g., chemical) at a source that emits a regulated pollutant.

(3) "Actual emissions" means the mass emissions of a pollutant from an emissions source during a specified time period.

(a) For determining actual emissions as of the baseline period:

(A) Except as provided in paragraphs (B) and (C) of this subsection and subsection (b) of this section, actual emissions equal the average rate at which the source actually emitted the pollutant during an applicable baseline period and that represents normal source operation;

(B) The Department presumes that the source-specific mass emissions limit included in a source's permit that was effective on September 8, 1981 is equivalent to the source's actual emissions during the applicable baseline period if it is within 10% of the actual emissions calculated under paragraph (A) of this subsection.

(C) Actual emissions equal the potential to emit of the source for the sources listed in paragraphs (i) through (iii) of this paragraph. The actual emissions will be reset if required in accordance with subsection (c) of this section.

(i) Any source or part of a source that had not begun normal operations during the applicable baseline period but was approved to construct and operate before or during the baseline period in accordance with OAR 340 division 210, or

(ii) Any source or part of a source of greenhouse gases that had not begun normal operations prior to January 1, 2010, but was approved to construct and operate prior to January 1, 2011 in accordance with OAR 340 division 210, or

(iii) Any source or part of a source that had not begun normal operations during the applicable baseline period and was not required to obtain approval to construct and operate before or during the applicable baseline period.

(b) For any source or part of a source that had not begun normal operations during the applicable baseline period, but was approved to construct and operate in accordance with OAR 340 division 224, actual emissions on the date the permit is issued equal the potential to emit of the source. The actual emissions will be reset if required in accordance with subsection (c) of this section.

(c) Where actual emissions equal potential to emit under paragraph (a)(C) or subsection (b) of this section, the potential emissions will be reset to actual emissions as follows:

(A) Paragraphs (A) through (D) of this subsection apply to sources whose actual emissions of greenhouse gases were determined pursuant paragraph (3)(a)(C), and to all other sources of all other regulated pollutants that are permitted in accordance with OAR division 224 on or after May 1, 2011.

(B) Except as provided in paragraph (D) of this subsection, ten years from the end of the applicable baseline period under paragraph (a)(C) or ten years from the date the permit is issued under subsection (b), or an earlier time if requested by the source in a permit application involving public notice, the Department will reset actual emissions to equal the highest actual emission rate during any consecutive 12-month period during the ten year period or any shorter period if requested by the source.

(C) Any emission reductions achieved due to enforceable permit conditions based on OAR 340-226-0110 and 0120 (highest and best practicable treatment and control) are not included in the reset calculation required in paragraph (B) of this subsection.

(D) The Department may extend the date of resetting by five additional years upon satisfactory demonstration by the source that construction is ongoing or normal operation has not yet been achieved.

(d) For determining actual emissions for Emission Statements under OAR 340-214-0200 through 340-214-0220 and Oregon Title V Operating Permit Fees under OAR 340 division 220, actual emissions include, but are not limited to, routine process emissions, fugitive emissions, excess emissions from maintenance, startups and shutdowns, equipment malfunction, and other activities, except categorically insignificant activities and secondary emissions.

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(e) For Oregon Title V Operating Permit Fees under OAR 340 division 220, actual emissions must be directly measured with a continuous monitoring system or calculated using a material balance or verified emission factor determined in accordance with division 220 in combination with the source's actual operating hours, production rates, or types of materials processed, stored, or combusted during the specified time period.

(4) "Adjacent" means interdependent facilities that are nearby to each other.

(5) "Affected source" means a source that includes one or more affected units that are subject to emission reduction requirements or limitations under Title IV of the FCAA.

(6) "Affected states" means all states:

(a) Whose air quality may be affected by a proposed permit, permit modification, or permit renewal and that are contiguous to Oregon; or

(b) That are within 50 miles of the permitted source.

(7) "Aggregate insignificant emissions" means the annual actual emissions of any regulated air pollutant from one or more designated activities at a source that are less than or equal to the lowest applicable level specified in this section. The total emissions from each designated activity and the aggregate emissions from all designated activities must be less than or equal to the lowest applicable level specified.

(a) One ton for total reduced sulfur, hydrogen sulfide, sulfuric acid mist, any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act, and each criteria pollutant, except lead;

(b) 120 pounds for lead;

(c) 600 pounds for fluoride;

(d) 500 pounds for PM10 in a PM10 nonattainment area;

(e) 500 pounds for direct PM2.5 in a PM2.5 nonattainment area;

(f) The lesser of the amount established in OAR 340-244-0040, Table 1 or 340-244-0230, Table 3, or 1,000 pounds;

(g) An aggregate of 5,000 pounds for all Hazardous Air Pollutants;

(h) 2,756 tons CO<sub>2</sub>e for greenhouse gases.

(8) "Air Contaminant" means a dust, fume, gas, mist, odor, smoke, vapor, pollen, soot, carbon, acid or particulate matter, or any combination thereof.

(9) "Air Contaminant Discharge Permit" or "ACDP" means a written permit issued, renewed, amended, or revised by the Department, pursuant to OAR 340 division 216.

(10) "Alternative method" means any method of sampling and analyzing for an air pollutant that is not a reference or equivalent method but has been demonstrated to the Department's satisfaction to, in specific cases, produce results adequate for determination of compliance. An alternative method used to meet an applicable federal requirement for which a reference method is specified must be approved by EPA unless EPA has delegated authority for the approval to the Department.

(11) "Ambient Air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(12) "Applicable requirement" means all of the following as they apply to emissions units in an Oregon Title V Operating Permit program source or ACDP program source, including requirements that have been promulgated or approved by the EPA through rule making at the time of issuance but have future-effective compliance dates:

(a) Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by the EPA through rule-making under Title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in 40 CFR Part 52;

(b) Any standard or other requirement adopted under OAR 340-200-0040 of the State of Oregon Clean Air Act Implementation Plan that is more stringent than the federal standard or requirement which has not yet been approved by the EPA, and other state-only enforceable air pollution control requirements;

(c) Any term or condition in an ACDP, OAR 340 division 216, including any term or condition of any preconstruction permits issued pursuant to OAR 340 division 224, New Source Review, until or unless the Department revokes or modifies the term or condition by a permit modification;

(d) Any term or condition in a Notice of Construction and Approval of Plans, OAR 340-210-0205 through 340-210-0240, until or unless the Department revokes or modifies the term or condition by a Notice of Construction and Approval of Plans or a permit modification;

(e) Any term or condition in a Notice of Approval, OAR 340-218-0190, issued before July 1, 2001, until or unless the Department revokes or modifies the term or condition by a Notice of Approval or a permit modification;

(f) Any term or condition of a PSD permit issued by the EPA until or unless the EPA revokes or modifies the term or condition by a permit modification;

(g) Any standard or other requirement under section 111 of the Act, including section 111(d);

(h) Any standard or other requirement under section 112 of the Act, including any requirement concerning accident prevention under section 112(r)(7) of the Act;

(i) Any standard or other requirement of the acid rain program under Title IV of the Act or the regulations promulgated thereunder;

(j) Any requirements established pursuant to section 504(b) or section 114(a)(3) of the Act;

(k) Any standard or other requirement under section 126(a)(1) and(c) of the Act;

(l) Any standard or other requirement governing solid waste incineration, under section 129 of the Act;

(m) Any standard or other requirement for consumer and commercial products, under section 183(e) of the Act;

(n) Any standard or other requirement for tank vessels, under section 183(f) of the Act;

(o) Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under section 328 of the Act;

(p) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the Act, unless the Administrator has determined that such requirements need not be contained in an Oregon Title V Operating Permit; and

(q) Any national ambient air quality standard or increment or visibility requirement under part C of Title I of the Act, but only as it would apply to temporary sources permitted pursuant to section 504(e) of the Act.

(13) "Baseline Emission Rate" means the actual emission rate during a baseline period. Baseline emission rate does not include increases due to voluntary fuel switches or increased hours of operation that occurred after that baseline period.

(a) A baseline emission rate will be established only for regulated pollutants subject to OAR 340 division 224 as specified in the definition of regulated pollutant. A baseline emission rate will not be established for PM<sub>2.5</sub>.

(b) The baseline emission rate for greenhouse gases, on a CO<sub>2</sub>e basis, will be established with the first permitting action issued after July 1, 2011, provided the permitting action involved a public notice period that began after July 1, 2011.

(c) For a pollutant that becomes a regulated pollutant subject to OAR 340 division 224 after May 1, 2011, the initial baseline emission rate is the actual emissions of that pollutant during any consecutive 12 month period within the 24 months immediately preceding its designation as a regulated pollutant if a baseline period has not been defined for the pollutant.

(d) The baseline emission rate will be recalculated if actual emissions are reset in accordance with the definition of actual emissions.

(e) Once the baseline emission rate has been established or recalculated in accordance with subsection (d) of this section, the production basis for the baseline emission rate may only be changed if a material mistake or an inaccurate statement was made in establishing the production basis for baseline emission rate.

(14) "Baseline Period" means:

(a) Any consecutive 12 calendar month period during the calendar years 1977 or 1978 for any regulated pollutant other than greenhouse gases. The Department may allow the use of a prior time period upon a determination that it is more representative of normal source operation.

(b) Any consecutive 12 calendar month period during the calendar years 2000 through 2010 for greenhouse gases.

(15) "Best Available Control Technology" or "BACT" means an emission limitation, including, but not limited to, a visible emission standard, based on the maximum degree of reduction of each air contaminant subject to regulation under the Act which would be emitted from any proposed major source or major modification which, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such air contaminant. In no event may the application of BACT result in emissions of any air contaminant that would exceed the emissions allowed by any applicable new source performance standard or any standard for hazardous air pollutant. If an emission limitation is not feasible, a design, equipment, work practice, or operational standard, or combination thereof, may be required. Such standard must, to the degree possible, set

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forth the emission reduction achievable and provide for compliance by prescribing appropriate permit conditions.

(16) "Biomass" means non-fossilized and biodegradable organic material originating from plants, animals, and micro-organisms, including products, byproducts, residues and waste from agriculture, forestry, and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic matter.

(17) "Capacity" means the maximum regulated pollutant emissions from a stationary source under its physical and operational design.

(18) "Capture system" means the equipment (including but not limited to hoods, ducts, fans, and booths) used to contain, capture and transport a pollutant to a control device.

(19) "Carbon dioxide equivalent" or "CO<sub>2</sub>e" means an amount of a greenhouse gas or gases expressed as the equivalent amount of carbon dioxide, and shall be computed by multiplying the mass of each of the greenhouse gases by the global warming potential published for each gas at 40 CFR Part 98, subpart A, Table A-1—Global Warming Potentials, and adding the resulting value for each greenhouse gas to compute the total equivalent amount of carbon dioxide. (20) "Categorically insignificant activity" means any of the following listed pollutant emitting activities principally supporting the source or the major industrial group. Categorically insignificant activities must comply with all applicable requirements.

(a) Constituents of a chemical mixture present at less than 1% by weight of any chemical or compound regulated under divisions 200 through 268 excluding divisions 248 and 262 of this chapter, or less than 0.1% by weight of any carcinogen listed in the U.S. Department of Health and Human Service's Annual Report on Carcinogens when usage of the chemical mixture is less than 100,000 pounds/year;

(b) Evaporative and tail pipe emissions from on-site motor vehicle operation;

(c) Distillate oil, kerosene, and gasoline fuel burning equipment rated at less than or equal to 0.4 million Btu/hr;

(d) Natural gas and propane burning equipment rated at less than or equal to 2.0 million Btu/hr;

(e) Office activities;

(f) Food service activities;

(g) Janitorial activities;

(h) Personal care activities;

(i) Groundskeeping activities including, but not limited to building painting and road and parking lot maintenance;

(j) On-site laundry activities;

(k) On-site recreation facilities;

(l) Instrument calibration;

(m) Maintenance and repair shop;

(n) Automotive repair shops or storage garages;

(o) Air cooling or ventilating equipment not designed to remove air contaminants generated by or released from associated equipment;

(p) Refrigeration systems with less than 50 pounds of charge of ozone depleting substances regulated under Title VI, including pressure tanks used in refrigeration systems but excluding any combustion equipment associated with such systems;

(q) Bench scale laboratory equipment and laboratory equipment used exclusively for chemical and physical analysis, including associated vacuum producing devices but excluding research and development facilities;

(r) Temporary construction activities;

(s) Warehouse activities;

(t) Accidental fires;

(u) Air vents from air compressors;

(v) Air purification systems;

(w) Continuous emissions monitoring vent lines;

(x) Demineralized water tanks;

(y) Pre-treatment of municipal water, including use of deionized water purification systems;

(z) Electrical charging stations;

(aa) Fire brigade training;

(bb) Instrument air dryers and distribution;

(cc) Process raw water filtration systems;

(dd) Pharmaceutical packaging;

(ee) Fire suppression;

(ff) Blueprint making;

(gg) Routine maintenance, repair, and replacement such as anticipated activities most often associated with and performed during regularly

scheduled equipment outages to maintain a plant and its equipment in good operating condition, including but not limited to steam cleaning, abrasive use, and woodworking;

(hh) Electric motors;

(ii) Storage tanks, reservoirs, transfer and lubricating equipment used for ASTM grade distillate or residual fuels, lubricants, and hydraulic fluids;

(jj) On-site storage tanks not subject to any New Source Performance Standards (NSPS), including underground storage tanks (UST), storing gasoline or diesel used exclusively for fueling of the facility's fleet of vehicles;

(kk) Natural gas, propane, and liquefied petroleum gas (LPG) storage tanks and transfer equipment;

(ll) Pressurized tanks containing gaseous compounds;

(mm) Vacuum sheet stacker vents;

(nn) Emissions from wastewater discharges to publicly owned treatment works (POTW) provided the source is authorized to discharge to the POTW, not including on-site wastewater treatment and/or holding facilities;

(oo) Log ponds;

(pp) Storm water settling basins;

(qq) Fire suppression and training;

(rr) Paved roads and paved parking lots within an urban growth boundary;

(ss) Hazardous air pollutant emissions of fugitive dust from paved and unpaved roads except for those sources that have processes or activities that contribute to the deposition and entrainment of hazardous air pollutants from surface soils;

(tt) Health, safety, and emergency response activities;

(uu) Emergency generators and pumps used only during loss of primary equipment or utility service due to circumstances beyond the reasonable control of the owner or operator, or to address a power emergency as determined by the Department;

(vv) Non-contact steam vents and leaks and safety and relief valves for boiler steam distribution systems;

(ww) Non-contact steam condensate flash tanks;

(xx) Non-contact steam vents on condensate receivers, deaerators and similar equipment;

(yy) Boiler blowdown tanks;

(zz) Industrial cooling towers that do not use chromium-based water treatment chemicals;

(aaa) Ash piles maintained in a wetted condition and associated handling systems and activities;

(bbb) Oil/water separators in effluent treatment systems;

(ccc) Combustion source flame safety purging on startup;

(ddd) Broke beaters, pulp and repulping tanks, stock chests and pulp handling equipment, excluding thickening equipment and repulpers;

(eee) Stock cleaning and pressurized pulp washing, excluding open stock washing systems; and

(fff) White water storage tanks.

(21) "Certifying individual" means the responsible person or official authorized by the owner or operator of a source who certifies the accuracy of the emission statement.

(22) "CFR" means Code of Federal Regulations.

(23) "Class I area" means any Federal, State or Indian reservation land which is classified or reclassified as Class I area. Class I areas are identified in OAR 340-204-0050.

(24) "Commence" or "commencement" means that the owner or operator has obtained all necessary preconstruction approvals required by the Act and either has:

(a) Begun, or caused to begin, a continuous program of actual on-site construction of the source to be completed in a reasonable time; or

(b) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the source to be completed in a reasonable time.

(25) "Commission" or "EQC" means Environmental Quality Commission.

(26) "Constant Process Rate" means the average variation in process rate for the calendar year is not greater than plus or minus ten percent of the average process rate.

(27) "Construction":

(a) Except as provided in subsection (b) of this section means any physical change including, but not limited to, fabrication, erection, installation, demolition, or modification of a source or part of a source;

(b) As used in OAR 340 division 224 means any physical change including, but not limited to, fabrication, erection, installation, demolition,



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or modification of an emissions unit, or change in the method of operation of a source which would result in a change in actual emissions.

(28) "Continuous compliance determination method" means a method, specified by the applicable standard or an applicable permit condition, which:

(a) Is used to determine compliance with an emission limitation or standard on a continuous basis, consistent with the averaging period established for the emission limitation or standard; and

(b) Provides data either in units of the standard or correlated directly with the compliance limit.

(29) "Continuous Monitoring Systems" means sampling and analysis, in a timed sequence, using techniques which will adequately reflect actual emissions or concentrations on a continuing basis in accordance with the Department's Continuous Monitoring Manual, and includes continuous emission monitoring systems, continuous opacity monitoring system (COMS) and continuous parameter monitoring systems.

(30) "Control device" means equipment, other than inherent process equipment, that is used to destroy or remove air pollutant(s) prior to discharge to the atmosphere. The types of equipment that may commonly be used as control devices include, but are not limited to, fabric filters, mechanical collectors, electrostatic precipitators, inertial separators, afterburners, thermal or catalytic incinerators, adsorption devices (such as carbon beds), condensers, scrubbers (such as wet collection and gas absorption devices), selective catalytic or non-catalytic reduction systems, flue gas recirculation systems, spray dryers, spray towers, mist eliminators, acid plants, sulfur recovery plants, injection systems (such as water, steam, ammonia, sorbent or limestone injection), and combustion devices independent of the particular process being conducted at an emissions unit (e.g., the destruction of emissions achieved by venting process emission streams to flares, boilers or process heaters). For purposes of OAR 340-212-0200 through 340-212-0280, a control device does not include passive control measures that act to prevent pollutants from forming, such as the use of seals, lids, or roofs to prevent the release of pollutants, use of low-polluting fuel or feedstocks, or the use of combustion or other process design features or characteristics. If an applicable requirement establishes that particular equipment which otherwise meets this definition of a control device does not constitute a control device as applied to a particular pollutant-specific emissions unit, then that definition will be binding for purposes of OAR 340-212-0200 through 340-212-0280.

(31) "Criteria Pollutant" means nitrogen oxides, volatile organic compounds, particulate matter, PM10, PM2.5, sulfur dioxide, carbon monoxide, or lead.

(32) "Data" means the results of any type of monitoring or method, including the results of instrumental or non-instrumental monitoring, emission calculations, manual sampling procedures, recordkeeping procedures, or any other form of information collection procedure used in connection with any type of monitoring or method.

(33) "De minimis emission levels" mean the levels for the pollutants listed in Table 4.

**NOTE:** De minimis is compared to all increases that are not included in the PSEL.

(34) "Department":

(a) Means Department of Environmental Quality; except

(b) As used in OAR 340 divisions 218 and 220 means Department of Environmental Quality or in the case of Lane County, Lane Regional Air Protection Agency.

(35) "Device" means any machine, equipment, raw material, product, or byproduct at a source that produces or emits a regulated pollutant.

(36) "Direct PM2.5" has the meaning provided in the definition of PM2.5.

(37) "Director" means the Director of the Department or the Director's designee.

(38) "Draft permit" means the version of an Oregon Title V Operating Permit for which the Department or Lane Regional Air Protection Agency offers public participation under OAR 340-218-0210 or the EPA and affected State review under 340-218-0230.

(39) "Effective date of the program" means the date that the EPA approves the Oregon Title V Operating Permit program submitted by the Department on a full or interim basis. In case of a partial approval, the "effective date of the program" for each portion of the program is the date of the EPA approval of that portion.

(40) "Emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the owner or operator, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency does

not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

(41) "Emission" means a release into the atmosphere of any regulated pollutant or any air contaminant.

(42) "Emission Estimate Adjustment Factor" or "EEAF" means an adjustment applied to an emission factor to account for the relative inaccuracy of the emission factor.

(43) "Emission Factor" means an estimate of the rate at which a pollutant is released into the atmosphere, as the result of some activity, divided by the rate of that activity (e.g., production or process rate).

(44)(a) Except as provided in subsection (b) of this section, "Emission Limitation" and "Emission Standard" mean a requirement established by a State, local government, or the EPA which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction.

(b) As used in OAR 340-212-0200 through 340-212-0280, "Emission limitation or standard" means any applicable requirement that constitutes an emission limitation, emission standard, standard of performance or means of emission limitation as defined under the Act. An emission limitation or standard may be expressed in terms of the pollutant, expressed either as a specific quantity, rate or concentration of emissions (e.g., pounds of SO2 per hour, pounds of SO2 per million British thermal units of fuel input, kilograms of VOC per liter of applied coating solids, or parts per million by volume of SO2) or as the relationship of uncontrolled to controlled emissions (e.g., percentage capture and destruction efficiency of VOC or percentage reduction of SO2). An emission limitation or standard may also be expressed either as a work practice, process or control device parameter, or other form of specific design, equipment, operational, or operation and maintenance requirement. For purposes of 340-212-0200 through 340-212-0280, an emission limitation or standard does not include general operation requirements that an owner or operator may be required to meet, such as requirements to obtain a permit, to operate and maintain sources in accordance with good air pollution control practices, to develop and maintain a malfunction abatement plan, to keep records, submit reports, or conduct monitoring.

(45) "Emission Reduction Credit Banking" means to presently reserve, subject to requirements of OAR 340 division 268, Emission Reduction Credits, emission reductions for use by the reserver or assignee for future compliance with air pollution reduction requirements.

(46) "Emission Reporting Form" means a paper or electronic form developed by the Department that must be completed by the permittee to report calculated emissions, actual emissions, or permitted emissions for interim emission fee assessment purposes.

(47) "Emissions unit" means any part or activity of a source that emits or has the potential to emit any regulated air pollutant.

(a) A part of a source is any machine, equipment, raw material, product, or byproduct that produces or emits regulated air pollutants. An activity is any process, operation, action, or reaction (e.g., chemical) at a stationary source that emits regulated air pollutants. Except as described in subsection (d) of this section, parts and activities may be grouped for purposes of defining an emissions unit if the following conditions are met:

(A) The group used to define the emissions unit may not include discrete parts or activities to which a distinct emissions standard applies or for which different compliance demonstration requirements apply; and

(B) The emissions from the emissions unit are quantifiable.

(b) Emissions units may be defined on a pollutant by pollutant basis where applicable.

(c) The term emissions unit is not meant to alter or affect the definition of the term "unit" under Title IV of the FCAA.

(d) Parts and activities cannot be grouped for determining emissions increases from an emissions unit under OAR 340-224-0050 through 340-224-0070, or 340 division 210, or for determining the applicability of any New Source Performance Standard (NSPS).

(48) "EPA" or "Administrator" means the Administrator of the United States Environmental Protection Agency or the Administrator's designee.

(49) "Equivalent method" means any method of sampling and analyzing for an air pollutant that has been demonstrated to the Department's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions. An equivalent method used to meet an applicable federal requirement for which a reference method is specified must be approved by EPA unless EPA has delegated authority for the approval to the Department.

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(50) "Event" means excess emissions that arise from the same condition and occur during a single calendar day or continue into subsequent calendar days.

(51) "Exceedance" means a condition that is detected by monitoring that provides data in terms of an emission limitation or standard and that indicates that emissions (or opacity) are greater than the applicable emission limitation or standard (or less than the applicable standard in the case of a percent reduction requirement) consistent with any averaging period specified for averaging the results of the monitoring.

(52) "Excess emissions" means emissions in excess of a permit limit or any applicable air quality rule.

(53) "Excursion" means a departure from an indicator range established for monitoring under OAR 340-212-0200 through 340-212-0280 and 340-218-0050(3)(a), consistent with any averaging period specified for averaging the results of the monitoring.

(54) "Federal Land Manager" means with respect to any lands in the United States, the Secretary of the federal department with authority over such lands.

(55) "Federal Major Source" means a source with potential to emit any individual regulated pollutant, excluding hazardous air pollutants listed in OAR 340 division 244, greater than or equal to 100 tons per year if in a source category listed below, or 250 tons per year if not in a source category listed. In addition, for greenhouse gases, a federal major source must also have the potential to emit CO<sub>2</sub>e greater than or equal to 100,000 tons per year. The fugitive emissions and insignificant activity emissions of a stationary source are considered in determining whether it is a federal major source. Potential to emit calculations must include emission increases due to a new or modified source and may include emission decreases.

(a) Fossil fuel-fired steam electric plants of more than 250 million BTU/hour heat input;

(b) Coal cleaning plants with thermal dryers;

(c) Kraft pulp mills;

(d) Portland cement plants;

(e) Primary Zinc Smelters;

(f) Iron and Steel Mill Plants;

(g) Primary aluminum ore reduction plants;

(h) Primary copper smelters;

(i) Municipal Incinerators capable of charging more than 50 tons of refuse per day;

(j) Hydrofluoric acid plants;

(k) Sulfuric acid plants;

(l) Nitric acid plants;

(m) Petroleum Refineries;

(n) Lime plants;

(o) Phosphate rock processing plants;

(p) Coke oven batteries;

(q) Sulfur recovery plants;

(r) Carbon black plants, furnace process;

(s) Primary lead smelters;

(t) Fuel conversion plants;

(u) Sintering plants;

(v) Secondary metal production plants;

(w) Chemical process plants;

(x) Fossil fuel fired boilers, or combinations thereof, totaling more than 250 million BTU per hour heat input;

(y) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(z) Taconite ore processing plants;

(aa) Glass fiber processing plants;

(bb) Charcoal production plants.

(56) "Final permit" means the version of an Oregon Title V Operating Permit issued by the Department or Lane Regional Air Protection Agency that has completed all review procedures required by OAR 340-218-0120 through 340-218-0240.

(57) "Form" means a paper or electronic form developed by the Department.

(58) "Fugitive Emissions":

(a) Except as used in subsection (b) of this section, means emissions of any air contaminant which escape to the atmosphere from any point or area that is not identifiable as a stack, vent, duct, or equivalent opening.

(b) As used to define a major Oregon Title V Operating Permit program source, means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(59) "General permit":

(a) Except as provided in subsection (b) of this section, means an Oregon Air Contaminant Discharge Permit established under OAR 340-216-0060;

(b) As used in OAR 340 division 218 means an Oregon Title V Operating Permit established under OAR 340-218-0090.

(60) "Generic PSEL" means the levels for the pollutants listed in Table 5.

**NOTE:** Sources are eligible for a generic PSEL if expected emissions are less than or equal to the levels listed in Table 5. Baseline emission rate and netting basis do not apply to pollutants at sources using generic PSELs.

(61)(a) "Greenhouse Gases" or "GHGs" means the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride. Each gas is also individually a greenhouse gas.

(b) The definition of greenhouse gases in subsection (a) of this section does not include, for purposes of division 216, 218, and 224, carbon dioxide emissions from the combustion or decomposition of biomass except to the extent required by federal law.

(62) "Growth Allowance" means an allocation of some part of an airshed's capacity to accommodate future proposed major sources and major modifications of sources.

(63) "Immediately" means as soon as possible but in no case more than one hour after a source knew or should have known of an excess emission period.

(64) "Inherent process equipment" means equipment that is necessary for the proper or safe functioning of the process, or material recovery equipment that the owner or operator documents is installed and operated primarily for purposes other than compliance with air pollution regulations. Equipment that must be operated at an efficiency higher than that achieved during normal process operations in order to comply with the applicable emission limitation or standard is not inherent process equipment. For the purposes of OAR 340-212-0200 through 340-212-0280, inherent process equipment is not considered a control device.

(65) "Insignificant Activity" means an activity or emission that the Department has designated as categorically insignificant, or that meets the criteria of aggregate insignificant emissions.

(66) "Insignificant Change" means an off-permit change defined under OAR 340-218-0140(2)(a) to either a significant or an insignificant activity which:

(a) Does not result in a re-designation from an insignificant to a significant activity;

(b) Does not invoke an applicable requirement not included in the permit; and

(c) Does not result in emission of regulated air pollutants not regulated by the source's permit.

(67) "Late Payment" means a fee payment which is postmarked after the due date.

(68) "Lowest Achievable Emission Rate" or "LAER" means that rate of emissions which reflects: the most stringent emission limitation which is contained in the implementation plan of any state for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable; or the most stringent emission limitation which is achieved in practice by such class or category of source, whichever is more stringent. The application of this term cannot permit a proposed new or modified source to emit any air contaminant in excess of the amount allowable under applicable New Source Performance Standards (NSPS) or standards for hazardous air pollutants.

(69) "Maintenance Area" means a geographical area of the State that was designated as a nonattainment area, redesignated as an attainment area by EPA, and redesignated as a maintenance area by the Environmental Quality Commission in OAR 340, division 204.

(70) "Maintenance Pollutant" means a pollutant for which a maintenance area was formerly designated a nonattainment area.

(71) "Major Modification" means any physical change or change in the method of operation of a source that results in satisfying the requirements of both subsections (a) and (b) of this section, or of subsection (c) of this section for any regulated air pollutant. Major modifications for ozone precursors or PM<sub>2.5</sub> precursors also constitute major modifications for ozone and PM<sub>2.5</sub>, respectively.

(a) Except as provided in subsection (d) of this section, a PSEL that exceeds the netting basis by an amount that is equal to or greater than the significant emission rate.

(b) The accumulation of emission increases due to physical changes and changes in the method of operation as determined in accordance with paragraphs (A) and (B) of this subsection is equal to or greater than the significant emission rate.

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(A) Calculations of emission increases in subsection (b) of this section must account for all accumulated increases in actual emissions due to physical changes and changes in the method of operation occurring at the source since the applicable baseline period, or since the time of the last construction approval issued for the source pursuant to the New Source Review Regulations in OAR 340 division 224 for that pollutant, whichever time is more recent. These include fugitive emissions and emissions from insignificant activities.

(B) Emission increases due solely to increased use of equipment or facilities that existed or were permitted or approved to construct in accordance with OAR 340 division 210 during the applicable baseline period are not included, except if the increased use is to support a physical change or change in the method of operation.

(c) Any change at a source, including production increases, that would result in a Plant Site Emission Limit increase of 1 ton or more for any regulated pollutant for which the source is a major source in nonattainment or maintenance areas or a federal major source in attainment or unclassified areas, if the source obtained permits to construct and operate after the applicable baseline period but has not undergone New Source Review.

(A) Subsection (c) of this section does not apply to PM<sub>2.5</sub> and greenhouse gases.

(B) Changes to the PSEL solely due to the availability of better emissions information are exempt from being considered an increase.

(d) If a portion of the netting basis or PSEL (or both) was set based on PTE because the source had not begun normal operations but was permitted or approved to construct and operate, that portion of the netting basis or PSEL (or both) must be excluded from the tests in subsections (a) and (b) of this section until the netting basis is reset as specified in the definitions of baseline emission rate and netting basis.

(e) The following are not considered major modifications:

(A) Except as provided in subsection (c) of this section, proposed increases in hours of operation or production rates that would cause emission increases above the levels allowed in a permit and would not involve a physical change or change in method of operation in the source;

(B) Routine maintenance, repair, and replacement of components;

(C) Temporary equipment installed for maintenance of the permanent equipment if the temporary equipment is in place for less than six months and operated within the permanent equipment's existing PSEL;

(D) Use of alternate fuel or raw materials, that were available and the source was capable of accommodating in the baseline period.

(72) "Major Source":

(a) Except as provided in subsection (b) of this section, means a source that emits, or has the potential to emit, any regulated air pollutant at a Significant Emission Rate. The fugitive emissions and insignificant activity emissions of a stationary source are considered in determining whether it is a major source. Potential to emit calculations must include emission increases due to a new or modified source and may include emission decreases.

(b) As used in OAR 340 division 210, Stationary Source Notification Requirements, OAR 340 division 218, rules applicable to sources required to have Oregon Title V Operating Permits, OAR 340 division 220, Oregon Title V Operating Permit Fees, and 340-216-0066 Standard ACDPs, means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping or supporting the major industrial group and that is described in paragraphs (A), (B), (C) or (D) of this subsection. For the purposes of this subsection, a stationary source or group of stationary sources is considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual (U.S. Office of Management and Budget, 1987) or support the major industrial group.

(A) A major source of hazardous air pollutants, which means:

(i) For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tons per year (tpy) or more of any hazardous air pollutants that has been listed pursuant to OAR 340-244-0040; 25 tpy or more of any combination of such hazardous air pollutants, or such lesser quantity as the Administrator may establish by rule. Emissions from any oil or gas exploration or production well, along with its associated equipment, and emissions from any pipeline compressor or pump station will not be aggregated

with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or

(ii) For radionuclides, "major source" will have the meaning specified by the Administrator by rule.

(B) A major stationary source of air pollutants, as defined in section 302 of the Act, that directly emits or has the potential to emit 100 tpy or more of any regulated air pollutant, except greenhouse gases, including any major source of fugitive emissions of any such pollutant. The fugitive emissions of a stationary source are not considered in determining whether it is a major stationary source for the purposes of section 302(j) of the Act, unless the source belongs to one of the following categories of stationary source:

(i) Coal cleaning plants (with thermal dryers);

(ii) Kraft pulp mills;

(iii) Portland cement plants;

(iv) Primary zinc smelters;

(v) Iron and steel mills;

(vi) Primary aluminum ore reduction plants;

(vii) Primary copper smelters;

(viii) Municipal incinerators capable of charging more than 50 tons of refuse per day;

(ix) Hydrofluoric, sulfuric, or nitric acid plants;

(x) Petroleum refineries;

(xi) Lime plants;

(xii) Phosphate rock processing plants;

(xiii) Coke oven batteries;

(xiv) Sulfur recovery plants;

(xv) Carbon black plants (furnace process);

(xvi) Primary lead smelters;

(xvii) Fuel conversion plants;

(xviii) Sintering plants;

(xix) Secondary metal production plants;

(xx) Chemical process plants;

(xxi) Fossil-fuel boilers, or combination thereof, totaling more than 250 million British thermal units per hour heat input;

(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(xxiii) Taconite ore processing plants;

(xxiv) Glass fiber processing plants;

(xxv) Charcoal production plants;

(xxvi) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or

(xxvii) Any other stationary source category, that as of August 7, 1980 is being regulated under section 111 or 112 of the Act.

(C) Beginning July 1, 2011, a major stationary source of air pollutants, as defined by Section 302 of the Act, that directly emits or has the potential to emit 100 tpy or more of greenhouse gases and directly emits or has the potential to emit 100,000 tpy or more CO<sub>2</sub>e, including fugitive emissions.

(D) A major stationary source as defined in part D of Title I of the Act, including:

(i) For ozone nonattainment areas, sources with the potential to emit 100 tpy or more of VOCs or oxides of nitrogen in areas classified as "marginal" or "moderate," 50 tpy or more in areas classified as "serious," 25 tpy or more in areas classified as "severe," and 10 tpy or more in areas classified as "extreme"; except that the references in this paragraph of this subsection to 100, 50, 25, and 10 tpy of nitrogen oxides do not apply with respect to any source for which the Administrator has made a finding, under section 182(f)(1) or (2) of the Act, that requirements under section 182(f) of the Act do not apply;

(ii) For ozone transport regions established pursuant to section 184 of the Act, sources with the potential to emit 50 tpy or more of VOCs;

(iii) For carbon monoxide nonattainment areas:

(I) That are classified as "serious"; and

(II) In which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit 50 tpy or more of carbon monoxide.

(iv) For particulate matter (PM<sub>10</sub>) nonattainment areas classified as "serious," sources with the potential to emit 70 tpy or more of PM<sub>10</sub>.

(73) "Material Balance" means a procedure for determining emissions based on the difference in the amount of material added to a process and the amount consumed and/or recovered from a process.

(74) "Modification," except as used in the term "major modification," means any physical change to, or change in the method of operation of, a



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stationary source that results in an increase in the stationary source's potential to emit any regulated air pollutant on an hourly basis. Modifications do not include the following:

(a) Increases in hours of operation or production rates that do not involve a physical change or change in the method of operation;

(b) Changes in the method of operation due to using an alternative fuel or raw material that the stationary source was physically capable of accommodating during the baseline period; and

(c) Routine maintenance, repair and like-for-like replacement of components unless they increase the expected life of the stationary source by using component upgrades that would not otherwise be necessary for the stationary source to function.

(75) "Monitoring" means any form of collecting data on a routine basis to determine or otherwise assess compliance with emission limitations or standards. Monitoring may include record keeping if the records are used to determine or assess compliance with an emission limitation or standard (such as records of raw material content and usage, or records documenting compliance with work practice requirements). Monitoring may include conducting compliance method tests, such as the procedures in appendix A to 40 CFR part 60, on a routine periodic basis. Requirements to conduct such tests on a one-time basis, or at such times as a regulatory authority may require on a non-regular basis, are not considered monitoring requirements for purposes of this definition. Monitoring may include one or more than one of the following data collection techniques as appropriate for a particular circumstance:

(a) Continuous emission or opacity monitoring systems.

(b) Continuous process, capture system, control device or other relevant parameter monitoring systems or procedures, including a predictive emission monitoring system.

(c) Emission estimation and calculation procedures (e.g., mass balance or stoichiometric calculations).

(d) Maintaining and analyzing records of fuel or raw materials usage.

(e) Recording results of a program or protocol to conduct specific operation and maintenance procedures.

(f) Verifying emissions, process parameters, capture system parameters, or control device parameters using portable or in situ measurement devices.

(g) Visible emission observations and recording.

(h) Any other form of measuring, recording, or verifying on a routine basis emissions, process parameters, capture system parameters, control device parameters or other factors relevant to assessing compliance with emission limitations or standards.

(76) "Netting Basis" means the baseline emission rate MINUS any emission reductions required by rule, orders, or permit conditions required by the SIP or used to avoid SIP requirements, MINUS any unassigned emissions that are reduced from allowable under OAR 340-222-0045, MINUS any emission reduction credits transferred off site, PLUS any emission increases approved through the New Source Review regulations in OAR 340 division 224 MINUS any emissions reductions required by subsection (g) of this section.

(a) A netting basis will only be established for regulated pollutants subject to OAR 340 division 224 as specified in the definition of regulated pollutant.

(b) The initial PM<sub>2.5</sub> netting basis and PSEL for a source that was permitted prior to May 1, 2011 will be established with the first permitting action issued after July 1, 2011, provided the permitting action involved a public notice period that began after July 1, 2011.

(A) The initial netting basis is the PM<sub>2.5</sub> fraction of the PM<sub>10</sub> netting basis in effect on May 1, 2011. DEQ may increase the initial PM<sub>2.5</sub> netting basis by up to 5 tons if necessary to avoid exceedance of the PM<sub>2.5</sub> significant emission rate as of May 1, 2011.

(B) Notwithstanding OAR 340-222-0041(2), the initial source specific PSEL for a source with PTE greater than or equal to the SER will be set equal to the PM<sub>2.5</sub> fraction of the PM<sub>10</sub> PSEL.

(c) The initial greenhouse gas netting basis and PSEL for a source will be established with the first permitting action issued after July 1, 2011, provided the permitting action involved a public notice period that began after July 1, 2011.

(d) Netting basis is zero for:

(A) Any regulated pollutant emitted from a source that first obtained permits to construct and operate after the applicable baseline period for that regulated pollutant, and has not undergone New Source Review for that pollutant;

(B) Any pollutant that has a generic PSEL in a permit;

(C) Any source permitted as portable; or

(D) Any source with a netting basis calculation resulting in a negative number.

(e) If a source relocates to an adjacent site, and the time between operation at the old and new sites is less than six months, the source may retain the netting basis from the old site.

(f) Emission reductions required by rule, order, or permit condition affect the netting basis if the source currently has devices or emissions units that are subject to the rules, order, or permit condition. The baseline emission rate is not affected. The netting basis reduction will be effective on the effective date of the rule, order, or permit condition requiring the reduction. The PSEL reduction will be effective on the compliance date of the rule, order, or permit condition.

(g) For permits issued after May 1, 2011 under New Source Review regulations in OAR 340 division 224, and where the netting basis initially equaled the potential to emit for a new or modified source, the netting basis will be reduced in accordance with the definition of actual emissions. Notwithstanding OAR 340-222-0041(2), this adjustment does not require a reduction in the PSEL.

(h) Emission reductions required by rule do not include emissions reductions achieved under OAR 340-226-0110 and 0120.

(i) Netting basis for a pollutant with a revised definition will be adjusted if the source is emitting the pollutant at the time of redefining and the pollutant is included in the permit's netting basis.

(j) Where EPA requires an attainment demonstration based on dispersion modeling, the netting basis will be established at no more than the level used in the dispersion modeling to demonstrate attainment with the ambient air quality standard (i.e., the attainment demonstration is an emission reduction required by rule).

(77) "Nitrogen Oxides" or "NO<sub>x</sub>" means all oxides of nitrogen except nitrous oxide.

(78) "Nonattainment Area" means a geographical area of the State, as designated by the Environmental Quality Commission or the EPA, that exceeds any state or federal primary or secondary ambient air quality standard.

(79) "Nonattainment Pollutant" means a pollutant for which an area is designated a nonattainment area.

(80) "Normal Source Operation" means operations which do not include such conditions as forced fuel substitution, equipment malfunction, or highly abnormal market conditions.

(81) "Offset" means an equivalent or greater emission reduction that is required before allowing an emission increase from a proposed major source or major modification of an existing source.

(82) "Opacity" means the degree to which an emission reduces transmission of light and obscures the view of an object in the background as measured in accordance with OAR 340-212-0120 and 212-0140. Unless otherwise specified by rule, opacity shall be measured in accordance with EPA Method 9 or a continuous opacity monitoring system (COMS) installed and operated in accordance with the Department's Continuous Monitoring Manual. For all standards, the minimum observation period shall be six minutes, though longer periods may be required by a specific rule or permit condition. Aggregate times (e.g. 3 minutes in any one hour) consist of the total duration of all readings during the observation period that equal or exceed the opacity percentage in the standard, whether or not the readings are consecutive.

(83) "Oregon Title V Operating Permit" means any permit covering an Oregon Title V Operating Permit source that is issued, renewed, amended, or revised pursuant to division 218.

(84) "Oregon Title V Operating Permit program" means a program approved by the Administrator under 40 CFR Part 70.

(85) "Oregon Title V Operating Permit program source" means any source subject to the permitting requirements, OAR 340 division 218.

(86) "Ozone Precursor" means nitrogen oxides and volatile organic compounds as measured by an applicable reference method in accordance with the Department's Source Sampling Manual (January, 1992) or as measured by an EPA reference method in 40 CFR Part 60, appendix A or as measured by a material balance calculation for VOC as appropriate.

(87) "Ozone Season" means the contiguous 3 month period during which ozone exceedances typically occur (i.e., June, July, and August).

(88) "Particulate Matter" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air. When used in emission standards, particulate matter is defined by the method specified within the standard or by an applicable reference method in accordance with OAR 340-212-0120 and 340-212-0140. Unless otherwise specified, sources with exhaust gases at or near ambient conditions may be tested with DEQ Method 5 or DEQ Method 8, as approved by the Department.

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Direct heat transfer sources shall be tested with DEQ Method 7; indirect heat transfer combustion sources and all other non-fugitive emissions sources not listed above shall be tested with DEQ Method 5.

(89) "Permit" means an Air Contaminant Discharge Permit or an Oregon Title V Operating Permit.

(90) "Permit modification" means a permit revision that meets the applicable requirements of OAR 340 division 216, 340 division 224, or 340-218-0160 through 340-218-0180.

(91) "Permit revision" means any permit modification or administrative permit amendment.

(92) "Permitted Emissions" as used in OAR division 220 means each regulated pollutant portion of the PSEL, as identified in an ACDP, Oregon Title V Operating Permit, review report, or by the Department pursuant to OAR 340-220-0090.

(93) "Permittee" means the owner or operator of the facility, authorized by the ACDP or the Oregon Title V Operating Permit to operate the source.

(94) "Person" means individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, the State of Oregon and any agencies thereof, and the federal government and any agencies thereof.

(95) "Plant Site Emission Limit" or "PSEL" means the total mass emissions per unit time of an individual air pollutant specified in a permit for a source. The PSEL for a major source may consist of more than one permitted emission.

(96) "PM10":

(a) When used in the context of emissions, means finely divided solid or liquid material, including condensable particulate, other than uncombined water, with an aerodynamic diameter less than or equal to a nominal 10 micrometers, emitted to the ambient air as measured by an applicable reference method in accordance with the Department's Source Sampling Manual (January, 1992);

(b) When used in the context of ambient concentration, means airborne finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured in accordance with 40 CFR Part 50, Appendix J.

(97) "PM2.5":

(a) When used in the context of direct PM2.5 emissions, means finely divided solid or liquid material, including condensable particulate, other than uncombined water, with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers, emitted to the ambient air as measured by EPA reference methods 201A and 202 in 40 CFR Part 51, appendix M.

(b) When used in the context of PM2.5 precursor emissions, means sulfur dioxide (SO<sub>2</sub>) and nitrogen oxides (NO<sub>x</sub>) emitted to the ambient air as measured by EPA reference methods in 40 CFR Part 60, appendix A.

(c) When used in the context of ambient concentration, means particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by a reference method based on 40 CFR Part 50, Appendix L, or an equivalent method designated in accordance with 40 CFR Part 53.

(98) "PM2.5 fraction" means the fraction of PM2.5 to PM10 for each emissions unit that is included in the netting basis and PSEL.

(99) "Pollutant-specific emissions unit" means an emissions unit considered separately with respect to each regulated air pollutant.

(100) "Potential to emit" or "PTE" means the lesser of:

(a) The capacity of a stationary source; or

(b) The maximum allowable emissions taking into consideration any physical or operational limitation, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, if the limitation is enforceable by the Administrator.

(c) This definition does not alter or affect the use of this term for any other purposes under the Act or the term "capacity factor" as used in Title IV of the Act and the regulations promulgated thereunder. Secondary emissions are not considered in determining the potential to emit.

(101) "Predictive emission monitoring system (PEMS)" means a system that uses process and other parameters as inputs to a computer program or other data reduction system to produce values in terms of the applicable emission limitation or standard.

(102) "Process Upset" means a failure or malfunction of a production process or system to operate in a normal and usual manner.

(103) "Proposed permit" means the version of an Oregon Title V Operating Permit that the Department or a Regional Agency proposes to issue and forwards to the Administrator for review in compliance with OAR 340-218-0230.

(104) "Reference method" means any method of sampling and analyzing for an air pollutant as specified in 40 CFR Part 52, 60, 61 or 63.

(105) "Regional Agency" means Lane Regional Air Protection Agency.

(106) "Regulated air pollutant" or "Regulated Pollutant":

(a) Except as provided in subsections (b) and (c) of this section, means:

(A) Nitrogen oxides or any VOCs;

(B) Any pollutant for which a national ambient air quality standard has been promulgated, including any precursors to such pollutants;

(C) Any pollutant that is subject to any standard promulgated under section 111 of the Act;

(D) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act;

(E) Any pollutant listed under OAR 340-244-0040 or 340-244-0230; and

(F) Greenhouse Gases.

(b) As used in OAR 340 division 220, regulated pollutant means particulates, volatile organic compounds, oxides of nitrogen and sulfur dioxide.

(c) As used in OAR 340 division 224, regulated pollutant does not include any pollutant listed in divisions 244 and 246, unless the pollutant is listed in OAR 340 division 200 Table 2 (significant emission rates).

(107) "Renewal" means the process by which a permit is reissued at the end of its term.

(108) "Responsible official" means one of the following:

(a) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(A) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or

(B) The delegation of authority to such representative is approved in advance by the Department or Lane Regional Air Protection Agency.

(b) For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

(c) For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this division, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of the EPA); or

(d) For affected sources:

(A) The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the Act or the regulations promulgated there under are concerned; and

(B) The designated representative for any other purposes under the Oregon Title V Operating Permit program.

(109) "Secondary Emissions" means emissions that are a result of the construction and/or operation of a source or modification, but that do not come from the source itself. Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the source associated with the secondary emissions. Secondary emissions may include, but are not limited to:

(a) Emissions from ships and trains coming to or from a facility;

(b) Emissions from off-site support facilities that would be constructed or would otherwise increase emissions as a result of the construction or modification of a source.

(110) "Section 111" means section 111 of the FCAA which includes Standards of Performance for New Stationary Sources (NSPS).

(111) "Section 111(d)" means subsection 111(d) of the FCAA which requires states to submit to the EPA plans that establish standards of performance for existing sources and provides for implementing and enforcing such standards.

(112) "Section 112" means section 112 of the FCAA which contains regulations for Hazardous Air Pollutants (HAP).

(113) "Section 112(b)" means subsection 112(b) of the FCAA which includes the list of hazardous air pollutants to be regulated.

(114) "Section 112(d)" means subsection 112(d) of the FCAA which directs the EPA to establish emission standards for sources of hazardous air

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pollutants. This section also defines the criteria to be used by the EPA when establishing the emission standards.

(115) "Section 112(e)" means subsection 112(e) of the FCAA which directs the EPA to establish and promulgate emissions standards for categories and subcategories of sources that emit hazardous air pollutants.

(116) "Section 112(r)(7)" means subsection 112(r)(7) of the FCAA which requires the EPA to promulgate regulations for the prevention of accidental releases and requires owners or operators to prepare risk management plans.

(117) "Section 114(a)(3)" means subsection 114(a)(3) of the FCAA which requires enhanced monitoring and submission of compliance certifications for major sources.

(118) "Section 129" means section 129 of the FCAA which requires the EPA to establish emission standards and other requirements for solid waste incineration units.

(119) "Section 129(e)" means subsection 129(e) of the FCAA which requires solid waste incineration units to obtain Oregon Title V Operating Permits.

(120) "Section 182(f)" means subsection 182(f) of the FCAA which requires states to include plan provisions in the State Implementation Plan for NO<sub>x</sub> in ozone nonattainment areas.

(121) "Section 182(f)(1)" means subsection 182(f)(1) of the FCAA which requires states to apply those plan provisions developed for major VOC sources and major NO<sub>x</sub> sources in ozone nonattainment areas.

(122) "Section 183(e)" means subsection 183(e) of the FCAA which requires the EPA to study and develop regulations for the control of certain VOC sources under federal ozone measures.

(123) "Section 183(f)" means subsection 182(f) of the FCAA which requires the EPA to develop regulations pertaining to tank vessels under federal ozone measures.

(124) "Section 184" means section 184 of the FCAA which contains regulations for the control of interstate ozone air pollution.

(125) "Section 302" means section 302 of the FCAA which contains definitions for general and administrative purposes in the Act.

(126) "Section 302(j)" means subsection 302(j) of the FCAA which contains definitions of "major stationary source" and "major emitting facility."

(127) "Section 328" means section 328 of the FCAA which contains regulations for air pollution from outer continental shelf activities.

(128) "Section 408(a)" means subsection 408(a) of the FCAA which contains regulations for the Title IV permit program.

(129) "Section 502(b)(10) change" means a change which contravenes an express permit term but is not a change that:

(a) Would violate applicable requirements;

(b) Would contravene federally enforceable permit terms and conditions that are monitoring, recordkeeping, reporting, or compliance certification requirements; or

(c) Is a Title I modification.

(130) "Section 504(b)" means subsection 504(b) of the FCAA which states that the EPA can prescribe by rule procedures and methods for determining compliance and for monitoring.

(131) "Section 504(e)" means subsection 504(e) of the FCAA which contains regulations for permit requirements for temporary sources.

(132) "Significant Air Quality Impact" means an additional ambient air quality concentration equal to or greater than in the concentrations listed in Table 1. The threshold concentrations listed in Table 1 are used for comparison against the ambient air quality standard and do not apply for protecting PSD Class I increments or air quality related values (including visibility). For sources of VOC or NO<sub>x</sub>, a major source or major modification has a significant impact if it is located within the Ozone Precursor Distance defined in OAR 340-225-0020.

(133) "Significant Emission Rate" or "SER," except as provided in subsections (a) through(c) of this section, means an emission rate equal to or greater than the rates specified in Table 2.

(a) For the Medford-Ashland Air Quality Maintenance Area, the Significant Emission Rate for PM<sub>10</sub> is defined in Table 3.

(b) For regulated air pollutants not listed in Table 2 or 3, the significant emission rate is zero unless the Department determines the rate that constitutes a significant emission rate.

(c) Any new source or modification with an emissions increase less than the rates specified in Table 2 or 3 associated with a new source or modification which would construct within 10 kilometers of a Class I area, and would have an impact on such area equal to or greater than 1 ug/m<sup>3</sup> (24 hour average) is emitting at a significant emission rate. This provision does not apply to greenhouse gas emissions.

(134) "Significant Impairment" occurs when the Department determines that visibility impairment interferes with the management, protection, preservation, or enjoyment of the visual experience within a Class I area. The Department will make this determination on a case-by-case basis after considering the recommendations of the Federal Land Manager and the geographic extent, intensity, duration, frequency, and time of visibility impairment. These factors will be considered along with visitor use of the Class I areas, and the frequency and occurrence of natural conditions that reduce visibility.

(135) "Small scale local energy project" means:

(a) A system, mechanism or series of mechanisms located primarily in Oregon that directly or indirectly uses or enables the use of, by the owner or operator, renewable resources including, but not limited to, solar, wind, geothermal, biomass, waste heat or water resources to produce energy, including heat, electricity and substitute fuels, to meet a local community or regional energy need in this state;

(b) A system, mechanism or series of mechanisms located primarily in Oregon or providing substantial benefits to Oregon that directly or indirectly conserves energy or enables the conservation of energy by the owner or operator, including energy used in transportation;

(c) A recycling project;

(d) An alternative fuel project;

(e) An improvement that increases the production or efficiency, or extends the operating life, of a system, mechanism, series of mechanisms or project otherwise described in this section of this rule, including but not limited to restarting a dormant project;

(f) A system, mechanism or series of mechanisms installed in a facility or portions of a facility that directly or indirectly reduces the amount of energy needed for the construction and operation of the facility and that meets the sustainable building practices standard established by the State Department of Energy by rule; or

(g) A project described in subsections (a) to (f) of this section, whether or not the existing project was originally financed under ORS 470, together with any refinancing necessary to remove prior liens or encumbrances against the existing project.

(h) A project described in subsections (a) to (g) of this section that conserves energy or produces energy by generation or by processing or collection of a renewable resource.

(136) "Source" means any building, structure, facility, installation or combination thereof that emits or is capable of emitting air contaminants to the atmosphere, is located on one or more contiguous or adjacent properties and is owned or operated by the same person or by persons under common control. The term includes all pollutant emitting activities that belong to a single major industrial group (i.e., that have the same two-digit code) as described in the Standard Industrial Classification Manual, (U.S. Office of Management and Budget, 1987) or that support the major industrial group.

(137) "Source category":

(a) Except as provided in subsection(b) of this section, means all the pollutant emitting activities that belong to the same industrial grouping(i.e., that have the same two-digit code) as described in the Standard Industrial Classification Manual, (U.S. Office of Management and Budget, 1987).

(b) As used in OAR 340 division 220, Oregon Title V Operating Permit Fees, means a group of major sources that the Department determines are using similar raw materials and have equivalent process controls and pollution control equipment.

(138) "Source Test" means the average of at least three test runs conducted in accordance with the Department's Source Sampling Manual.

(139) "Startup" and "shutdown" means that time during which an air contaminant source or emission-control equipment is brought into normal operation or normal operation is terminated, respectively.

(140) "State Implementation Plan" or "SIP" means the State of Oregon Clean Air Act Implementation Plan as adopted by the Commission under OAR 340-200-0040 and approved by EPA.

(141) "Stationary source" means any building, structure, facility, or installation at a source that emits or may emit any regulated air pollutant.

(142) "Substantial Underpayment" means the lesser of ten percent (10%) of the total interim emission fee for the major source or five hundred dollars.

(143) "Synthetic minor source" means a source that would be classified as a major source under OAR 340-200-0020, but for limits on its potential to emit air pollutants contained in a permit issued by the Department under OAR 340 division 216 or 218.

(144) "Title I modification" means one of the following modifications pursuant to Title I of the FCAA:



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(a) A major modification subject to OAR 340-224-0050, Requirements for Sources in Nonattainment Areas;

(b) A major modification subject to OAR 340-224-0060, Requirements for Sources in Maintenance Areas;

(c) A major modification subject to OAR 340-224-0070, Prevention of Significant Deterioration Requirements for Sources in Attainment or Unclassified Areas;

(d) A modification that is subject to a New Source Performance Standard under Section 111 of the FCAA; or

(e) A modification under Section 112 of the FCAA.

(145) "Total Reduced Sulfur" or "TRS" means the sum of the sulfur compounds hydrogen sulfide, methyl mercaptan, dimethyl sulfide, dimethyl disulfide, and any other organic sulfides present expressed as hydrogen sulfide(H<sub>2</sub>S).

(146) "Typically Achievable Control Technology" or "TACT" means the emission limit established on a case-by-case basis for a criteria pollutant from a particular emissions unit in accordance with OAR 340-226-0130. For existing sources, the emission limit established will be typical of the emission level achieved by emissions units similar in type and size. For new and modified sources, the emission limit established will be typical of the emission level achieved by well controlled new or modified emissions units similar in type and size that were recently installed. TACT determinations will be based on information known to the Department while considering pollution prevention, impacts on other environmental media, energy impacts, capital and operating costs, cost effectiveness, and the age and remaining economic life of existing emission control equipment. The Department may consider emission control technologies typically applied to other types of emissions units where such technologies could be readily applied to the emissions unit. If an emission limitation is not feasible, a design, equipment, work practice, operational standard, or combination thereof, may be required.

(147) "Unassigned Emissions" means the amount of emissions that are in excess of the PSEL but less than the Netting Basis.

(148) "Unavoidable" or "could not be avoided" means events that are not caused entirely or in part by poor or inadequate design, operation, maintenance, or any other preventable condition in either process or control equipment.

(149) "Upset" or "Breakdown" means any failure or malfunction of any pollution control equipment or operating equipment that may cause excess emissions.

(150) "Visibility Impairment" means any humanly perceptible change in visual range, contrast or coloration from that which existed under natural conditions. Natural conditions include fog, clouds, windblown dust, rain, sand, naturally ignited wildfires, and natural aerosols.

(151) "Volatile Organic Compounds" or "VOC" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, that participates in atmospheric photochemical reactions.

(a) This includes any such organic compound except the following, which have been determined to have negligible photochemical reactivity in the formation of tropospheric ozone: methane; ethane; methylene chloride(dichloromethane); dimethyl carbonate, propylene carbonate, 1,1,1-trichloroethane(methyl chloroform); 1,1,2-trichloro-1,2,2-trifluoroethane(CFC-113); trichlorofluoromethane(CFC-111); dichlorodifluoromethane(CFC-12); chlorodifluoromethane(HCFC-22); difluoromethane(HFC-23); 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane(CFC-115); 1,1,1-trifluoro 2,2-dichloroethane(HCFC-123); 1,1,1,2-tetrafluoroethane(HFC-134a); 1,1-dichloro 1-fluoroethane(HCFC-141b); 1-chloro 1,1-difluoroethane(HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane(HCFC-124); pentafluoroethane(HFC-125); 1,1,2,2-tetrafluoroethane(HFC-134); 1,1,1-trifluoroethane(HFC-143a); 1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride(PCBTF); cyclic, branched, or linear completely methylated siloxanes; acetone; perchloroethylene(tetrachloroethylene); 3,3-dichloro-1,1,1,2,2-pentafluoropropane(HCFC-225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb); 1,1,1,2,3,4,4,5,5,5-decafluoropentane HFC 43-10mee); difluoromethane(HFC-32); ethylfluoride(HFC-161); 1,1,1,3,3,3-hexafluoropropane(HFC-236fa); 1,1,2,2,3-pentafluoropropane(HFC-245ca); 1,1,2,3,3-pentafluoropropane(HFC-245ea); 1,1,1,2,3-pentafluoropropane(HFC-245eb); 1,1,1,3,3-pentafluoropropane(HFC-245fa); 1,1,1,2,3,3-hexafluoropropane(HFC-236ea); 1,1,1,3,3,3-pentafluorobutane(HFC-365mf); chlorofluoromethane (HCFC-31); 1 chloro-1-fluoroethane(HCFC-151a); 1,2-dichloro-1,1,2-trifluoroethane(HCFC-123a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxybutane(C4F9OCH<sub>3</sub> or HFE-7100); 2-(difluoromethoxymethyl)-

1,1,1,2,3,3,3-heptafluoropropane(CF<sub>3</sub>)<sub>2</sub>CFCF<sub>2</sub>OCH<sub>3</sub>); 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane(C4F9OC<sub>2</sub>H<sub>5</sub> or HFE-7200); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF<sub>3</sub>)<sub>2</sub>CFCF<sub>2</sub>OCH<sub>2</sub>); methyl acetate; 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane(n-C3F7OCH<sub>3</sub>, HFE-7000); 3-ethoxy-1,1,1,2,3,4,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane(HFE-7500); 1,1,1,2,3,3,3-heptafluoropropane(HFC 227ea); methyl formate (HCOOCH<sub>3</sub>); (1) 1,1,1,2,2,3,4,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane(HFE-7300); and perfluorocarbon compounds that fall into these classes:

(A) Cyclic, branched, or linear, completely fluorinated alkanes;

(B) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(C) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(D) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

(b) For purposes of determining compliance with emissions limits, VOC will be measured by an applicable reference method in accordance with the Department's Source Sampling Manual, January, 1992. Where such a method also measures compounds with negligible photochemical reactivity, these negligibly-reactive compounds may be excluded as VOC if the amount of such compounds is accurately quantified, and the Department approves the exclusion.

(c) The Department may require an owner or operator to provide monitoring or testing methods and results demonstrating, to the Department's satisfaction, the amount of negligibly-reactive compounds in the source's emissions.

(d) The following compound(s) are VOC for purposes of all record-keeping, emissions reporting, photochemical dispersion modeling and inventory requirements which apply to VOC and must be uniquely identified in emission reports, but are not VOC for purposes of VOC emissions limitations or VOC content requirements: t-butyl acetate.

(152) "Year" means any consecutive 12 month period of time.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.

[ED. NOTE: Tables referenced are available from the agency.]

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: [DEQ 15-1978, f. & ef. 10-13-78; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 47, f. 8-31-72, ef. 9-15-72; DEQ 63, f. 12-20-73, ef. 1-11-74; DEQ 107, f. & ef. 1-6-76; Renumbered from 340-020-0033.04; DEQ 25-1981, f. & ef. 9-8-81; DEQ 5-1983, f. & ef. 4-18-83; DEQ 18-1984, f. & ef. 10-16-84; DEQ 8-1988, f. & cert. ef. 5-19-88 (and corrected 5-31-88); DEQ 14-1989, f. & cert. ef. 6-26-89; DEQ 42-1990, f. 12-13-90, cert. ef. 1-2-91; DEQ 2-1992, f. & cert. ef. 1-30-92; DEQ 7-1992, f. & cert. ef. 3-30-92; DEQ 27-1992, f. & cert. ef. 11-12-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93, Renumbered from 340-020-0145, 340-020-0225, 340-020-0305, 340-020-0355, 340-020-0460 & 340-020-0520; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 21-1994, f. & cert. ef. 10-14-94; DEQ 24-1994, f. & cert. ef. 10-28-94; DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ 12-1995, f. & cert. ef. 5-23-95; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 9-1997, f. & cert. ef. 5-9-97; DEQ 14-1998, f. & cert. ef. 9-14-98; DEQ 16-1998, f. & cert. ef. 9-23-98; DEQ 21-1998, f. & cert. ef. 10-14-98; DEQ 1-1999, f. & cert. ef. 1-25-99; DEQ 6-1999, f. & cert. ef. 5-21-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0205, 340-028-0110; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 6-2007(Temp), f. & cert. ef. 8-17-07 thru 2-12-08; DEQ 8-2007, f. & cert. ef. 11-8-07; DEQ 10-2008, f. & cert. ef. 8-25-08; DEQ 5-2010, f. & cert. ef. 5-21-10; DEQ 10-2010(Temp), f. 8-31-10, cert. ef. 9-1-10 thru 2-28-11; Administrative correction 3-29-11; DEQ 5-2011, f. 4-29-11, cert. ef. 5-1-11; DEQ 7-2011(Temp), f. & cert. ef. 6-24-11 thru 12-19-11

## 340-210-0100

### Registration in General

(1) Any air contaminant source not subject to Air Contaminant Discharge Permits, OAR 340 division 216, or Oregon Title V Operating Permits, OAR 340 division 218, must register with the Department upon request pursuant to OAR 340-210-0110 through 340-210-0120.

(2) The owner or operator of an air contaminant source listed in subsection (2)(a) of this rule that is certified through a Department approved environmental certification program and subject to an Area Source NESHAP may register the source with the Department pursuant to OAR 340-210-0110 through 340-210-0120 in lieu of obtaining a permit in accordance with OAR 340-216-0020, unless the Department determines that the source has not complied with the requirements of the environmental certification program.

(a) The following air contaminant sources may be registered under this section:

(A) Motor vehicle surface coating operations.

(B) Dry cleaners using perchloroethylene.

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(b) Approved environmental certification program. To be approved, the environmental certification program must, at a minimum, require certified air contaminant sources to comply with all applicable state and federal rules and regulations and require additional measures to increase environmental protection.

(c) Fees. In order to obtain and maintain registration, owners and operators of air contaminant sources registered pursuant to this section must pay the following annual fees by March 1 of each year:

(A) Motor vehicle surface coating operations — \$240.00.

(B) Dry cleaners using perchloroethylene — \$180.00.

(C) Late fees.

(i) 30 days late: 5% of annual fee.

(ii) 31-60 days late: 10% of annual fee.

(iii) 61 or more days late: 20% of annual fee.

(D) Failure to pay fees. Registration is automatically terminated upon failure to pay annual fees within 90 days of invoice by the Department, unless prior arrangements for payment have been approved in writing by the Department.

(d) Recordkeeping. In order to maintain registration, owners and operators of air contaminant sources registered pursuant to this section must maintain records required by the approved environmental performance program under subsection (3)(b) of this rule. The records must be kept on site and in a form suitable and readily available for expeditious inspection and review.

(3) The owner or operator of a boiler that is subject to 40 CFR part 63, subpart DDDDD or subpart JJJJJ, as in effect on June 22, 2011, and that is not located at a source that is required to obtain a permit under OAR chapter 340, division 216 (Air Contaminant Discharge Permits) or OAR chapter 340, division 218 (Oregon Title V Operating Permits), must register and maintain registration with the Department pursuant to OAR 340-210-0110 through 340-210-0120 as follows:

(a) Upon request by the Department, the owner or operator must register a boiler with a heat output capacity of 1 MMBTU/hr or greater; and

(b) The owner or operator may register a boiler with a heat output capacity of less than 1 MMBTU/hr, and if so, the boiler is exempt from the definition of "solid fuel burning device" under OAR 340-262-0450 and is exempt from the requirements for new and used solid fuel burning devices sold in Oregon under OAR 340-262-0600(2).

(4) Revocation. The Department may revoke a registration if a source fails to meet any requirement in OAR 340-210-0110.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.

Stat. Auth.: ORS 468.020, 468A.050 & 468A.310

Stats. Implemented: ORS 468 & 468A

Hist.: DEQ 15, f. 6-12-70, ef. 9-1-70; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93, Renumbered from 340-020-0005; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-0500; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 8-2009, f. & cert. ef. 12-16-09; DEQ 7-2011(Temp), f. & cert. ef. 6-24-11 thru 12-19-11

## 340-210-0110

### Registration Requirements

(1) Registration pursuant to OAR 340-210-0100(1) must be completed within 30 days following the mailing date of the request by the Department.

(2) Registration must be made on forms furnished by the Department and completed by the owner, lessee of the source, or agent.

(3) In order to obtain registration pursuant to OAR 340-210-0100(1), the following information must be reported by registrants:

(a) Name, address, and nature of business;

(b) Name of local person responsible for compliance with these rules;

(c) Name of person authorized to receive requests for data and information;

(d) A description of the production processes and a related flow chart;

(e) A plot plan showing the location and height of all air contaminant sources. The plot plan must also indicate the nearest residential or commercial property;

(f) Type and quantity of fuels used;

(g) Amount, nature, and duration of air contaminant emissions;

(h) Estimated efficiency of air pollution control equipment under present or anticipated operating conditions;

(i) Any other information requested by the Department.

(4) In order to obtain registration pursuant to OAR 340-210-0100(2), a registrant must submit the information in section (3)(a), (b), (c), and (i) of this rule and the following:

(a) Information demonstrating that the air contaminant source is operating in compliance with all applicable state and federal rules and regulations, as requested by the Department.

(b) Information demonstrating that the source is certified through an approved environmental certification program.

(c) A signed statement that the submitted information is true, accurate, and complete. This signed statement shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

(5) Registration pursuant to OAR 340-210-0100(3) must be completed by the following deadlines:

(a) Not less than 7 days before installation of any boiler, for boilers subject to OAR 340-210-0100(3)(b); and

(b) For boilers subject to OAR 340-210-0100(3)(a), within 30 days following the mailing date of the request by the Department (or by EPA on the Department's behalf).

(6) In order to obtain registration pursuant to OAR 340-210-0100(3), the following must be submitted by a registrant:

(a) Registration information including:

(A) Name, address and nature of business or institution;

(B) Name of local person responsible for compliance with these rules;

(C) Name of person authorized to receive requests for data;

(D) A description of the boiler, including but not limited to the manufacturer, model, heat output capacity, combustion air system (such as fixed or variable speed fan, movable damper, etc.);

(E) A description of the boiler output (such as steam, electricity, hot water, or hot air);

(F) How the combustion air control system is controlled (manually or automatically, and if automatically describe the control system and the parameter(s) that are monitored by the control system);

(G) All fuel types that can be used (such as chips, pellets, split logs, whole logs, log size, etc.) and whether fuel feed is manual or automatic;

(H) Fuel moisture content; and

(I) Any other information requested by the Department.

(b) Except as provided in subsection (d) of this section, confirmation that the boiler is operating in compliance with all applicable state and federal rules and regulations, including but not limited to OAR 340-208-0110 (visible air contaminant limitations), OAR 340-212-0140(3) (sampling), 340-228-0210 (grain loading standards) and 340-244-0220 (federal NESHAP regulations adopted by reference); and

(c) For boilers subject to 40 CFR part 63, subpart JJJJJ, as in effect on June 22, 2011, a notification to the Department that the boiler has been tuned-up in accordance with 40 CFR § 63.11223.

(d) If the boiler has not begun operating at time that registration is required, the registrant may provide confirmation as required in subsection (b) of this section within six months of installation of the boiler.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.

Stat. Auth.: ORS 468.020, 468A.050 & 468A.310

Stats. Implemented: ORS 468 & 468A

Hist.: DEQ 15, f. 6-12-70, ef. 9-1-70; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93, Renumbered from 340-020-0010; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-0510; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 8-2009, f. & cert. ef. 12-16-09; DEQ 7-2011(Temp), f. & cert. ef. 6-24-11 thru 12-19-11

## 340-210-0120

### Re-Registration

(1) In order to re-register or maintain registration pursuant to OAR 340-210-0100(1)-(2), a person responsible for an air contaminant source must reaffirm in writing, by March 1 of each year, the correctness and current status of the information furnished to the Department.

(2) In order to maintain registration, any change in any of the factual data reported under OAR 340-210-0110 must be reported to the Department within 30 days of the change, on a form furnished by the Department, at which time re-registration may also be required on forms furnished by the Department.

(3) In order to maintain registration in OAR 340-210-0100(3), the registrant must notify the Department in writing on a form furnished by the Department each time that the boiler has been tuned-up in accordance with 40 CFR § 63.11223, as in effect on June 22, 2011.

(4) In order to re-register, a person must not have had their registration terminated or revoked within the last 3 years, unless the air contaminant source has changed ownership since termination or revocation.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.

Stat. Auth.: ORS 468.020, 468A.050 & 468A.310

Stats. Implemented: ORS 468 & 468A

Hist.: DEQ 15, f. 6-12-70, ef. 9-1-70; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93, Renumbered from 340-020-0015; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-0520; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 8-2009, f. & cert. ef. 12-16-09; DEQ 7-2011(Temp), f. & cert. ef. 6-24-11 thru 12-19-11

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## 340-212-0140

### Methods

(1) Any sampling, testing, or measurement performed pursuant to this division must conform to methods contained in the Department's Source Sampling Manual (January 1992) or to recognized applicable standard methods approved in advance by the Department.

(2) The Department may approve any alternative method of sampling if it finds that the proposed method is satisfactory and complies with the intent of these rules, is at least equivalent to the uniform recognized procedures in objectivity and reliability, and is demonstrated to be reproducible, selective, sensitive, accurate, and applicable to the program.

(3) Except pursuant to section (4), to demonstrate compliance with OAR 340-228-0210 for a boiler that is subject to registration under OAR 340-210-0100(3), sampling must be performed in accordance with this section.

(a) Pollutant to be Measured: Total particulate matter (condensable & filterable)

(b) Test Methods: Test methods utilized during the compliance demonstration must be consistent with the following:

(A) Total Particulate: Oregon Department of Environmental Quality Method 5 (ODEQ Source Sampling Manual Volume I - January 1992), Alternatively, EPA Method 5 (40 CFR part 60 App. A-3) combined with EPA Method 202 (40 CFR part 51) may be used in lieu of ODEQ Method 5.

(B) Diluents: EPA Method 3A (40 CFR part 60 App. A-2) is to be used for measuring O<sub>2</sub> & CO<sub>2</sub>.

(C) Visual Emissions: EPA Method 9 (40 CFR part 60 App. A-4).

(c) Sampling Replicates: Two (2) replicates are required while operating above 90% of normal maximum operating rate. Other replicate information is as follows:

(A) At a minimum, each sample replicate shall represent 60 minutes of sampling and 31.8 dscf of sample volume.

(B) For batch-type fuel feed units the following requirements apply:

(i) Each sample replicate shall commence within five (5) minutes of ignition.

(ii) Each sample replicate shall terminate when the combustion has concluded, which is identifiable by the exhaust CO<sub>2</sub> dropping to a value that is less than 0.5% for at least one (1) minute.

(iii) Two six (6) minute visible emissions surveys as per EPA Method 9 are to be performed during each particulate replicate. The first survey shall commence within twenty (20) minutes of ignition.

(C) For continuous fuel feed units the following requirements apply:

(i) Each sampling replicate shall commence after the heater reaches 90% of normal maximum operating rate.

(ii) One six (6) minute visible emission survey as per EPA Method 9 is to be performed during each sampling replicate.

(d) Operating Requirements: The boiler shall be operated as per manufacturer specifications during the emissions test. Other operating considerations are as follows:

(A) Fuel characteristics during the emissions test shall be representative of day-to-day operations.

(B) For batch-type fuel feed units, the feed quantity (pounds per cubic foot of furnace volume) must represent normal maximum operating conditions.

(e) Sampling Locations: Sampling location must be at least four (4) duct diameters downstream from the nearest flow disturbance and at least two (2) duct diameters upstream from the exhaust to atmosphere. Minimum traverse point requirements are as follows:

(A) For ducts less than 8 inches in diameter, locate one (1) traverse point within or centrally located over the centroidal area of the duct cross section.

(B) For ducts greater or equal to 8 inches in diameter but less than 12 inches in diameter, locate three (3) traverse points at 16.7, 50.0, and 83.3 percent of the measurement line.

(C) For ducts greater or equal to 12 inches in diameter, locate traverse points as per EPA Method 1 (40CFR60 App. A-1) particulate sampling criteria.

(f) QA/QC: Method specific quality assurance/quality control (QA/QC) procedures must be performed to ensure that the data is valid for determining compliance.

(g) Documentation Requirements: A compliance test report must be kept on file and made available for regulatory review for at least five years from the date of the source test. At a minimum the test report must contain the following information:

(A) Heater manufacturing information including: model number, serial number, date of manufacture, place of manufacture, maximum capacity (MMBtu/hr), and contact information for manufacturer

(B) Testing contractor information including: company name, name of testing technicians, and contact information for contractor.

(C) Test results including all supporting calculations and laboratory supporting information. Test results shall include the arithmetic mean of the two (2) sample replicates, expressed as gr/dscf on a 12% CO<sub>2</sub> basis.

(D) Heater operating parameters including: heat input in MMBtu/hr (measured directly or indirectly), water temperature, blower settings (if applicable), pollution control equipment operating parameters (if available) and operating schedule during test.

(E) Fuel characteristics including, species, approximate size, moisture content, and feed rate, (if available).

(F) Testing specifics including but not limited to; sampling location, traverse point location, test equipment I.D., sampling times, and method deviations.

(G) Documentation of QA/QC procedures, results, and supporting data.

(4) As an alternative to sampling the owner or operator's boiler pursuant to section (3), the owner or operator may rely on sampling performed by the boiler manufacturer, so long as the sampling was performed in accordance with section (3) by a third party independent of the boiler manufacturer, on a boiler that is representative of the boiler registered under 340-210-0110(6), using the same model, combustion air system, heat output capacity, fuel type, and moisture content as the registered boiler. In addition, the owner or operator must maintain documentation of the sampling performed by the boiler manufacturer for at least five years after initial registration of the boiler under OAR 340-210-0110.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 468.020 & 468A.310

Stats. Implemented: ORS 468 & 468A

Hist.: DEQ 15, f. 6-12-70, ef. 9-11-70; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93, Renumbered from 340-020-0040; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1120; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 7-2011(Temp), f. & cert. ef. 6-24-11 thru 12-19-11

## 340-228-0020

### Definitions

The definitions in OAR 340-200-0020 and this rule apply to this division. If the same term is defined in this rule and OAR 340-200-0020, the definition in this rule applies to this division.

(1) "ASTM" means the American Society for Testing and Materials.

(2) "Coastal Areas" means Clatsop, Tillamook, Lincoln, Coos, and Curry Counties and those portions of Douglas and Lane County west of Range 8 West, Willamette Meridian.

(3) "Distillate Fuel Oil" means any oil meeting the specifications of ASTM Grade 1 or 2 fuel oils;

(4) "Fuel burning equipment" means equipment, other than internal combustion engines, the principal purpose of which is to produce heat or power by indirect heat transfer.

(5) "Residual Fuel Oil" means any oil meeting the specifications of ASTM Grade 4, 5, or 6 fuel oils.

(6) "Standard conditions" means a temperature of 68° Fahrenheit and a pressure of 14.7 pounds per square inch absolute.

(7) "Standard cubic foot" means the amount of gas that would occupy a volume of one cubic foot, if the gas were free of uncombined water at standard conditions. When applied to combustion flue gases from fuel or refuse burning, "standard cubic foot" also implies adjustment of gas volume to that which would result at a concentration of 12% carbon dioxide or 50% excess air.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468.020 & 468A.025

Hist.: [DEQ 16, f. 6-12-70, ef. 7-11-70; DEQ 1-1984, f. & ef. 1-16-84; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 3-1996, f. & cert. ef. 1-29-96]; [DEQ 37, f. 2-15-72, ef. 3-1-72; DEQ 4-1993, f. & cert. ef. 3-10-93]; [DEQ 37, f. 2-15-72, ef. 3-1-72; DEQ 4-1993, f. & cert. ef. 3-10-93]; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-021-0005, 340-022-0005, 340-022-0050; DEQ 8-2007, f. & cert. ef. 11-8-07; DEQ 7-2011(Temp), f. & cert. ef. 6-24-11 thru 12-19-11

## 340-228-0200

### Sulfur Dioxide Standards

The following emission standards are applicable to sources installed, constructed, or modified after January 1, 1972 only:



# ADMINISTRATIVE RULES

(1) For fuel burning equipment having a heat input capacity between 150 million BTU per hour and 250 million BTU, no person may cause, suffer, allow, or permit the emission into the atmosphere of sulfur dioxide in excess of:

(a) 1.4 lb. per million BTU heat input, maximum three-hour average, when liquid fuel is burned;

(b) 1.6 lb. per million BTU heat input, maximum three-hour average, when solid fuel is burned.

(2) For fuel burning equipment having a heat input capacity of more than 250 million BTU per hour, no person may cause, suffer, allow, or permit the emission into the atmosphere of sulfur dioxide in excess of:

(a) 0.8 lb. per million BTU heat input, maximum three-hour average, when liquid fuel is burned;

(b) 1.2 lb. per million BTU heat input, maximum three-hour average, when solid fuel is burned.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468.020 & 468A.025

Hist.: DEQ 37, f. 2-15-72, ef. 3-1-72; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-022-0055; DEQ 8-2007, f. & cert. ef. 11-8-07; DEQ 7-2011(Temp), f. & cert. ef. 6-24-11 thru 12-19-11

## 340-228-0210

### Grain Loading Standards

(1) Except as provided in sections (2) and (3) of this rule, no person shall cause, suffer, allow, or permit the emission of particulate matter, from any fuel burning equipment in excess of:

(a) 0.2 grains per standard cubic foot for sources installed, constructed, or modified on or before June 1, 1970;

(b) 0.1 grains per standard cubic foot for sources installed, constructed, or modified after June 1, 1970.

(2) For sources burning salt laden wood waste on July 1, 1981, where salt in the fuel is the only reason for failure to comply with the above limits and when the salt in the fuel results from storage or transportation of logs in salt water, the resulting salt portion of the emissions shall be exempted from subsection (1)(a) or (b) of this rule and OAR 340-208-0110. In no case shall sources burning salt laden woodwaste exceed 0.6 grains per standard cubic foot.

(a) This exemption and the alternative emissions standard are only applicable upon prior notice to the Department.

(b) Sources which utilize this exemption, to demonstrate compliance otherwise with subsection (1)(a) or (b) of this rule, shall submit the results of a particulate emissions source test of the boiler stacks bi-annually.

(3) This rule does not apply to solid fuel burning devices that have been certified under OAR 340-262-0500.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468.020 & 468A.025

Hist.: DEQ 16, f. 6-12-70, ef. 7-1-70; DEQ 12-1979, f. & ef. 6-8-79; DEQ 6-1981, f. & ef. 2-17-81; DEQ 18-1982, f. & ef. 9-1-82; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 3-1996, f. & cert. ef. 1-29-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-021-0020; DEQ 8-2007, f. & cert. ef. 11-8-07; DEQ 7-2011(Temp), f. & cert. ef. 6-24-11 thru 12-19-11

## 340-262-0450

### Definitions

The definitions in OAR 340-200-0020 and this rule apply to this Division. If OAR 340-0200-0020 and this rule define the same term, the definition in this rule applies to this Division.

(1) "Antique woodstove" means a woodstove built before 1940 that has an ornate construction and a current market value substantially higher than a common woodstove manufactured during the same period.

(2) "Central wood-fired furnace" means an indoor, wood-fired furnace that is thermostatically controlled, has a dedicated cold air inlet and dedicated hot air outlet, and is connected to heating ductwork for the entire residential structure.

(3) "CFR" means Code of Federal Regulations.

(4) "Consumer" means a person who buys a solid fuel burning device for personal use.

(5) "Cookstove" means an indoor wood-burning appliance designed for the primary purpose of cooking food.

(6) "Dealer" means a person that sells solid fuel burning devices to retailers or other dealers for resale. For the purpose of this Division, a dealer that is also an Oregon retailer shall be considered to be only a retailer.

(7) "DEQ" means Oregon Department of Environmental Quality.

(8) "Destroy" means to demolish or decommission to the extent that restoration or reuse as a heating device is impossible.

(9) "EPA" means United States Environmental Protection Agency.

(10) "EQC" means Environmental Quality Commission

(11) "Federal Regulations" means 40 CFR, Part 60, Subpart AAA as in effect on July 1, 2010.

(12) "Fireplace" means a site-built or factory-built masonry fireplace that is designed to be used with an open combustion chamber and that is without features to control air-to-fuel ratios.

(13) "Hydronic heater" means a fuel-burning device which may be equipped with a heat storage unit, and which is designed to:

(a) Burn wood or other automatically fed fuels such as wood pellets, shelled corn, and wood chips;

(b) Be installed according to the manufacturer's specifications either indoors or outdoors; and

(c) Heat building space and/or water via the distribution, typically through pipes, of a fluid heated in the device, typically water or a water/antifreeze mixture.

(14) "Manufacturer" means a person who designs a solid fuel burning device, constructs a solid fuel burning device or constructs parts for solid fuel burning devices.

(15) "Masonry heater" means a site-built or site-assembled, solid fueled heating device constructed of structural masonry mass used to store heat from intermittent fires burned rapidly in the structure's firebox and slow release the heat to the site. Such solid-fueled heating device must meet the design and construction specifications set forth in ASTM E 1602-03, "Guide for Construction of Solid Fuel Burning Masonry Heaters."

(16) "New solid fuel burning device" or "new device" means a solid fuel burning device defined under ORS 468A.485(4)(a) that has not been sold, bargained, exchanged, given away, acquired secondhand, or otherwise had its ownership transferred from the person who first acquired it from a retailer.

(17) "PM10" means particulate matter less than 10 microns.

(18) "PM2.5" means particulate matter less than 2.5 microns.

(19) "Pellet stove" means a heating device that uses wood pellets, or other biomass fuels designed for use in pellet stoves, as its primary source of fuel.

(20) "Phase 1 emission level qualified model" is a model of a hydronic heater that achieves an average emission level of 0.60 lbs/million Btu heat input or less for all fuel types listed in the owner's manual and/or mentioned in marketing/sales materials, as acknowledged by EPA in writing to the manufacturer as part of EPA's acceptance of the model as a qualified model.

(21) "Phase 2 emission level qualified model" is a model of a hydronic heater that achieves an average emissions level of 0.32 lbs/million Btu heat output or less for all fuel types listed in the owner's manual and/or mentioned in marketing/sales materials, and that did not exceed 18.0 grams/hr of fine particles in any individual test run that was used in the calculation of the average, as acknowledged by EPA in writing to the manufacturer as part of EPA's acceptance of the model as a qualified model pursuant to the EPA Hydronic Heater Program Phase 2 Partnership Agreement.

(22) "Residential structure" has the meaning given that term in ORS 701.005.

(23) "Retailer" means a person engaged in the sale of solid fuel burning devices directly to consumers.

(24) "Solid fuel burning device" or "device" means a woodstove or any other device that burns wood, coal or other nongaseous or non-liquid fuels for aesthetic, space-heating or water-heating purposes in or for a private residential structure or a commercial establishment and that has a heat output of less than one million British thermal units per hour. Solid fuel burning device does not include:

(a) Fireplace;

(b) Antique stove;

(c) Pellet stoves;

(d) Masonry heaters;

(e) Central, wood-fired furnaces;

(f) Saunas; and

(g) Boilers subject to 40 CFR part 63, subpart DDDDD or subpart JJJJJJ, as in effect on June 22, 2011 that are:

(A) Located at a source that is required to obtain a permit under OAR chapter 340, division 216 (Air Contaminant Discharge Permits) or OAR chapter 340, division 218 (Oregon Title V Operating Permits); or

(B) Registered with the Department under OAR 340-210-0100(3)(b).

(25) "Trash burner" means any equipment that is used to dispose of waste by burning and has not been issued an air quality permit under ORS 468A.040.

# ADMINISTRATIVE RULES

(26) "Treated Wood" means wood of any species that has been chemically impregnated, painted or similarly modified to prevent weathering and deterioration.

(27) "Used solid fuel burning device" or "used device" means a solid fuel burning device that has been sold, bargained, exchanged, given away, or otherwise has had its ownership transferred.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468A.460 - 468A.515

Hist.: DEQ 2-2011, f. 3-10-11, cert. ef. 3-15-11; DEQ 8-2007, f. & cert. ef. 11-8-07; DEQ 7-2011(Temp), f. & cert. ef. 6-24-11 thru 12-19-11

## 340-262-0600

### New and Used Solid Fuel Burning Devices Sold in Oregon

(1) No person may advertise to sell, offer to sell or sell a new or used solid fuel burning device in Oregon unless:

(a) The device has been certified for sale as new by DEQ pursuant to OAR 340-262-0500, or by EPA pursuant to 40 CFR part 60, subpart AAA; and

(b) The device is permanently labeled as certified, or in the case of a hydronic heater is permanently labeled as a Phase 1 or Phase 2 emission level qualified model, with a label authorized by DEQ or EPA.

(2) Exempt devices. The following are exempt from this rule:

(a) Pellet stoves;

(b) Antique woodstoves;

(c) Cookstoves

(d) Fireplaces;

(e) Masonry heaters;

(f) Central, wood-fired furnaces;

(g) Saunas; and

(h) Boilers subject to 40 CFR part 63, subpart DDDDD or subpart JJJJJ, as in effect on June 22, 2011 that are:

(A) Located at a source that is required to obtain a permit under OAR chapter 340, division 216 (Air Contaminant Discharge Permits) or OAR chapter 340, division 218 (Oregon Title V Operating Permits); or

(B) Registered with the Department under OAR 340-210-0100(3)(b).

(3) Exempt consumer transactions. Consumer transactions are exempt from this rule, if the consumer:

(a) Sells a used solid fuel burning device to a person in the business of reusing, reclaiming or recycling scrap metal and the person destroys the device; or

(b) Remits a used device to a retailer for a price reduction on a new residential heating system.

(4) Prohibited label alteration. No person may alter DEQ or EPA authorized labels.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468A.460 - 468A.515

Hist.: DEQ 2-2011, f. 3-10-11, cert. ef. 3-15-11; DEQ 7-2011(Temp), f. & cert. ef. 6-24-11 thru 12-19-11

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**Rule Caption:** Amendments to Oregon Water Quality Standards for Arsenic.

**Adm. Order No.:** DEQ 8-2011

**Filed with Sec. of State:** 6-30-2011

**Certified to be Effective:** 6-30-11

**Notice Publication Date:** 9-1-2010

**Rules Amended:** 340-041-0033

**Subject:** The rule revises Oregon's water quality criteria for arsenic contained in Table 20 and incorporated into rule by reference in OAR 340-041-0033(2). In addition, the rule adds an "arsenic reduction policy" in OAR 340-041-0033(4).

DEQ and EPA use Oregon's water quality standards to implement Clean Water Act programs, which include assessing Oregon's water quality and developing and enforcing wastewater discharge permits, Total Maximum Daily Loads and water quality certifications.

**Rules Coordinator:** Maggie Vandehey — (503) 229-6878

## 340-041-0033

### Toxic Substances

(1) Toxic substances may not be introduced above natural background levels in waters of the state in amounts, concentrations, or combinations that may be harmful, may chemically change to harmful forms in the envi-

ronment, or may accumulate in sediments or bioaccumulate in aquatic life or wildlife to levels that adversely affect public health, safety, or welfare or aquatic life, wildlife, or other designated beneficial uses.

(2) Levels of toxic substances in waters of the state may not exceed the applicable criteria listed in Tables 20, 33A, and 33B. Tables 33A and 33B, adopted on May 20, 2004, update Table 20 as described in this section.

(a) Each value for criteria in Table 20 is effective until the corresponding value in Tables 33A or 33B becomes effective.

(A) Each value in Table 33A is effective on February 15, 2005, unless EPA has disapproved the value before that date. If a value is subsequently disapproved, any corresponding value in Table 20 becomes effective immediately. Values that are the same in Tables 20 and 33A remain in effect.

(B) Each value in Table 33B is effective upon EPA approval.

(b) The arsenic criteria in Table 20 established by this rule do not become applicable for purposes of ORS chapter 468B or the federal Clean Water Act unless and until they are approved by EPA pursuant to 40 CFR 131.21 (4/27/2000).

(c) The department will note the effective date for each value in Tables 20, 33A, and 33B as described in this section.

(3) To establish permit or other regulatory limits for toxic substances for which criteria are not included in Tables 20, 33A, or 33B, the department may use the guidance values in Table 33C, public health advisories, and other published scientific literature. The department may also require or conduct bio-assessment studies to monitor the toxicity to aquatic life of complex effluents, other suspected discharges, or chemical substances without numeric criteria.

(4) Arsenic Reduction Policy: The inorganic arsenic criterion for the protection of human health from the combined consumption of organisms and drinking water is 2.1 micrograms per liter. While this criterion is protective of human health and more stringent than the federal maximum contaminant level (MCL) for arsenic in drinking water, which is 10 micrograms per liter, it nonetheless is based on a higher risk level than the Commission has used to establish other human health criteria. This higher risk level recognizes that much of the risk is due to naturally high levels of inorganic arsenic in Oregon's waterbodies. In order to maintain the lowest human health risk from inorganic arsenic in drinking water, the Commission has determined that it is appropriate to adopt the following policy to limit the human contribution to that risk.

(a) The arsenic reduction policy established by this rule section does not become applicable for purposes of ORS chapter 468B or the federal Clean Water Act unless and until the numeric arsenic criteria established by this rule are approved by EPA pursuant to 40 CFR 131.21 (4/27/2000).

(b) It is the policy of the Commission that the addition of inorganic arsenic from new or existing anthropogenic sources to waters of the state within a surface water drinking water protection area be reduced the maximum amount feasible. The requirements of this rule section (OAR 340-041-0033(4)) apply to sources that discharge to surface waters of the state with an ambient inorganic arsenic concentration equal to or lower than the applicable numeric inorganic arsenic criteria for the protection of human health.

(c) The following definitions apply to this section (OAR 340-041-0033(4)):

(A) "Add inorganic arsenic" means to discharge a net mass of inorganic arsenic from a point source (the mass of inorganic arsenic discharged minus the mass of inorganic arsenic taken into the facility from a surface water source).

(B) A "surface water drinking water protection area," for the purpose of this section, means an area delineated as such by DEQ under the source water assessment program of the federal Safe Drinking Water Act, 42 U.S.C. § 300j 13. The areas are delineated for the purpose of protecting public or community drinking water supplies that use surface water sources. These delineations can be found at DEQ's drinking water program website.

(C) "Potential to significantly increase inorganic arsenic concentrations in the public drinking water supply source water" means:

(i) To increase the concentration of inorganic arsenic in the receiving water for a discharge by 10 percent or more after mixing with the harmonic mean flow of the receiving water; or

(ii) As an alternative, if sufficient data are available, the discharge will increase the concentration of inorganic arsenic in the surface water intake water of a public water system by 0.021 micrograms per liter or more based on a mass balance calculation.

(d) Following the effective date of this rule, applications for an individual NPDES permit or permit renewal received from industrial discharg-

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ers located in a surface water drinking water protection area and identified by DEQ as likely to add inorganic arsenic to the receiving water must include sufficient data to enable DEQ to determine whether:

(A) The discharge in fact adds inorganic arsenic; and

(B) The discharge has the potential to significantly increase inorganic arsenic concentrations in the public drinking water supply source water.

(e) Where DEQ determines that both conditions in subsection (d) of this section (4) are true, the industrial discharger must develop an inorganic arsenic reduction plan and propose all feasible measures to reduce its inorganic arsenic loading to the receiving water. The proposed plan, including proposed measures, monitoring and reporting requirements, and a schedule for those actions, will be described in the fact sheet and incorporated into the source's NPDES permit after public comment and DEQ review and approval. In developing the plan, the source must:

(A) Identify how much it can minimize its inorganic arsenic discharge through pollution prevention measures, process changes, wastewater treatment, alternative water supply (for groundwater users) or other possible pollution prevention and/or control measures;

(B) Evaluate the costs, feasibility and environmental impacts of the potential inorganic arsenic reduction and control measures;

(C) Estimate the predicted reduction in inorganic arsenic and the reduced human health risk expected to result from the control measures;

(D) Propose specific inorganic arsenic reduction or control measures, if feasible, and an implementation schedule; and

(E) Propose monitoring and reporting requirements to document progress in plan implementation and the inorganic arsenic load reductions.

(f) In order to implement this section, DEQ will develop the following information and guidance within 120 days of the effective date of this rule and periodically update it as warranted by new information:

(A) A list of industrial sources or source categories, including industrial stormwater and sources covered by general permits, that are likely to add inorganic arsenic to surface waters of the State.

(i) For industrial sources or source categories permitted under a general permit that have been identified by DEQ as likely sources of inorganic arsenic, DEQ will evaluate options for reducing inorganic arsenic during permit renewal or evaluation of Stormwater Pollution Control Plans.

(B) Quantitation limits for monitoring inorganic arsenic concentrations.

(C) Information and guidance to assist sources in estimating, pursuant to paragraph (d)(C) of this section, the reduced human health risk expected to result from inorganic arsenic control measures based on the most current EPA risk assessment.

(g) It is the policy of the Commission that landowners engaged in agricultural or development practices on land where pesticides, fertilizers, or soil amendments containing arsenic are currently being or have previously been applied, implement conservation practices to minimize the erosion and runoff of inorganic arsenic to waters of the State or to a location where such material could readily migrate into waters of the State.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 468.020, 468B.030, 468B.035 & 468B.048

Stats. Implemented: ORS 468B.030, 468B.035 & 468B.048

Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03; DEQ 3-2004, f. & cert. ef. 5-28-04; DEQ 17-2010, f. & cert. ef. 12-21-10; DEQ 8-2011, f. & cert. ef. 6-30-11

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**Rule Caption:** This rulemaking increases water quality permit fees by two percent to address increasing permit program costs, and creates a construction stormwater permit fee for sites less than one acre.

**Adm. Order No.:** DEQ 9-2011

**Filed with Sec. of State:** 6-30-2011

**Certified to be Effective:** 7-1-11

**Notice Publication Date:** 3-1-2011

**Rules Amended:** 340-045-0075, 340-071-0140

**Subject:** This amendment to Oregon Administrative Rules increases water quality permit fees. The rulemaking increases fees for all National Pollution Discharge Elimination System and Water Pollution Control Facility permits by two percent, except suction dredge (700-PM) general permits. The rulemaking also creates a \$230 fee for construction stormwater permits covering sites less than one acre, that are part of a common plan of development disturbing one or more acres.

**Rules Coordinator:** Maggie Vandehey—(503) 229-6878

## 340-045-0075

### Permit Fee Schedule

(1) The fee schedule for onsite sewage disposal system permits, including WPCF permits, is found in OAR chapter 340, division 071.

(2) The Department has established fees for various industrial, domestic and general permit categories. The industrial and domestic permit categories and fees are listed in Tables 70B and 70C. The general permit categories are defined in OAR 340-045-0033 and the fees are listed in Table 70G.

(3) The Department must consider the following criteria when classifying a facility for determining applicable fees. For industrial sources that discharge to surface waters, discharge flowrate refers to the system design capacity. For industrial sources that do not discharge to surface waters, discharge flow refers to the total annual flow divided by 365:

(a) Tier 1 industry. A facility is classified as a Tier 1 industry if the facility:

(A) Discharges at a flowrate that is greater than or equal to 1 mgd; or

(B) Discharges large biochemical oxygen demand loads; or

(C) Is a large metals facility; or

(D) Has significant toxic discharges; or

(E) Has a treatment system that will have a significant adverse impact on the receiving stream if not operated properly; or

(F) Needs special regulatory control, as determined by the Department.

(b) Tier 1 domestic facility. A facility is classified as a Tier 1 domestic facility if the facility:

(A) Has a dry weather design flow of 1 mgd or greater; or

(B) Serves an industry that can have a significant impact on the treatment system.

(c) Tier 2 industry or domestic facility: does not meet Tier 1 qualifying factors.

(4) New Permit Application Fee. Unless waived by this rule, the applicable new permit application fee listed in Table 70A, 70C or 70G (available on the Department's website or upon request) must be submitted with each application. The amount of the fee is based on the facility category and type of permit (e.g., individual vs. general).

(5) Permit Modification Fee. Permit modification fees are listed in Tables 70A and 70C (available on the Department's website or upon request). They vary with the type of permit, the type of modification and the timing of modification as follows:

(a) Modification at time of permit renewal:

(A) Major Modification — involves an increase in effluent limitations or any other change that involves significant analysis by the Department;

(B) Minor Modification — does not involve significant analysis by the Department.

(b) Modification prior to permit renewal:

(A) Major Modification — involves an increase in effluent limitations or any other change that involves significant analysis by the Department. A permittee requesting a significant modification to their permit may be required by the Department to enter into an agreement to pay for these services according to ORS 468.073. ORS 468.073 allows the Department "to expedite or enhance a regulatory process by contracting for services, hiring additional staff or covering costs of activities not otherwise provided during the ordinary course of Department business;"

(B) Minor Modification — does not involve significant analysis by the Department.

(6) Annual fees. Applicable annual fees for General and Industrial permit holders may be found in Tables 70G and 70B (available on the Department's website or upon request). Annual fees for domestic sources may also be found in Table 70C (available on the Department's website or upon request), and consist of the following:

(a) Base annual fee. This is based on the type of treatment system and the dry weather design flow;

(b) Population-based fee. A permit holder with treatment systems other than Type F (septage alkaline stabilization facilities) must pay a population-based fee. The applicable fee may be found in Table 70D (available on the Department's website or upon request);

(c) Pretreatment fee. A source required by the Department to administer a pretreatment program pursuant to federal pretreatment program regulations (40CFR, Part 403; January 29, 1981 and amendments thereto) must pay an additional annual fee plus a fee for each significant industrial user specified in their annual report for the previous year. The applicable fee may be found in Table 70E (available on the Department's website or upon request).



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(7) Technical Activities Fee. Technical activity fees are listed in Tables 70F and 70H (available on the Department's website or upon request). They are categorized as follows:

(a) All Permits. A permittee must pay a fee for NPDES and WPCF permit-related technical activities. A fee will be charged for initial submittal of engineering plans and specifications. Fees will not be charged for revisions and re-submittals of engineering plans and specifications or for facilities plans, design studies, reports, change orders, or inspections;

(b) General Permits. A permittee must pay the technical activity fee shown in Table 70H (available on the Department's website or upon request) when the following activities are required for application review:

- (A) Disposal system plan review;
- (B) Site inspection and evaluation.

(8) For permits administered by the Oregon Department of Agriculture, the following fees are applicable until superseded by a fee schedule established by the Oregon Department of Agriculture:

(a) WPCF and NPDES General Permits #800 for Confined Animal Feeding Operations Filing Fee — \$50;

(b) Individual Permits:

(A) Filing Fee — \$50;

(B) New Applications — \$6,280;

(C) Permit Renewals (including request for effluent limit modifications) — \$3,140;

(D) Permit Renewals (without request for effluent limit modifications) — \$1,416;

(E) Permit Modifications (involving increase in effluent limit modifications) — \$3,140;

(F) Permit Modifications (not involving an increase in effluent limitations) — \$500;

(G) Annual Compliance Determination Fee for dairies and other confined feeding operations — \$705;

(H) Annual Compliance Determination Fee for facilities not elsewhere classified with disposal of process wastewater — \$1,885;

(I) Annual Compliance Determination Fee for facilities not elsewhere classified that dispose of non-process wastewater (e.g., small cooling water discharges, boiler blowdown, filter backwash, log ponds) — \$1,180.

(c) Annual Compliance Determination Fee for facilities that dispose of wastewater only by evaporation from watertight ponds or basins — \$705.

(9) A surcharge in the amount listed below is imposed on municipalities that are permittees as defined in 2007 Oregon Laws chapter 696, section 2. The surcharge is imposed to defray the cost of conducting and administering the study of persistent pollutants discharged in the State of Oregon required under 2007 Oregon Laws chapter 696, section 3. A permittee subject to the surcharge must pay one half of the surcharge on or before July 15, 2008 and the other half of the surcharge on or before July 15, 2009.

Each municipality will pay a surcharge based on a dry weather design flow in millions of gallons per day (mgd) as follows:  
less than 5 mgd = \$6,975  
5 mgd to 9.9 mgd = \$13,950  
10 mgd and greater = \$20,925

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 468.020, 468B.020 & 468B.035

Stats. Implemented: ORS 468.065, 468B.015, 468B.035 & 468B.050

Hist.: DEQ 113, f. & ef. 5-10-76; DEQ 129, f. & ef. 3-16-77; DEQ 31-1979, f. & ef. 10-1-79; DEQ 18-1981, f. & ef. 7-13-81; DEQ 12-1983, f. & ef. 6-2-83; DEQ 9-1987, f. & ef. 6-3-87; DEQ 18-1990, f. & cert. ef. 6-7-90; DEQ 10-1991, f. & cert. ef. 7-1-91; DEQ 9-1992, f. & cert. ef. 6-5-92; DEQ 10-1992, f. & cert. ef. 6-9-92; DEQ 30-1992, f. & cert. ef. 12-18-92; DEQ 20-1994, f. & cert. ef. 10-7-94; DEQ 4-1998, f. & cert. ef. 3-30-98; Administrative correction 10-22-98; DEQ 15-2000, f. & cert. ef. 10-11-00; DEQ 2-2002, f. & cert. ef. 2-12-02; DEQ 7-2004, f. & cert. ef. 8-3-04; DEQ 5-2005, f. & cert. ef. 7-1-05; DEQ 11-2006, f. & cert. ef. 8-15-06; DEQ 5-2007, f. & cert. ef. 7-3-07; DEQ 8-2008, f. 6-27-08, cert. ef. 7-1-08; DEQ 7-2010, f. 8-27-10, cert. ef. 9-1-10; DEQ 9-2011, f. & cert. ef. 6-30-11

## 340-071-0140

### Onsite System Fees

(1) This rule establishes the fees for site evaluations, permits, reports, variances, licenses, and other services the department provides under this division.

(2) Site evaluation and existing system evaluation fees are listed in **Table 9A**.

(3) Permitting fees for systems not subject to WPCF permits are listed in **Table 9B** and **Table 9C**.

(4) WPCF permit fees. Fees in this section apply to WPCF permits issued pursuant to OAR 340-071-0162. WPCF permit fees are listed in **Table 9D**.

(5) Innovative or Alternative Technology or Material Review fees are listed in **Table 9F**.

(6) Material Plan Review fees are listed in **Table 9F**.

(7) Sewage Disposal Service License and Truck Inspection fees are listed in **Table 9E**.

(8) Contract county fee schedules.

(a) Each county having an agreement with the department under ORS 454.725 must adopt a fee schedule for services rendered and permits issued. The county fee schedule may not include the department's surcharge established in section (9) of this rule unless identified as a department surcharge.

(b) A copy of the fee schedule and any subsequent amendments to the schedule must be submitted to the department.

(c) Fees may not exceed actual costs for efficiently conducted services.

(9) Department surcharge.

(a) To offset a portion of the administrative and program oversight costs of the statewide onsite wastewater management program, the department and contract counties must levy a surcharge for each site evaluation, report permit, and other activity for which an application is required in this division. The surcharge fee is listed in Table 9F. This surcharge does not apply to sewage disposal service license applications, pumper truck inspections, annual report evaluation fees, or certification of installers or maintenance providers.

(b) Proceeds from surcharges collected by the department and contract counties must be accounted for separately. Each contract county must forward the proceeds to the department in accordance with its agreement with the department.

(10) Refunds. The department may refund all or a portion of a fee accompanying an application if the applicant withdraws the application before any field work or other substantial review of the application has been done.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 454.625, 468.020 & 468.065(2)

Stats. Implemented: ORS 454.745, 468.065 & 468B.050

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 19-1981, f. 7-23-81, ef. 7-27-81; DEQ 5-1982, f. & ef. 3-9-82; DEQ 8-1983, f. & ef. 5-25-83; DEQ 9-1984, f. & ef. 5-29-84; DEQ 13-1986, f. & ef. 6-18-86; DEQ 15-1986, f. & ef. 8-6-86; DEQ 6-1988, f. & cert. ef. 3-17-88; DEQ 11-1991, f. & cert. ef. 7-3-91; DEQ 18-1994, f. 7-28-94, cert. ef. 8-1-94; DEQ 27-1994, f. & cert. ef. 11-15-94; DEQ 12-1997, f. & cert. ef. 6-19-97; Administrative correction 1-28-98; DEQ 8-1998, f. & cert. ef. 6-5-98; DEQ 16-1999, f. & cert. ef. 12-29-99; Administrative correction 2-16-00; DEQ 9-2001(Temp), f. & cert. ef. 7-16-01 thru 12-28-01; DEQ 14-2001, f. & cert. ef. 12-26-01; DEQ 2-2002, f. & cert. ef. 2-12-02; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05; DEQ 7-2008, f. 6-27-08, cert. ef. 7-1-08; DEQ 10-2009, f. 12-28-09, cert. ef. 1-4-10; DEQ 7-2010, f. 8-27-10, cert. ef. 9-1-10; DEQ 9-2011, f. & cert. ef. 6-30-11

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**Rule Caption:** Revised Water Quality Standards for Human Health Toxic Pollutants and Revised Water Quality Standards Implementation Policies.

**Adm. Order No.:** DEQ 10-2011

**Filed with Sec. of State:** 7-13-2011

**Certified to be Effective:** 7-13-11

**Notice Publication Date:** 1-1-2011

**Rules Adopted:** 340-041-0059, 340-045-0105

**Rules Amended:** 340-041-0007, 340-041-0009, 340-041-0033, 340-041-0061, 340-042-0040, 340-042-0080

**Subject:** DEQ uses Oregon's water quality standards to implement Clean Water Act programs, which includes assessing Oregon's water quality and developing and enforcing wastewater discharge permits, Total Maximum Daily loads and water quality certifications. The proposed rules amend Oregon's water quality standards for toxic pollutants and other water quality standards and policies related to the application and implementation of the water quality standards in Clean Water Act and state nonpoint source control programs.

Amended Rules:

**Nonpoint source pollution** (OAR 340-041-0007 and 340-041-0061): Revised water quality standards implementation rules pertaining to agriculture and forestry to make DEQ's rules consistent with state statutes affecting nonpoint sources of pollution.

**Deletion of existing variance language** (340-041-0061): Deleted existing variance regulatory language in 340-041-0061(2) and adopted a new variance provision in OAR 340-041-0059.

**Typographical error** (340-041-0061): Corrected a typographical error at 340-041-0061(9)(a)(e) discovered during the public comment period that incorrectly cross-referenced the antidegradation policy. The cross-reference should be to 340-041-0004(9), addressing excep-

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tions to the rule, not 340-041-0004(7), the water quality limited waters policy.

**Bacteria** (340-041-0009): Revised a citation in section (10) due to a numbering revision in 340-041-0061(12).

**Human health toxics criteria and establishing site-specific background pollutant criteria** (OAR 340-041-0033): Revised numeric criteria based on an increased fish consumption rate of 175 grams per day. Criteria that are not based on a fish ingestion method are not revised. Additional criteria revisions incorporate EPA's 2002 criteria recommendations, which include added pollutants and revisions to other variables (such as toxicity factors) used to derive some criteria. The rule also specifies that the new criteria become applicable upon approval by the Environmental Protection Agency. In addition, a site-specific background pollutant provision allows a limited increase in the concentration of toxic pollutants present in a discharger's intake water as long as the facility does not discharge added mass load of the pollutant and the ambient water body concentration does not exceed a  $10^{-4}$  (1 in 10,000) risk level value.

**Total maximum daily loads (TMDLs)** (OAR 340-042-0040 and 340-042-0080): Makes DEQ's rules consistent with state statutes to allocate load limits to air and land sources of pollutants in establishing TMDLs.

Adopted Rules:

**Variance provision** (OAR 340-041-0059): Revised rule replaces the variance provision in 340-041-0061(2). This provision specifies procedures and requirements, including a pollutant reduction plan, to obtain a variance from water quality standards. A variance establishes alternate requirements for a discharger when it demonstrates that permit limits based on water quality standards cannot be met based on one of six justification factors. Variances require EPA approval. The rule also specifies that the new criteria become applicable upon approval by the Environmental Protection Agency.

**Intake credits** (OAR 340-045-0105): New permitting provision that allows DEQ to account for background pollutants that are present in a discharger's intake water and pass through the facility as long as the discharge does not increase the mass or concentration of the pollutant.

In October, 2008, the Environmental Quality Commission directed DEQ to pursue rulemaking to set new water quality standards for toxic pollutants in Oregon based upon an increased fish consumption rate of 175 grams per day. The commission also directed DEQ to propose rule language or develop other implementation strategies to: 1) reduce the adverse impacts of toxic substances in Oregon's waters that are the result of nonpoint source discharges or other sources not subject to permitting, and 2) allow DEQ to implement the standards in an environmentally meaningful and cost-effective manner. The final rules, adopted by the Environmental Quality Commission on June 16, 2011, respond to these EQC directives. The proposed human health toxics criteria revisions correct deficiencies identified by the Environmental Protection Agency in their June 2010 disapproval of the human health criteria adopted by the EQC in June, 2004.

**Rules Coordinator:** Maggie Vandehey—(503) 229-6878

### 340-041-0007

#### Statewide Narrative Criteria

(1) Notwithstanding the water quality standards contained in this Division, the highest and best practicable treatment and/or control of wastes, activities, and flows must in every case be provided so as to maintain dissolved oxygen and overall water quality at the highest possible levels and water temperatures, coliform bacteria concentrations, dissolved chemical substances, toxic materials, radioactivity, turbidities, color, odor, and other deleterious factors at the lowest possible levels.

(2) Where a less stringent natural condition of a water of the State exceeds the numeric criteria set out in this Division, the natural condition supersedes the numeric criteria and becomes the standard for that water body. However, there are special restrictions, described in OAR 340-041-0004(9)(a)(D)(iii), that may apply to discharges that affect dissolved oxygen.

(3) For any new waste sources, alternatives that utilize reuse or disposal with no discharge to public waters must be given highest priority for use wherever practicable. New source discharges may be approved subject to the criteria in OAR 340-041-0004(9).

(4) No discharges of wastes to lakes or reservoirs may be allowed except as provided in section OAR 340-041-0004(9).

(5) Logging and forest management activities must be conducted in accordance with the rules established by the Environmental Quality Commission and must not cause violation of water quality standards. Nonpoint sources of pollution from forest operations on state and private forest lands are subject to best management practices and other control measures established by the Oregon Board of Forestry as provided in ORS 527.765 and 527.770. Forest operations conducted in good faith compliance with best management practices and control measures established under the Forest Practice Act are generally deemed not to cause violations of water quality standards as provided in ORS 527.770. Forest operations are subject to load allocations established under ORS 468B.110 and OAR Division 340-042 to the extent needed to implement the federal Clean Water Act.

(6) Log handling in public waters must conform to current Commission policies and guidelines.

(7) Sand and gravel removal operations must be conducted pursuant to a permit from the Division of State Lands and separated from the active flowing stream by a watertight berm wherever physically practicable. Recirculation and reuse of process water must be required wherever practicable. Discharges or seepage or leakage losses to public waters may not cause a violation of water quality standards or adversely affect legitimate beneficial uses.

(8) Road building and maintenance activities must be conducted in a manner so as to keep waste materials out of public waters and minimize erosion of cut banks, fills, and road surfaces.

(9) In order to improve controls over nonpoint sources of pollution, federal, State, and local resource management agencies will be encouraged and assisted to coordinate planning and implementation of programs to regulate or control runoff, erosion, turbidity, stream temperature, stream flow, and the withdrawal and use of irrigation water on a basin-wide approach so as to protect the quality and beneficial uses of water and related resources. Such programs may include, but not be limited to, the following:

(a) Development of projects for storage and release of suitable quality waters to augment low stream flow;

(b) Urban runoff control to reduce erosion;

(c) Possible modification of irrigation practices to reduce or minimize adverse impacts from irrigation return flows;

(d) Stream bank erosion reduction projects; and

(e) Federal water quality restoration plans.

(10) The development of fungi or other growths having a deleterious effect on stream bottoms, fish or other aquatic life, or that are injurious to health, recreation, or industry may not be allowed;

(11) The creation of tastes or odors or toxic or other conditions that are deleterious to fish or other aquatic life or affect the potability of drinking water or the palatability of fish or shellfish may not be allowed;

(12) The formation of appreciable bottom or sludge deposits or the formation of any organic or inorganic deposits deleterious to fish or other aquatic life or injurious to public health, recreation, or industry may not be allowed;

(13) Objectionable discoloration, scum, oily sheens, or floating solids, or coating of aquatic life with oil films may not be allowed;

(14) Aesthetic conditions offensive to the human senses of sight, taste, smell, or touch may not be allowed;

(15) Radioisotope concentrations may not exceed maximum permissible concentrations (MPC's) in drinking water, edible fishes or shellfishes, wildlife, irrigated crops, livestock and dairy products, or pose an external radiation hazard;

(16) Minimum Design Criteria for Treatment and Control of Wastes. Except as provided in OAR 340-041-0101 through 340-041-0350, and subject to the implementation requirements set forth in OAR 340-041-0061, prior to discharge of any wastes from any new or modified facility to any waters of the State, such wastes must be treated and controlled in facilities designed in accordance with the following minimum criteria.

(a) In designing treatment facilities, average conditions and a normal range of variability are generally used in establishing design criteria. A facility once completed and placed in operation should operate at or near the design limit most of the time but may operate below the design criteria limit at times due to variables which are unpredictable or uncontrollable. This is particularly true for biological treatment facilities. The actual oper-

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ating limits are intended to be established by permit pursuant to ORS 468.740 and recognize that the actual performance level may at times be less than the design criteria.

(A) Sewage wastes:

(i) Effluent BOD concentrations in mg/l, divided by the dilution factor (ratio of receiving stream flow to effluent flow) may not exceed one unless otherwise approved by the Commission;

(ii) Sewage wastes must be disinfected, after treatment, equivalent to thorough mixing with sufficient chlorine to provide a residual of at least 1 part per million after 60 minutes of contact time unless otherwise specifically authorized by permit;

(iii) Positive protection must be provided to prevent bypassing raw or inadequately treated sewage to public waters unless otherwise approved by the Department where elimination of inflow and infiltration would be necessary but not presently practicable; and

(iv) More stringent waste treatment and control requirements may be imposed where special conditions make such action appropriate.

(B) Industrial wastes:

(i) After maximum practicable in-plant control, a minimum of secondary treatment or equivalent control (reduction of suspended solids and organic material where present in significant quantities, effective disinfection where bacterial organisms of public health significance are present, and control of toxic or other deleterious substances);

(ii) Specific industrial waste treatment requirements may be determined on an individual basis in accordance with the provisions of this plan, applicable federal requirements, and the following:

(I) The uses that are or may likely be made of the receiving stream;

(II) The size and nature of flow of the receiving stream;

(III) The quantity and quality of wastes to be treated; and

(IV) The presence or absence of other sources of pollution on the same watershed.

(iii) Where industrial, commercial, or agricultural effluents contain significant quantities of potentially toxic elements, treatment requirements may be determined utilizing appropriate bioassays;

(iv) Industrial cooling waters containing significant heat loads must be subjected to off-stream cooling or heat recovery prior to discharge to public waters;

(v) Positive protection must be provided to prevent bypassing of raw or inadequately treated industrial wastes to any public waters;

(vi) Facilities must be provided to prevent and contain spills of potentially toxic or hazardous materials.

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048

Stats. Implemented: ORS 468B.030, 468B.035, 468B.048

Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03; DEQ 2-2007, f. & cert. ef. 3-15-07; DEQ 10-2011, f. & cert. ef. 7-13-11

### 340-041-0009

#### Bacteria

(1) Numeric Criteria: Organisms of the coliform group commonly associated with fecal sources (MPN or equivalent membrane filtration using a representative number of samples) may not exceed the criteria described in paragraphs (a) and (b) of this paragraph:

(a) Freshwaters and Estuarine Waters Other than Shellfish Growing Waters:

(A) A 30-day log mean of 126 E. coli organisms per 100 milliliters, based on a minimum of five (5) samples;

(B) No single sample may exceed 406 E. coli organisms per 100 milliliters.

(b) Marine Waters and Estuarine Shellfish Growing Waters: A fecal coliform median concentration of 14 organisms per 100 milliliters, with not more than ten percent of the samples exceeding 43 organisms per 100 ml.

(2) Raw Sewage Prohibition: No sewage may be discharged into or in any other manner be allowed to enter the waters of the State, unless such sewage has been treated in a manner approved by the Department or otherwise allowed by these rules;

(3) Animal Waste: Runoff contaminated with domesticated animal wastes must be minimized and treated to the maximum extent practicable before it is allowed to enter waters of the State;

(4) Bacterial pollution or other conditions deleterious to waters used for domestic purposes, livestock watering, irrigation, bathing, or shellfish propagation, or otherwise injurious to public health may not be allowed;

(5) Effluent Limitations for Bacteria: Except as allowed in subsection (c) of this section, upon NPDES permit renewal or issuance, or upon request for a permit modification by the permittee at an earlier date, effluent discharges to freshwaters, and estuarine waters other than shellfish growing waters may not exceed a monthly log mean of 126 E. coli organ-

isms per 100 ml. No single sample may exceed 406 E. coli organisms per 100 ml. However, no violation will be found, for an exceedance if the permittee takes at least five consecutive re-samples at four-hour intervals beginning as soon as practicable (preferably within 28 hours) after the original sample was taken and the log mean of the five re-samples is less than or equal to 126 E. coli. The following conditions apply:

(a) If the Department finds that re-sampling within the timeframe outlined in this section would pose an undue hardship on a treatment facility, a more convenient schedule may be negotiated in the permit, provided that the permittee demonstrates that the sampling delay will result in no increase in the risk to water contact recreation in waters affected by the discharge;

(b) The in-stream criterion for chlorine listed in Table 20 must be met at all times outside the assigned mixing zone;

(c) For sewage treatment plants that are authorized to use recycled water pursuant to OAR 340, division 55, and that also use a storage pond as a means to dechlorinate their effluent prior to discharge to public waters, effluent limitations for bacteria may, upon request by the permittee, be based upon appropriate total coliform limits as required by OAR 340, division 55:

(i) Class C limitations: No two consecutive samples may exceed 240 total coliform per 100 milliliters.

(ii) Class A and Class B limitations: No single sample may exceed 23 total coliform per 100 milliliters.

(iii) No violation will be found for an exceedance under this paragraph if the permittee takes at least five consecutive re-samples at four hour intervals beginning as soon as practicable (preferably within 28 hours) after the original sample(s) were taken; and in the case of Class C recycled water, the log mean of the five re-samples is less than or equal to 23 total coliform per 100 milliliters or, in the case of Class A and Class B recycled water, if the log mean of the five re-samples is less than or equal to 2.2 total coliform per 100 milliliters.

(6) Sewer Overflows in winter: Domestic waste collection and treatment facilities are prohibited from discharging raw sewage to waters of the State during the period of November 1 through May 21, except during a storm event greater than the one-in-five-year, 24-hour duration storm. However, the following exceptions apply:

(a) The Commission may on a case-by-case basis approve a bacteria control management plan to be prepared by the permittee, for a basin or specified geographic area which describes hydrologic conditions under which the numeric bacteria criteria would be waived. These plans will identify the specific hydrologic conditions, identify the public notification and education processes that will be followed to inform the public about an event and the plan, describe the water quality assessment conducted to determine bacteria sources and loads associated with the specified hydrologic conditions, and describe the bacteria control program that is being implemented in the basin or specified geographic area for the identified sources;

(b) Facilities with separate sanitary and storm sewers existing on January 10, 1996, and which currently experience sanitary sewer overflows due to inflow and infiltration problems, must submit an acceptable plan to the Department at the first permit renewal, which describes actions that will be taken to assure compliance with the discharge prohibition by January 1, 2010. Where discharges occur to a receiving stream with sensitive beneficial uses, the Department may negotiate a more aggressive schedule for discharge elimination;

(c) On a case-by-case basis, the beginning of winter may be defined as October 15, if the permittee so requests and demonstrates to the Department's satisfaction that the risk to beneficial uses, including water contact recreation, will not be increased due to the date change.

(7) Sewer Overflows in summer: Domestic waste collection and treatment facilities are prohibited from discharging raw sewage to waters of the State during the period of May 22 through October 31, except during a storm event greater than the one-in-ten-year, 24-hour duration storm. The following exceptions apply:

(a) For facilities with combined sanitary and storm sewers, the Commission may on a case-by-case basis approve a bacteria control management plan such as that described in subsection (6)(a) of this rule;

(b) On a case-by-case basis, the beginning of summer may be defined as June 1 if the permittee so requests and demonstrates to the Department's satisfaction that the risk to beneficial uses, including water contact recreation, will not be increased due to the date change;

(c) For discharge sources whose permit identifies the beginning of summer as any date from May 22 through May 31: If the permittee demonstrates to the Department's satisfaction that an exceedance occurred between May 21 and June 1 because of a sewer overflow, and that no



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increase in risk to beneficial uses, including water contact recreation, occurred because of the exceedance, no violation may be triggered, if the storm associated with the overflow was greater than the one-in-five-year, 24-hour duration storm.

(8) Storm Sewers Systems Subject to Municipal NPDES Stormwater Permits: Best management practices must be implemented for permitted storm sewers to control bacteria to the maximum extent practicable. In addition, a collection-system evaluation must be performed prior to permit issuance or renewal so that illicit and cross connections are identified. Such connections must be removed upon identification. A collection system evaluation is not required where the Department determines that illicit and cross connections are unlikely to exist.

(9) Storm Sewers Systems Not Subject to Municipal NPDES Stormwater Permits: A collection system evaluation must be performed of non-permitted storm sewers by January 1, 2005, unless the Department determines that an evaluation is not necessary because illicit and cross connections are unlikely to exist. Illicit and cross-connections must be removed upon identification.

(10) Water Quality Limited for Bacteria: In those water bodies, or segments of water bodies identified by the Department as exceeding the relevant numeric criteria for bacteria in the basin standards and designated as water-quality limited under section 303(d) of the Clean Water Act, the requirements specified in section 11 of this rule and in OAR 340-041-0061(11) must apply.

(11) In water bodies designated by the Department as water-quality limited for bacteria, and in accordance with priorities established by the Department, development and implementation of a bacteria management plan may be required of those sources that the Department determines to be contributing to the problem. The Department may determine that a plan is not necessary for a particular stream segment or segments within a water-quality limited basin based on the contribution of the segment(s) to the problem. The bacteria management plans will identify the technologies, best management practices and/or measures and approaches to be implemented by point and nonpoint sources to limit bacterial contamination. For point sources, their National Pollutant Discharge Elimination System permit is their bacteria management plan. For nonpoint sources, the bacteria management plan will be developed by designated management agencies (DMAs) which will identify the appropriate best management practices or measures and approaches.

Stat. Auth.: ORS 468.020, 468B.030, 468B.035 & 468B.048  
Stats. Implemented: ORS 468B.030, 468B.035 & 468B.048  
Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03; DEQ 6-2008, f. & cert. ef. 5-5-08; DEQ 10-2011, f. & cert. ef. 7-13-11

## 340-041-0033

### Toxic Substances

(1) Amendments in sections (4) and (6) of this rule (OAR 340-041-0033) and associated revisions to Tables 20, 33A, 33B and 40 do not become applicable for purposes of ORS chapter 468B or the federal Clean Water Act unless and until EPA approves the provisions it identifies as water quality standards pursuant to 40 CFR 131.21 (4/27/2000).

(2) Toxic substances may not be introduced above natural background levels in waters of the state in amounts, concentrations, or combinations that may be harmful, may chemically change to harmful forms in the environment, or may accumulate in sediments or bioaccumulate in aquatic life or wildlife to levels that adversely affect public health, safety, or welfare or aquatic life, wildlife, or other designated beneficial uses.

(3) Aquatic Life Criteria. Levels of toxic substances in waters of the state may not exceed the applicable aquatic life criteria listed in Tables 20, 33A, and 33B. Tables 33A and 33B, adopted on May 20, 2004, update Table 20 as described in this section.

(a) Each value for criteria in Table 20 is effective until the corresponding value in Tables 33A or 33B becomes effective.

(A) Each value in Table 33A is effective on February 15, 2005, unless EPA has disapproved the value before that date. If a value is subsequently disapproved, any corresponding value in Table 20 becomes effective immediately. Values that are the same in Tables 20 and 33A remain in effect.

(B) Each value in Table 33B is effective upon EPA approval.

(b) The department will note the effective date for each value in Tables 20, 33A, and 33B as described in this section.

(4) Human Health Criteria. The criteria for waters of the state listed in Table 40 are established to protect Oregonians from potential adverse health effects associated with long-term exposure to toxic substances associated with consumption of fish, shellfish, and water.

(5) To establish permit or other regulatory limits for toxic substances for which criteria are not included in Tables 20, 33A, or 33B, the depart-

ment may use the guidance values in Table 33C, public health advisories, and other published scientific literature. The department may also require or conduct bio-assessment studies to monitor the toxicity to aquatic life of complex effluents, other suspected discharges, or chemical substances without numeric criteria.

(6) Establishing Site-Specific Background Pollutant Criteria: This provision is a performance based water quality standard that results in site-specific human health water quality criteria under the conditions and procedures specified in this rule section. It addresses existing permitted discharges of a pollutant removed from the same body of water. For waterbodies where a discharge does not increase the pollutant's mass and does not increase the pollutant concentration by more than 3%, and where the water body meets a pollutant concentration associated with a risk level of  $1 \times 10^{-4}$ , DEQ concludes that the pollutant concentration continues to protect human health.

(a) Definitions: For the purpose of this section (OAR 340-041-0033(6)):

(A) "Background pollutant concentration" means the ambient water body concentration immediately upstream of the discharge, regardless of whether those pollutants are natural or result from upstream human activity.

(B) An "intake pollutant" is the amount of a pollutant that is present in public waters (including groundwater) as provided in subsection (C), below, at the time it is withdrawn from such waters by the discharger or other facility supplying the discharger with intake water.

(C) "Same body of water": An intake pollutant is considered to be from the "same body of water" as the discharge if the department finds that the intake pollutant would have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee. This finding may be deemed established if:

(i) The background concentration of the pollutant in the receiving water (excluding any amount of the pollutant in the facility's discharge) is similar to that in the intake water;

(ii) There is a direct hydrological connection between the intake and discharge points; and

(I) The department may also consider other site-specific factors relevant to the transport and fate of the pollutant to make the finding in a particular case that a pollutant would or would not have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee.

(II) An intake pollutant from groundwater may be considered to be from the "same body of water" if the department determines that the pollutant would have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee, except that such a pollutant is not from the same body of water if the groundwater contains the pollutant partially or entirely due to past or present human activity, such as industrial, commercial, or municipal operations, disposal actions, or treatment processes.

(iii) Water quality characteristics (e.g., temperature, pH, hardness) are similar in the intake and receiving waters.

(b) Applicability

(A) Site-specific criteria may be established under this rule section only for carcinogenic pollutants.

(B) Site-specific criteria established under this rule section apply in the vicinity of the discharge for purposes of establishing permit limits for the specified permittee.

(C) The underlying waterbody criteria continue to apply for all other Clean Water Act programs.

(D) The site-specific background pollutant criterion will be effective upon department issuance of the permit for the specified permittee.

(E) Any site-specific criteria developed under this procedure will be re-evaluated upon permit renewal.

(c) A site-specific background pollutant criterion may be established where all of the following conditions are met:

(A) The discharger has a currently effective NPDES permit;

(B) The mass of the pollutant discharged to the receiving waterbody does not exceed the mass of the intake pollutant from the same body of water, as defined in section (6)(a)(C) above, and, therefore, does not increase the total mass load of the pollutant in the receiving water body;

(C) The discharger has not been assigned a TMDL wasteload allocation for the pollutant in question;

(D) The permittee uses any feasible pollutant reduction measures available and known to minimize the pollutant concentration in their discharge;

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(E) The pollutant discharge has not been chemically or physically altered in a manner that causes adverse water quality impacts that would not occur if the intake pollutants were left in-stream; and,

(F) The timing and location of the pollutant discharge would not cause adverse water quality impacts that would not occur if the intake pollutant were left in-stream.

(d) The site-specific background pollutant criterion must be the most conservative of the following four values. The procedures deriving these values are described in the sections (6)(e) of this rule.

(A) The projected in-stream pollutant concentration resulting from the current discharge concentration and any feasible pollutant reduction measures under (c)(D) above, after mixing with the receiving stream.

(B) The projected in-stream pollutant concentration resulting from the portion of the current discharge concentration associated with the intake pollutant mass after mixing with the receiving stream. This analysis ensures that there will be no increase in the mass of the intake pollutant in the receiving water body as required by condition (c)(B) above.

(C) The projected in-stream pollutant concentration associated with a 3% increase above the background pollutant concentration as calculated:

(i) For the mainstem Willamette and Columbia Rivers, using 25% of the harmonic mean flow of the waterbody.

(ii) For all other waters, using 100% of the harmonic mean flow or similar critical flow value of the waterbody.

(D) A criterion concentration value representing a human health risk level of  $1 \times 10^{-4}$ . This value is calculated using EPA's human health criteria derivation equation for carcinogens (EPA 2000), a risk level of  $1 \times 10^{-4}$ , and the same values for the remaining calculation variables that were used to derive the underlying human health criterion.

(e) Procedure to derive a site-specific human health water quality criterion to address a background pollutant:

(A) The department will develop a flow-weighted characterization of the relevant flows and pollutant concentrations of the receiving waterbody, effluent and all facility intake pollutant sources to determine the fate and transport of the pollutant mass.

(i) The pollutant mass in the effluent discharged to a receiving waterbody may not exceed the mass of the intake pollutant from the same body of water.

(ii) Where a facility discharges intake pollutants from multiple sources that originate from the receiving waterbody and from other waterbodies, the department will calculate the flow-weighted amount of each source of the pollutant in the characterization.

(iii) Where intake water for a facility is provided by a municipal water supply system and the supplier provides treatment of the raw water that removes an intake water pollutant, the concentration and mass of the intake water pollutant shall be determined at the point where the water enters the water supplier's distribution system.

(B) Using the flow weighted characterization developed in Section (6)(e)(A), the department will calculate the in-stream pollutant concentration following mixing of the discharge into the receiving water. The resultant concentration will be used to determine the conditions in Section (6)(d)(A) and (B).

(C) Using the flow weighted characterization, the department will calculate the in-stream pollutant concentration based on an increase of 3% above background pollutant concentration. The resultant concentration will be used to determine the condition in Section (6)(d)(C).

(i) For the mainstem Willamette and Columbia Rivers, 25% of the harmonic mean flow of the waterbody will be used.

(ii) For all other waters, 100% of the harmonic mean flow or similar critical flow value of the waterbody will be used.

(D) The department will select the most conservative of the following values as the site-specific water quality criterion.

(i) The projected in-stream pollutant concentration described in Section 6(e)(B);

(ii) The in-stream pollutant concentration based on an increase of 3% above background described in Section (6)(e)(C); or

(iii) A water quality criterion based on a risk level of  $1 \times 10^{-4}$ .

(f) Calculation of water quality based effluent limits based on a site-specific background pollutant criterion:

(A) For discharges to receiving waters with a site-specific background pollutant criterion, the department will use the site-specific criterion in the calculation of a numeric water quality based effluent limit.

(B) The department will compare the calculated water quality based effluent limits to any applicable aquatic toxicity or technology based effluent limits and select the most conservative for inclusion in the permit conditions.

(g) In addition to the water quality based effluent limits described in Section (6)(f), the department will calculate a mass-based limit where necessary to ensure that the condition described in Section (6)(c)(B) is met. Where mass-based limits are included, the permit shall specify how compliance with mass-based effluent limitations will be assessed.

(h) The permit shall include a provision requiring the department to consider the re-opening of the permit and re-evaluation of the site-specific background pollutant criterion if new information shows the discharger no longer meets the conditions described in subsections (6)(c) and (e).

(i) Public Notification Requirements.

(A) If the department proposes to grant a site-specific background pollutant criterion, it must provide public notice of the proposal and hold a public hearing. The public notice may be included in the public notification of a draft NPDES permit or other draft regulatory decision that would rely on the criterion and will also be published on the water quality standards website;

(B) The department will publish a list of all site-specific background pollutant criteria approved pursuant to this rule. A criterion will be added to this list within 30 days of its effective date. The list will identify: the permittee; the site-specific background pollutant criterion and the associated risk level; the waterbody to which the criterion applies; the allowable pollutant effluent limit; and how to obtain additional information about the criterion.

(7) Arsenic Reduction Policy: The inorganic arsenic criterion for the protection of human health from the combined consumption of organisms and drinking water is 2.1 micrograms per liter. While this criterion is protective of human health and more stringent than the federal maximum contaminant level (MCL) for arsenic in drinking water, which is 10 micrograms per liter, it nonetheless is based on a higher risk level than the Commission has used to establish other human health criteria. This higher risk level recognizes that much of the risk is due to naturally high levels of inorganic arsenic in Oregon's waterbodies. In order to maintain the lowest human health risk from inorganic arsenic in drinking water, the Commission has determined that it is appropriate to adopt the following policy to limit the human contribution to that risk.

(a) The arsenic reduction policy established by this rule section does not become applicable for purposes of ORS chapter 468B or the federal Clean Water Act unless and until the numeric arsenic criteria established by this rule are approved by EPA pursuant to 40 CFR 131.21 (4/27/2000).

(b) It is the policy of the Commission that the addition of inorganic arsenic from new or existing anthropogenic sources to waters of the state within a surface water drinking water protection area be reduced the maximum amount feasible. The requirements of this rule section (OAR 340-041-0033(4)) apply to sources that discharge to surface waters of the state with an ambient inorganic arsenic concentration equal to or lower than the applicable numeric inorganic arsenic criteria for the protection of human health.

(c) The following definitions apply to this section (OAR 340-041-0033(4)):

(A) "Add inorganic arsenic" means to discharge a net mass of inorganic arsenic from a point source (the mass of inorganic arsenic discharged minus the mass of inorganic arsenic taken into the facility from a surface water source).

(B) A "surface water drinking water protection area," for the purpose of this section, means an area delineated as such by DEQ under the source water assessment program of the federal Safe Drinking Water Act, 42 U.S.C. § 300j 13. The areas are delineated for the purpose of protecting public or community drinking water supplies that use surface water sources. These delineations can be found at DEQ's drinking water program website.

(C) "Potential to significantly increase inorganic arsenic concentrations in the public drinking water supply source water" means:

(i) to increase the concentration of inorganic arsenic in the receiving water for a discharge by 10 percent or more after mixing with the harmonic mean flow of the receiving water; or

(ii) as an alternative, if sufficient data are available, the discharge will increase the concentration of inorganic arsenic in the surface water intake water of a public water system by 0.021 micrograms per liter or more based on a mass balance calculation.

(d) Following the effective date of this rule, applications for an individual NPDES permit or permit renewal received from industrial dischargers located in a surface water drinking water protection area and identified by DEQ as likely to add inorganic arsenic to the receiving water must include sufficient data to enable DEQ to determine whether:

(A) The discharge in fact adds inorganic arsenic; and

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(B) The discharge has the potential to significantly increase inorganic arsenic concentrations in the public drinking water supply source water.

(e) Where DEQ determines that both conditions in subsection (d) of this section (4) are true, the industrial discharger must develop an inorganic arsenic reduction plan and propose all feasible measures to reduce its inorganic arsenic loading to the receiving water. The proposed plan, including proposed measures, monitoring and reporting requirements, and a schedule for those actions, will be described in the fact sheet and incorporated into the source's NPDES permit after public comment and DEQ review and approval. In developing the plan, the source must:

(A) Identify how much it can minimize its inorganic arsenic discharge through pollution prevention measures, process changes, wastewater treatment, alternative water supply (for groundwater users) or other possible pollution prevention and/or control measures;

(B) Evaluate the costs, feasibility and environmental impacts of the potential inorganic arsenic reduction and control measures;

(C) Estimate the predicted reduction in inorganic arsenic and the reduced human health risk expected to result from the control measures;

(D) Propose specific inorganic arsenic reduction or control measures, if feasible, and an implementation schedule; and

(E) Propose monitoring and reporting requirements to document progress in plan implementation and the inorganic arsenic load reductions.

(f) In order to implement this section, DEQ will develop the following information and guidance within 120 days of the effective date of this rule and periodically update it as warranted by new information:

(A) A list of industrial sources or source categories, including industrial stormwater and sources covered by general permits, that are likely to add inorganic arsenic to surface waters of the State.

(i) For industrial sources or source categories permitted under a general permit that have been identified by DEQ as likely sources of inorganic arsenic, DEQ will evaluate options for reducing inorganic arsenic during permit renewal or evaluation of Stormwater Pollution Control Plans.

(B) Quantitation limits for monitoring inorganic arsenic concentrations.

(C) Information and guidance to assist sources in estimating, pursuant to paragraph (d)(C) of this section, the reduced human health risk expected to result from inorganic arsenic control measures based on the most current EPA risk assessment.

(g) It is the policy of the Commission that landowners engaged in agricultural or development practices on land where pesticides, fertilizers, or soil amendments containing arsenic are currently being or have previously been applied, implement conservation practices to minimize the erosion and runoff of inorganic arsenic to waters of the State or to a location where such material could readily migrate into waters of the State.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 468.020, 468B.030, 468B.035 & 468B.048

Stats. Implemented: ORS 468B.030, 468B.035 & 468B.048

Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03; DEQ 3-2004, f. & cert. ef. 5-28-04; DEQ 17-2010, f. & cert. ef. 12-21-10; DEQ 8-2011, f. & cert. ef. 6-30-11; DEQ 10-2011, f. & cert. ef. 7-13-11

## 340-041-0059

### Variations

This rule (OAR 340-041-0059) does not become applicable for purposes of ORS chapter 468B or the federal Clean Water Act unless and until EPA approves the provisions it identifies as water quality standards pursuant to 40 CFR 131.21 (4/27/2000).

(1) Applicability. Subject to the requirements and limitations set out in sections (2) through (7) below, a point source may request a water quality standards variance where it is demonstrated that the source cannot feasibly meet effluent limits sufficient to meet water quality standards. The director of the department will determine whether to issue a variance for a source covered by an existing NPDES permit. The commission will determine whether to issue a variance for a discharger that does not have a currently effective NPDES permit.

(a) The variance applies only to the specified point source permit and pollutant(s); the underlying water quality standard(s) otherwise remains in effect.

(b) The department or commission may not grant a variance if:

(A) The effluent limit sufficient to meet the underlying water quality standard can be attained by implementing technology-based effluent limits required under sections 301(b) and 306 of the federal Clean Water Act, and by implementing cost-effective and reasonable best management practices for nonpoint sources under the control of the discharger; or

(B) The variance would likely jeopardize the continued existence of any threatened or endangered species listed under section 4 of the

Endangered Species Act or result in the destruction or adverse modification of such species' critical habitat; or

(C) The conditions allowed by the variance would result in an unreasonable risk to human health; or

(D) A point source does not have a currently effective NPDES permit, unless the variance is necessary to:

(i) Prevent or mitigate a threat to public health or welfare;

(ii) Allow a water quality or habitat restoration project that may cause short term water quality standards exceedances, but will result in long term water quality or habitat improvement that enhances the support of aquatic life uses;

(iii) Provide benefits that outweigh the environmental costs of lowering water quality. This analysis is comparable to that required under the antidegradation regulation contained in OAR-041-0004(6)(b); or

(E) The information and demonstration submitted in accordance with section (4) below does not allow the department or commission to conclude that a condition in section (2) has been met.

(2) Conditions to Grant a Variance. Before the commission or department may grant a variance, it must determine that:

(a) No existing use will be impaired or removed as a result of granting the variance and

(b) Attaining the water quality standard during the term of the variance is not feasible for one or more of the following reasons:

(A) Naturally occurring pollutant concentrations prevent the attainment of the use;

(B) Natural, ephemeral, intermittent, or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges to enable uses to be met without violating state water conservation requirements;

(C) Human-caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place;

(D) Dams, diversions, or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the waterbody to its original condition or to operate such modification in a way which would result in the attainment of the use;

(E) Physical conditions related to the natural features of the waterbody, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and unrelated to water quality preclude attainment of aquatic life protection uses; or

(F) Controls more stringent than those required by sections 301(b) and 306 of the federal Clean Water Act would result in substantial and widespread economic and social impact.

(3) Variance Duration.

(a) The duration of a variance must not exceed the term of the NPDES permit. If the permit is administratively extended, the permit effluent limits and any other requirements based on the variance and associated pollutant reduction plan will continue to be in effect during the period of the administrative extension. The department will give priority to NPDES permit renewals for permits containing variances and where a renewal application has been submitted to the director at least one hundred eighty days prior to the NPDES permit expiration date.

(b) When the duration of the variance is less than the term of a NPDES permit, the permittee must be in compliance with the specified effluent limitation sufficient to meet the underlying water quality standard upon the expiration of the variance.

(c) A variance is effective only after EPA approval. The effective date and duration of the variance will be specified in a NPDES permit or order of the commission or department.

(4) Variance Submittal Requirements. To request a variance, a permittee must submit the following information to the department:

(a) A demonstration that attaining the water quality standard for a specific pollutant is not feasible for the requested duration of the variance based on one or more of the conditions found in section (2)(b) of this rule;

(b) A description of treatment or alternative options considered to meet limits based on the applicable underlying water quality standard, and a description of why these options are not technically, economically, or otherwise feasible;

(c) Sufficient water quality data and analyses to characterize ambient and discharge water pollutant concentrations;

(d) Any cost-effective and reasonable best management practices for nonpoint sources under the control of the discharger that addresses the pollutant the variance is based upon;



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(e) A proposed pollutant reduction plan that includes any actions to be taken by the permittee that would result in reasonable progress toward meeting the underlying water quality standard. Such actions may include proposed pollutant offsets or trading or other proposed pollutant reduction activities, and associated milestones for implementing these measures. Pollutant reduction plans will be tailored to address the specific circumstances of each facility and to the extent pollutant reduction can be achieved; and

(f) If the discharger is a publicly owned treatment works, a demonstration of the jurisdiction's legal authority (such as a sewer use ordinance) to regulate the pollutant for which the variance is sought. The jurisdiction's legal authority must be sufficient to control potential sources of that pollutant that discharge into the jurisdiction's sewer collection system.

(5) Variance Permit Conditions. Effluent limits in the discharger's permit will be based on the variance and not the underlying water quality standard, so long as the variance remains effective. The department must establish and incorporate into the discharger's NPDES permit all conditions necessary to implement and enforce an approved variance and associated pollutant reduction plan. The permit must include, at a minimum, the following requirements:

(a) An interim concentration based permit limit or requirement representing the best achievable effluent quality based on discharge monitoring data and that is no less stringent than that achieved under the previous permit. For a new discharger, the permit limit will be calculated based on best achievable technology;

(b) A requirement to implement any pollutant reduction actions approved as part of a pollutant reduction plan submitted in accordance with section (4)(e) above and to make reasonable progress toward attaining the underlying water quality standard(s);

(c) Any studies, effluent monitoring, or other monitoring necessary to ensure compliance with the conditions of the variance; and

(d) An annual progress report to the department describing the results of any required studies or monitoring during the reporting year and identifying any impediments to reaching any specific milestones stated in the variance.

(6) Public Notification Requirements.

(a) If the department proposes to grant a variance, it must provide public notice of the proposal and hold a public hearing. The public notice may be included in the public notification of a draft NPDES permit or other draft regulatory decision that would rely on the variance;

(b) The department will publish a list of all variances approved pursuant to this rule. Newly approved variances will be added to this list within 30 days of their effective date. The list will identify: the discharger; the underlying water quality standard addressed by the variance; the waters of the state to which the variance applies; the effective date and duration of the variance; the allowable pollutant effluent limit granted under the variance; and how to obtain additional information about the variance.

(7) Variance Renewals.

(a) A variance may be renewed if:

(A) The permittee makes a renewed demonstration pursuant to section (2) of this rule that attaining the water quality standard continues to be infeasible,

(B) The permittee submits any new or updated information pertaining to any of the requirements of section 4,

(C) The department determines that all conditions and requirements of the previous variance and actions contained in the pollutant reduction plan pursuant to section (5) have been met, unless reasons outside the control of the discharger prevented meeting any condition or requirement, and

(D) All other requirements of this rule have been met.

(b) A variance renewal must be approved by the department director and by EPA.

Stat. Auth.: ORS 468.020, 468B.010, 468B.020, 468B.035, 468B.110

Stats. Implemented: ORS 468B.048

Hist.: DEQ 10-2011, f. & cert. ef. 7-13-11

## 340-041-0061

### Other Implementation of Water Quality Criteria

(1) A waste treatment and disposal facility may not be constructed or operated and wastes may not be discharged to public waters without a permit from the department in accordance with ORS 468B.050.

(2) Plans for all sewage and industrial waste treatment, control, and disposal facilities must be submitted to the department for review and approval prior to construction as required by ORS 468B.055.

(3) Minimum design criteria for waste treatment and control facilities prescribed under this plan and other waste treatment and controls deemed necessary to ensure compliance with the water quality standards contained

in this plan must be provided in accordance with specific permit conditions for those sources or activities for which permits are required and the following implementation program.

(a) For new or expanded waste loads or activities, fully approved treatment or control facilities, or both, must be provided prior to discharge of any wastes from the new or expanded facilities or conduct of the new or expanded activity.

(b) For existing waste loads or activities, additional treatment or control facilities necessary to correct specific unacceptable water quality conditions must be provided in accordance with a specific program and timetable incorporated into the waste discharge permit for the individual discharger or activity. In developing treatment requirements and implementation schedules for existing installations or activities, consideration will be given to the impact upon the overall environmental quality, including air, water, land use, and aesthetics.

(c) Wherever minimum design criteria for waste treatment and control facilities set forth in this plan are more stringent than applicable federal standards and treatment levels currently being provided, upgrading to the more stringent requirements will be deferred until it is necessary to expand or otherwise modify or replace the existing treatment facilities. Such deferral will be acknowledged in the permit for the source.

(d) Where planning, design, or construction of new or modified waste treatment and controls to meet prior applicable state or federal requirements is underway at the time this plan is adopted, such plans, design, or construction may be completed under the requirements in effect when the project was initiated. Upgrading to meet more stringent future requirements will be timed in accordance with section (3) of this rule.

(4) Confined animal feeding operations (CAFOs) are regulated under OAR 340-051-0005 through 340-051-0080 to minimize potential adverse effect on water quality (see also OAR 603-074-0005 through 603-074-0070).

(5) Programs for control of pollution from nonpoint sources when developed by the department or by other agencies pursuant to section 208 of the federal Clean Water Act and approved by the department will be incorporated into this plan by amendment via the same process used to adopt the plan unless other procedures are established by law.

(6) Where minimum requirements of federal law or enforceable regulations are more stringent than specific provisions of this plan, the federal requirements will prevail.

(7) Within the framework of statewide priorities and available resources, the department will monitor water quality within the basin for the purposes of evaluating conformance with the plan and developing information for additions or updates.

(8) The commission recognizes that the potential exists for conflicts between water quality management plans and the land use plans and resource management plans that local governments and other agencies are required to develop. If conflicts develop, the department will meet with the local governments or responsible agencies to resolve the conflicts. Revisions will be presented for adoption via the same process used to adopt the plan unless other specific procedures are established by law.

(9) The department will calculate and include effluent limits specified in pounds per day, which will be the mass load limits for biochemical oxygen demand or carbonaceous biochemical oxygen demand and total suspended solids in National Pollutant Discharge Elimination System permits issued to all sewage treatment facilities. These limits must be calculated as follows.

(a) Except as noted in paragraph (H) of this subsection, the following requirements apply to existing facilities and to facilities receiving departmental approval for engineering plans and specifications for new treatment facilities or treatment facilities expanding the average dry weather treatment capacity before June 30, 1992:

(A) During periods of low stream flows (approximately May 1 through October 31), the monthly average mass load expressed as pounds per day may not exceed the applicable monthly concentration effluent limit times the design average dry weather flow expressed in million gallons per day times 8.34. The weekly average mass load expressed as pounds per day may not exceed the monthly average mass load times 1.5. The daily mass load expressed in pounds per day may not exceed the monthly average mass load times 2.0.

(B) During the period of high stream flows (approximately November 1 through April 30), the monthly average mass load expressed as pounds per day may not exceed the monthly concentration effluent limit times the design average wet weather flow expressed in million gallons per day times 8.34. The weekly average mass load expressed as pounds per day may not exceed the monthly average mass load times 1.5. The daily mass load

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expressed in pounds per day may not exceed the monthly average mass load times 2.0.

(C) On any day that the daily flow to a sewage treatment facility exceeds the lesser hydraulic capacity of the secondary treatment portion of the facility or twice the design average dry weather flow, the daily mass load limit does not apply. The permittee must operate the treatment facility at highest and best practicable treatment and control.

(D) The design average wet weather flow used in calculating mass loads must be approved by the department in accordance with prudent engineering practice and must be based on a facility plan approved by the department, engineering plans and specifications approved by the department, or an engineering evaluation. The permittee must submit documentation describing and supporting the design average wet weather flow with the permit application, application for permit renewal, or modification request or upon request by the department. The design average wet weather flow is defined as the average flow between November 1 and April 30 when the sewage treatment facility is projected to be at design capacity for that portion of the year.

(E) Mass loads assigned as described in paragraphs (B) and (C) of this subsection will not be subject to OAR 340-041-0004(9);

(F) Mass loads as described in this rule will be included in permits upon renewal or upon a request for permit modification.

(G) Within 180 days after permit renewal or modification, a permittee receiving higher mass loads under this rule and having a separate sanitary sewer system must submit to the department for review and approval a proposed program and time schedule for identifying and reducing inflow. The program must include the following:

(i) Identification of all overflow points and verification that sewer system overflows are not occurring up to a 24-hour, five-year storm event or equivalent;

(ii) Monitoring of all pump station overflow points;

(iii) A program for identifying and removing all inflow sources into the permit holder's sewer system over which the permit holder has legal control; and

(iv) For those permit holders not having the necessary legal authority for all portions of the sewer system discharging into the permit holder's sewer system or treatment facility, a program and schedule for gaining legal authority to require inflow reduction and a program and schedule for removing inflow sources.

(H) Within one year after the department's approval of the program, the permit holder must begin implementation of the program.

(I) Paragraphs (A) through (G) of this subsection do not apply to the cities of Athena, Elgin, Adair Village, Halsey, Harrisburg, Independence, Carlton, and Sweet Home. Mass load limits have been individually assigned to these facilities.

(b) For new sewage treatment facilities or treatment facilities expanding the average dry weather treatment capacity and receiving engineering plans and specifications approval from the department after June 30, 1992, the mass load limits must be calculated by the department based on the proposed treatment facility capabilities and the highest and best practicable treatment to minimize the discharge of pollutants.

(c) Mass load limits as defined in this rule may be replaced by more stringent limits if required by waste load allocations established in accordance with a TMDL for treatment facilities discharging to water quality limited streams or if required to prevent or eliminate violations of water quality standards.

(d) If the design average wet weather flow or the hydraulic secondary treatment capacity is not known or has not been approved by the department at the time of permit issuance, the permit must include as interim mass load limits the mass load limits in the previous permit issued to the permit holder for the treatment facility. The permit must also include a requirement that the permit holder submit to the department the design average wet weather flow and hydraulic secondary treatment capacity within 12 months after permit issuance. Upon review and approval of the design flow information, the department will modify the permit and include mass load limits as described in subsection (a) of this section.

(e) Each permit holder with existing sewage treatment facilities otherwise subject to subsection (a) of this section may choose mass load limits calculated as follows:

(A) The monthly average mass load expressed as pounds per day may not exceed the applicable monthly concentration effluent limit times the design average dry weather flow expressed in million gallons per day times 8.34 pounds per gallon.

(B) The weekly average mass load expressed as pounds per day may not exceed the monthly average mass load times 1.5.

(C) The daily mass load expressed in pounds per day may not exceed the monthly average mass load times 2.0. If existing mass load limits are retained by the permit holder, the terms and requirements of subsection (a) of this section do not apply.

(f) The commission may grant exceptions to subsection (a) of this section. In allowing increased discharged loads, the commission must make the findings specified in OAR 340-041-0004(9)(a) for waste loads and the following findings:

(A) Mass loads calculated in subsection (a) of this section cannot be achieved with the existing treatment facilities operated at maximum efficiency at projected design flows; and

(B) There are no practicable alternatives to achieving the mass loads as calculated in subsection (a) of this section.

(10) Forestry on state and private lands. Nonpoint sources of pollution from forest operations on state or private lands are subject to best management practices and other control measures established by the Oregon Department of Forestry under the Forest Practices Act (ORS 527.610 to 527.992). Such forest operations when conducted in good faith compliance with the Forest Practices Act requirements are generally deemed not to cause violations of water quality standards as provided in ORS 527.770. Forest operations on state and private lands are subject to load allocations under ORS 468.110 and OAR 340, Division 42, to the extent necessary to implement the federal Clean Water Act.

(11) In areas subject to the Agricultural Water Quality Management Act, the Oregon Department of Agriculture (ODA) under ORS 568.900 to 568.933 and 561.191 develops and implements agricultural water quality management area plans and rules to prevent and control water pollution from agricultural activities and soil erosion on agricultural and rural lands. Area plans and rules must be designed to achieve and maintain water quality standards. If the department determines that the area plan and rules are not adequate to achieve and maintain water quality standards, the department will provide ODA with comments on what would be sufficient to meet WQS or TMDL load allocations. If a resolution cannot be agreed upon, the department will request the Environmental Quality Commission (EQC) to petition ODA for a review of part or all of water quality management area plan and rules. If a person subject to an ODA area plan and implementing rules causes or contributes to water quality standards violations, the department will refer the activity to ODA for further evaluation and potential requirements.

(12) Agriculture and forestry on federal lands. Agriculture and forestry activities conducted on federal land must meet the requirements of this division and are subject to the department's jurisdiction. Pursuant to Memoranda of Agreement with the U.S. Forest Service and the Bureau of Land Management, water quality standards are expected to be met through the development and implementation of water quality restoration plans, best management practices, and aquatic conservation strategies. Where the department designates a federal agency as a designated management agency, implementation of these plans, practices, and strategies is deemed compliance with this division.

(13) Testing methods. The analytical testing methods for determining compliance with the water quality standards in this rule must comply with 40 CFR Part 136 or, if Part 136 does not prescribe a method, with the most recent edition of Standard Methods for the Examination of Water and Waste Water published jointly by the American Public Health Association, American Water Works Association, and Water Pollution Control Federation; if the department has published an applicable superseding method, testing must comply with the superseding method. Testing in accordance with an alternative method must comply with this rule if the department has published the method or has approved the method in writing.

(14) Reservoirs or managed lakes are deemed in compliance with water quality criteria for temperature, pH, or dissolved oxygen (DO) if all of the following circumstances exist.

(a) The water body has thermally stratified naturally or due to the presence of an impoundment.

(b) The water body has three observable layers, defined as the epilimnion, metalimnion, and hypolimnion.

(c) A layer exists in the reservoir or managed lake in which temperature, pH, and DO criteria are all met, and the layer is sufficient to support beneficial uses.

(d) All practicable measures have been taken by the entities responsible for management of the reservoir or managed lake to maximize the layers meeting the temperature, pH, and DO criteria.

(e) One of the following conditions is met:

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(A) The streams or river segments immediately downstream of the water body meet applicable criteria for temperature, pH, and DO.

(B) All practicable measures have been taken to maximize downstream water quality potential and fish passage.

(C) If the applicable criteria are not met in the stream or river segment immediately upstream of the water body, then no further measurable downstream degradation of water quality has taken place due to stratification of the reservoir or managed lake.

(15) Compliance schedules. In a permit issued under OAR 340, division 045 or in a water quality certification under OAR 340, division 48, the department may include compliance schedules for the implementation of effluent limits derived from water quality criteria in this division. A compliance schedule in an NPDES permit is allowed only for water quality based effluent limits that are newly applicable to the permit and must comply with provisions in 40 CFR §122.47 (including the requirement that water quality criteria must be achieved as soon as possible).

Stat. Auth.: ORS 468.020, 468B.030, 468B.035 & 468B.048

Stats. Implemented: ORS 468.030, 468B.035 & 468B.048

Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03; DEQ 3-2004, f. & cert. ef. 5-28-04; DEQ 10-2011, f. & cert. ef. 7-13-11

## 340-042-0040

### Establishing Total Maximum Daily Loads (TMDLs)

(1) The Department will establish TMDLs for pollutants in waters of the state that are listed in accordance with the Federal Water Pollution Control Act Section 303(d) (33 USC Section 1313(d)).

(2) The Department will group stream segments and other waterbodies geographically by subbasin and develop TMDLs for those subbasins, unless it determines another approach is warranted.

(3) The Department will prioritize and schedule TMDLs for completion considering the following factors:

- (a) Severity of the pollution,
- (b) Uses of the water,
- (c) Availability of resources to develop TMDLs,
- (d) Specific judicial requirements, and
- (e) Any other relevant information.

(4) A TMDL will include the following elements:

(a) Name and location. This element describes the geographic area for which the TMDL is developed and includes maps as appropriate.

(b) Pollutant identification. This element identifies the pollutants causing impairment of water quality that are addressed in the TMDL.

(c) Water quality standards and beneficial uses. This element identifies the beneficial uses in the basin and the relevant water quality standards, including specific basin standards established in OAR 340-041-0202 through 340-041-0975. The beneficial use that is most sensitive to impairment by the pollutant or pollutants addressed in the TMDL will be specified.

(d) Loading capacity. This element specifies the amount of a pollutant or pollutants that a waterbody can receive and still meet water quality standards. The TMDL will be set at a level to ensure that loading capacity is not exceeded. Flow assumptions used in the TMDL will be specified.

(e) Excess load. This element evaluates, to the extent existing data allow, the difference between the actual pollutant load in a waterbody and the loading capacity of that waterbody.

(f) Sources or source categories. This element identifies the pollutant sources and estimates, to the extent existing data allow, the amount of actual pollutant loading from these sources. The TMDL will establish wasteload allocations and load allocations for these sources. The Department will use available information and analyses to identify and document sources.

(g) Wasteload allocations. This element determines the portions of the receiving water's loading capacity that are allocated to existing point sources of pollution, including all point source discharges regulated under the Federal Water Pollution Control Act Section 402 (33 USC Section 1342).

(h) Load allocations. This element determines the portions of the receiving water's loading capacity that are allocated to existing nonpoint sources, including runoff, deposition, soil contamination and groundwater discharges, or to background sources. Load allocations are best estimates of loading, and may range from reasonably accurate estimates to gross allotments depending on the availability of data and appropriate techniques for predicting loading. Whenever reasonably feasible, natural background, long-range transport and anthropogenic nonpoint source loads will be distinguished from each other.

(i) Margin of safety. This element accounts for uncertainty related to the TMDL and, where feasible, quantifies uncertainties associated with estimating pollutant loads, modeling water quality and monitoring water

quality. The TMDL will explain how the margin of safety was derived and incorporated into the TMDL.

(j) Seasonal variation. This element accounts for seasonal variation and critical conditions in stream flow, sensitive beneficial uses, pollutant loading and water quality parameters so that water quality standards will be attained and maintained during all seasons of the year.

(k) Reserve capacity. This element is an allocation for increases in pollutant loads from future growth and new or expanded sources. The TMDL may allocate no reserve capacity and explain that decision.

(l) Water quality management plan (WQMP). This element provides the framework of management strategies to attain and maintain water quality standards. The framework is designed to work in conjunction with detailed plans and analyses provided in sector-specific or source-specific implementation plans. The WQMP will address the following:

(A) Condition assessment and problem description.

(B) Goals and objectives.

(C) Proposed management strategies designed to meet the wasteload allocations and load allocations in the TMDL. This will include a categorization of sources and a description of the management strategies proposed for each source category.

(D) Timeline for implementing management strategies including:

(i) Schedule for revising permits,

(ii) Schedule for achieving appropriate incremental and measurable water quality targets,

(iii) Schedule for implementing control actions, and

(iv) Schedule for completing other measurable milestones.

(E) Explanation of how implementing the management strategies will result in attainment of water quality standards.

(F) Timeline for attainment of water quality standards.

(G) Identification of persons, including Designated Management Agencies (DMAs), responsible for implementing the management strategies and developing and revising sector-specific or source-specific implementation plans.

(H) Identification of sector-specific or source-specific implementation plans that are available at the time the TMDL is issued.

(I) Schedule for preparation and submission of sector-specific or source-specific implementation plans by responsible persons, including DMAs, and processes that trigger revisions to these implementation plans.

(J) Description of reasonable assurance that management strategies and sector-specific or source-specific implementation plans will be carried out through regulatory or voluntary actions.

(K) Plan to monitor and evaluate progress toward achieving TMDL allocations and water quality standards including:

(i) Identification of persons responsible for monitoring, and

(ii) Plan and schedule for reviewing monitoring information and revising the TMDL.

(L) Plan for public involvement in implementing management strategies.

(M) Description of planned efforts to maintain management strategies over time.

(N) General discussion of costs and funding for implementing management strategies. Sector-specific or source-specific implementation plans may provide more detailed analyses of costs and funding for specific management strategies.

(O) Citation of legal authorities relating to implementation of management strategies.

(5) To determine allocations for sources identified in the TMDL, the Department:

(a) Will use water quality data analyses, which may include statistical analyses or mathematical models.

(b) May use surrogate measures to estimate allocations for pollutants addressed in the TMDL. The Department may use one or more surrogate measures for a pollutant that is difficult to measure or highly variable. A surrogate measure will be closely related to the pollutant, and may be easier to monitor and track. The TMDL will establish the correlation between the surrogate measure and pollutant.

(6) The Department will distribute wasteload and load allocations among identified sources and in doing so, may consider the following factors:

(a) Contributions from sources;

(b) Costs of implementing measures;

(c) Ease of implementation;

(d) Timelines for attainment of water quality standards;

(e) Environmental impacts of allocations;

(f) Unintended consequences;



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- (g) Reasonable assurances of implementation; and
- (h) Any other relevant factor.

(7) After issuing the TMDL, the Department may revise the loading capacity and allocations to accommodate changed needs or new information. In making these revisions, the Department will comply with the public notice provisions in OAR 340-042-0050(2) and procedures for issuing TMDL orders in OAR 340-042-0060.

(8) If the Environmental Protection Agency establishes a TMDL addressing waterbodies in Oregon, the Department may prepare a WQMP to implement that TMDL.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 468.020, ORS 468B.020, ORS 468B.030, ORS 468B.035 & ORS 468B.110  
Stats. Implemented: ORS 468B.020, ORS 468B.110  
Hist.: DEQ 18-2002, f. & cert. ef. 12-20-02; DEQ 10-2011, f. & cert. ef. 7-13-11

## 340-042-0080

### Implementing a Total Maximum Daily Load

(1) Management strategies identified in a WQMP to achieve wastewater and load allocations in a TMDL will be implemented through water quality permits for those sources subject to permit requirements in ORS 468B.050 and through sector-specific or source-specific implementation plans for other sources. WQMPs will identify the sector and source-specific implementation plans required and the persons, including DMAs, responsible for developing and revising those plans.

(2) Nonpoint source discharges of pollutants from forest operations on state or private lands are subject to best management practices and other control measures established by the Oregon Department of Forestry under the ORS 527.610 to 527.992 and according to OAR chapter 629, divisions 600 through 665. Such forest operations, when conducted in good faith compliance with the Forest Practices Act requirements are generally deemed not to cause violations of water quality standards as provided in ORS 527.770. Where the department determines that there are adequate resources and data available, the department will also assign sector or source specific load allocations needed for nonpoint sources of pollution on state and private forestlands to implement the load allocations. In areas where a TMDL has been approved, site specific rules under the Forest Practices Act rules will need to be revised if the department determines that the generally applicable Forest Practices Act rules are not adequate to implement the TMDL load allocations. If a resolution cannot be achieved, the department will request the Environmental Quality Commission to petition the Board of Forestry for a review of part or all of Forest Practices Act rules implementing the TMDL.

(3) In areas subject to the Agricultural Water Quality Management Act the Oregon Department of Agriculture (ODA) under ORS 568.900 to 568.933 and 561.191 and according to OAR chapter 603, divisions 90 and 95 develops and implements agricultural water quality management area plans and rules to prevent and control water pollution from agricultural activities and soil erosion on agricultural and rural lands. Where the department determines that there are adequate resources and data available, the department will also assign sector or source specific load allocations needed for agricultural or rural nonpoint sources to implement the load allocations. In areas where a TMDL has been approved, agricultural water quality management area plans and rules must be sufficient to meet the TMDL load allocations. If the department determines that the plan and rules are not adequate to implement the load allocation, the department will provide ODA with comments on what would be sufficient to meet TMDL load allocations. If a resolution cannot be achieved, the department will request the Environmental Quality Commission to petition ODA for a review of part or all of water quality management area plan and rules implementing the TMDL.

(4) Persons, including DMAs other than the Oregon Department of Forestry or the Oregon Department of Agriculture, identified in a WQMP as responsible for developing and revising sector-specific or source-specific implementation plans must:

(a) Prepare an implementation plan and submit the plan to the Department for review and approval according to the schedule specified in the WQMP. The implementation plan must:

(A) Identify the management strategies the DMA or other responsible person will use to achieve load allocations and reduce pollutant loading;

(B) Provide a timeline for implementing management strategies and a schedule for completing measurable milestones;

(C) Provide for performance monitoring with a plan for periodic review and revision of the implementation plan;

(D) To the extent required by ORS 197.180 and OAR chapter 340, division 18, provide evidence of compliance with applicable statewide land use requirements; and

(E) Provide any other analyses or information specified in the WQMP.  
(b) Implement and revise the plan as needed.

(5) For sources subject to permit requirements in ORS 468B.050, wastewater allocations and other management strategies will be incorporated into permit requirements.

Stat. Auth.: ORS 468.020, ORS 468B.020, ORS 468B.030, ORS 468B.035 & ORS 468B.110  
Stats. Implemented: ORS 468B.020, ORS 468B.110  
Hist.: DEQ 18-2002, f. & cert. ef. 12-20-02; DEQ 10-2011, f. & cert. ef. 7-13-11

## 340-045-0105

### Intake Credits

(1) General Provisions. The following provisions apply to the consideration of intake pollutants in determining reasonable potential under section (2) of this rule and the consideration of intake pollutants in establishing water quality based effluent limits under section (3) of this rule.

These provisions do not alter the permitting authority's obligation under 40 CFR 122.44(d)(vii)(B) to develop effluent limitations consistent with the assumptions and requirements of any available waste load allocations for the discharge, that is part of a TMDL prepared by the department and approved by EPA pursuant to 40 CFR 130.7, or prepared by EPA pursuant to 40 CFR 130.7(d).

(a) An "intake pollutant" is the amount of a pollutant that is present in public waters (including groundwater as provided in subsection (d), below, at the time it is withdrawn from such waters by the discharger or other facility supplying the discharger with intake water.

(b) An intake pollutant is considered to be from the "same body of water" as the discharge if the department finds that the intake pollutant would have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee. This finding may be deemed established if:

(A) The background concentration of the pollutant in the receiving water (excluding any amount of the pollutant in the facility's discharge) is similar to that in the intake water;

(B) There is a direct hydrological connection between the intake and discharge points; and

(C) Water quality characteristics (e.g., temperature, pH, hardness) are similar in the intake and receiving waters.

(c) The department may also consider other site-specific factors relevant to the transport and fate of the pollutant to make the finding in a particular case that a pollutant would or would not have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee.

(d) An intake pollutant from groundwater may be considered to be from the "same body of water" if the department determines that the pollutant would have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee, except that such a pollutant is not from the same body of water if the groundwater contains the pollutant partially or entirely due to human activity, such as industrial, commercial, or municipal operations, disposal actions, or treatment processes.

(e) The determinations made under Sections (2) and (3), below, will be made on a pollutant-by-pollutant and outfall-by-outfall basis.

(2) Consideration of Intake Pollutants in Determining Reasonable Potential:

(a) The department may determine that there is "no reasonable potential" for the discharge of an identified intake pollutant to cause or contribute to an excursion above a narrative or numeric water quality criterion contained in Oregon's water quality standards where a discharger demonstrates to the satisfaction of the department (based upon information provided in the permit application or other information) that:

(A) The facility withdraws 100 percent of the intake water containing the pollutant from the same body of water into which the discharge is made;

(B) The facility does not contribute any additional mass of the identified intake pollutant to its wastewater;

(C) The facility does not alter the identified intake pollutant chemically or physically in a manner that would cause adverse water quality impacts to occur that would not occur if the pollutants were left in-stream;

(D) The facility does not increase the identified intake pollutant concentration at the edge of the mixing zone, or at the point of discharge if a mixing zone is not allowed, as compared to the pollutant concentration in the intake water, unless the increased concentration does not cause or contribute to an excursion above an applicable water quality standard; and

(E) The timing and location of the discharge would not cause adverse water quality impacts to occur that would not occur if the identified intake pollutant were left in-stream.

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(b) Upon a finding under subsection (a) of this section that an intake pollutant in the discharge does not cause, have the reasonable potential to cause, or contribute to an excursion above an applicable water quality standard, the department is not required to include a water quality-based effluent limit for the identified intake pollutant in the facility's permit, provided:

(A) The NPDES permit evaluation report includes a determination that there is no reasonable potential for the discharge of an identified intake pollutant to cause or contribute to an excursion above an applicable numeric water quality criterion and references appropriate supporting documentation included in the administrative record;

(B) The permit requires all influent, effluent, and ambient monitoring necessary to demonstrate that the conditions above in subsection (a) of this section are maintained during the permit term; and

(C) The permit contains a re-opener clause authorizing modification or revocation and re-issuance of the permit if new information shows the discharger no longer meets the conditions in subsection (a)(A) through (E) of this section.

(3) Consideration of Intake Pollutants in Establishing Water Quality Based Effluent Limits (WQBELs):

(a) The department may consider pollutants in intake water as provided in section (3) when establishing water quality-based effluent limitations based on narrative or numeric criteria, provided that the discharger has demonstrated that the following conditions are met:

(A) The facility withdraws 100 percent of the intake water containing the pollutant from the same body of water into which the discharge is made;

(B) The observed maximum ambient background concentration and the intake water concentration of the pollutant exceeds the most stringent applicable water quality criterion for that pollutant;

(C) The facility does not alter the identified intake pollutant chemically or physically in a manner that would cause adverse water quality impacts to occur that would not occur if the pollutants were left in-stream;

(D) The facility does not increase the identified intake pollutant concentration, as defined by the department, at the point of discharge as compared to the pollutant concentration in the intake water; and

(E) The timing and location of the discharge would not cause adverse water quality impacts to occur that would not occur if the identified intake pollutant were left in-stream.

(b) Where the conditions in subsection (a) of this section are met, the department may establish a water quality-based effluent limitation allowing the facility to discharge a mass and concentration of the intake pollutant that are no greater than the mass and concentration found in the facility's intake water. A discharger may add mass of the pollutant to its waste stream if an equal or greater mass is removed prior to discharge, so there is no net addition of the pollutant in the discharge compared to the intake water.

(c) Where proper operation and maintenance of a facility's treatment system results in the removal of an intake water pollutant, the department may establish limitations that reflect the lower mass and concentration of the pollutant achieved by such treatment.

(d) Where intake water for a facility is provided by a municipal water supply system and the supplier provides treatment of the raw water that removes an intake water pollutant, the concentration of the intake water pollutant will be determined at the point where the water enters the water supplier's distribution system.

(e) Where a facility discharges intake pollutants from multiple sources that originate from the receiving water body and from other water bodies, the department may derive an effluent limitation reflecting the flow-weighted amount of each source of the pollutant provided that adequate monitoring to determine compliance can be established and is included in the permit.

(f) The permit will specify how compliance with mass and concentration-based limitations for the intake water pollutant will be assessed. This may be done by basing the effluent limitation on background concentration data. Alternatively, the department may determine compliance by monitoring the pollutant concentrations in the intake water and in the effluent. This monitoring may be supplemented by monitoring internal waste streams or by a department evaluation of the use of best management practices.

(g) In addition to the above, effluent limitations must be established to comply with all other applicable State and Federal laws and regulations including technology-based requirements and anti-degradation policies.

(h) When determining whether WQBELs are necessary, information from chemical-specific, whole effluent toxicity and biological assessments will be considered independently.

(i) Permits limits must be consistent with the assumptions and requirements of waste load allocations or other provisions in a TMDL that has been approved by the EPA.

Stat. Auth.: ORS 468.020, 468B.010, 468B.020, 468B.035, 468B.110  
Stats. Implemented: ORS 468B.048  
Hist.: DEQ 10-2011, f. & cert. ef. 7-13-11

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**Department of Fish and Wildlife**  
**Chapter 635**

**Rule Caption:** Area 2S and Camas-Washougal Reef Commercial Shad Seasons Extended.

**Adm. Order No.:** DFW 72-2011(Temp)

**Filed with Sec. of State:** 6-17-2011

**Certified to be Effective:** 6-21-11 thru 6-24-11

**Notice Publication Date:**

**Rules Amended:** 635-042-0110, 635-042-0115

**Rules Suspended:** 635-042-0110(T), 635-042-0115(T)

**Subject:** These amended rules extend, by four additional days, the open commercial shad seasons on the Columbia River in the Area 2S and Camas-Washougal Reef fisheries. The Area 2S fishery is open daily from 3:00 p.m. to 10:00 p.m. while the Camas-Washougal Reef fishery is open daily from 8:00 p.m. to 12:00 Midnight; both fisheries begin Tuesday June 21 through Friday June 24, 2011. Only shad may be kept or sold. All other fish must be immediately returned unharmed to the water. Modifications allow harvest using experimental gear when purchasing an *Experimental Fishing Gear Permit* as described in OAR 635-006-0020. Revisions are consistent with action taken on June 16, 2011 by the Columbia River Compact agencies of Oregon and Washington.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

**635-042-0110**

**Gary Island to Bonneville Dam (Area 2S) Shad Season**

(1) Shad may be taken for commercial purposes from the area of the Columbia River described in section (2) from 3:00 p.m. to 10:00 p.m. daily, Tuesday June 21 through Friday June 24, 2011.

(2) The area of the Columbia River open to fishing is from a downstream boundary of a true north/south line through the flashing red 4 second Light "50" near the Oregon bank to an upstream boundary of a straight line from a deadline marker on the Oregon bank, through the western tip of Pierce Island, to a deadline marker on the Washington bank at Beacon Rock, both such deadline markers located approximately four miles downstream from Bonneville Dam.

(3) It is *unlawful* to use a gillnet having a mesh size less than 5 3/8 inches or more than 6 1/4 inches with a breaking strength greater than a 10-pound pull, or to use a gillnet other than a single wall floater net, or to use a gillnet having slackers, or to use a gillnet of more than 150 fathoms in length or 40 meshes in depth. Rip lines are authorized spaced not closer than 20 corks apart.

(4) All salmon, steelhead, walleye and sturgeon taken in shad nets must be immediately returned unharmed to the water.

(5) Shad may also be taken and sold for commercial purposes with experimental fishing gears.

(a) A permit issued by the Department as described in OAR 635-006-0020 is required to use experimental gear types for shad.

(b) Conditions under which shad may be taken and sold for commercial purposes will be specified in the permit.

(c) Any salmon, steelhead or non-target species taken as incidental catch in operation of such gear shall immediately, with care and the least possible injury, be released and transferred to the water without violence.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.129 & 507.030

Hist.: FWC 85, f. & ef. 1-28-77; FWC 116(Temp), f. & ef. 6-1-77 thru 6-3-77; FWC 124(Temp), f. & ef. 6-17-77 thru 10-14-77; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 27-1978(Temp), f. & ef. 5-26-78 thru 9-22-78; FWC 2-1979, f. & ef. 1-25-79, Renumbered from 635-035-0275; FWC 6-1980, f. & ef. 1-28-80; FWC 25-1980(Temp), f. & ef. 6-13-80; FWC 1-1981, f. & ef. 1-19-81; FWC 18-1981(Temp), f. & ef. 6-10-81; FWC 6-1982, f. & ef. 1-28-82; FWC 36-1982 (Temp), f. & ef. 6-11-82; FWC 2-1983, f. 1-21-83, ef. 2-1-83; FWC 21-1983(Temp), f. & ef. 6-10-83; FWC 4-1984, f. & ef. 1-31-84; FWC 2-1985, f. & ef. 1-30-85; FWC 19-1985, f. & ef. 5-1-85; FWC 4-1986(Temp), f. & ef. 1-28-86; FWC 16-1986 (Temp), f. & ef. 5-23-86; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 23-1987(Temp), f. & ef. 5-20-87; FWC 10-1988, f. & cert. ef. 3-4-88; FWC 5-1989, f. 2-6-89, cert. ef. 2-7-89; FWC 15-1990(Temp), f. 2-8-90, cert. ef. 2-9-90; FWC 20-1990, f. 3-6-90, cert. ef. 3-15-90; FWC 10-1991, f. 2-7-91, cert. ef. 2-8-91; FWC 8-1992, f. & cert. ef. 2-11-92; FWC 34-1992(Temp), f. 5-19-92, cert. ef. 5-20-92; FWC 11-1993, f. 2-11-93, cert. ef. 2-16-93; FWC 9-1994, f. 2-14-94, cert. ef. 2-15-94; FWC 15-1995, f. & cert. ef. 2-15-95; FWC 6-1996, f. & cert. ef. 2-7-96; FWC 4-1997, f.

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& cert. ef. 1-30-97; DFW 15-1998, f. & cert. ef. 3-3-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 48-1999(Temp), f. & cert. ef. 6-24-99 thru 7-2-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 36-2000(Temp), f. 6-28-00, cert. ef. 6-28-00 thru 7-1-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 39-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 45-2005(Temp), f. 5-17-05, cert. ef. 5-23-05 thru 10-16-05; DFW 63-2005(Temp), f. & cert. ef. 6-29-05 thru 7-31-05; Administrative correction 11-18-05; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 32-2006(Temp), f. & cert. ef. 5-23-06 thru 7-31-06; DFW 35-2006(Temp), f. & cert. ef. 5-30-06 thru 7-31-06; Administrative correction 8-22-06; 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 18-2008(Temp), f. 2-27-08, cert. ef. 5-12-08 thru 11-7-08; DFW 68-2008(Temp), f. 6-20-08, cert. ef. 6-21-08 thru 8-31-08; Administrative correction 9-29-08; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 59-2009(Temp), f. 5-27-09, cert. ef. 6-1-09 thru 6-19-09; Administrative correction 7-21-09; DFW 34-2010, f. 3-16-10, cert. ef. 4-1-10; DFW 41-2011(Temp), f. 5-5-11, cert. ef. 5-10-11 thru 6-20-11; DFW 72-2011(Temp), f. 6-17-11, cert. ef. 6-21-11 thru 6-24-11

## 635-042-0115

### Camas-Washougal Reef Shad Season

(1) Shad may be taken for commercial purposes from the area of the Columbia River described in section (2) daily from 8:00 p.m. to 12:00 Midnight, Tuesday June 21 through Friday June 24, 2011.

(2) The area of the Columbia River open to fishing is from a line commencing at the white 6 second equal-interval light approximately 3/4 mile east of the Washougal Woolen Mill pipeline and projected westerly to the Washougal blinker light; thence continuing westerly to the 4 second blinker light on the east end of Lady Island; thence easterly and northerly along the shoreline of Lady Island to the State Highway 14 Bridge; thence easterly across State Highway 14 Bridge to the mainland.

(3) It is *unlawful* to use a gill net having a mesh size less than 5 3/8 inches or more than 6 1/4 inches with a breaking strength greater than a 30 pound pull or to use a gill net other than a single wall floater net, or to use a gill net having slackers.

(4) All salmon, steelhead, walleye, and sturgeon taken in shad nets must be immediately returned unharmed to the water.

(5) Shad may also be taken and sold for commercial purposes with experimental fishing gears.

(a) A permit issued by the Department as described in OAR 635-006-0020 is required to use experimental gear types for shad.

(b) Conditions under which shad may be taken and sold for commercial purposes will be specified in the permit.

(c) Any salmon, steelhead or non-target species taken as incidental catch in operation of such gear shall immediately, with care and the least possible injury, be released and transferred to the water without violence.

Stat. Auth.: ORS 183.325 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 85, f. & ef. 1-28-77; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 27-1978(Temp), f. & ef. 5-26-78 thru 9-22-78; FWC 2-1979, f. & ef. 1-25-79, Renumbered from 635-035-0280; FWC 6-1980, f. & ef. 1-28-80; FWC 1-1981, f. & ef. 1-19-81; FWC 6-1982, f. & ef. 1-28-82; FWC 2-1983, f. 1-21-83, ef. 2-1-83; FWC 4-1984, f. & ef. 1-31-84; FWC 2-1985, f. & ef. 1-30-85; FWC 4-1986(Temp), f. & ef. 1-28-86; FWC 16-1986(Temp), f. & ef. 5-23-86; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 23-1987(Temp), f. & ef. 5-20-87; FWC 1-1988, f. & cert. ef. 3-4-88; FWC 5-1989, f. 2-6-89, cert. ef. 2-7-89; FWC 41-1989(Temp), f. & cert. ef. 6-26-89; FWC 15-1990(Temp), f. 2-8-90, cert. ef. 2-9-90; FWC 20-1990, f. 3-6-90, cert. ef. 3-15-90; FWC 10-1991, f. 2-7-91, cert. ef. 2-8-91; FWC 8-1992, f. & cert. ef. 2-11-92; FWC 11-1993, f. 2-11-93, cert. ef. 2-16-93; FWC 9-1994, f. 2-14-94, cert. ef. 2-15-94; FWC 36-1994(Temp), f. & cert. ef. 6-20-94; FWC 39-1994(Temp), f. 6-24-94, cert. ef. 6-27-94; FWC 15-1995, f. & cert. ef. 2-15-95; FWC 6-1996, f. & cert. ef. 2-7-96; FWC 24-1996, f. & cert. ef. 5-14-96; FWC 4-1997, f. & cert. ef. 1-30-97; DFW 15-1998, f. & cert. ef. 3-3-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 41-2011(Temp), f. 5-5-11, cert. ef. 5-10-11 thru 6-20-11; DFW 72-2011(Temp), f. 6-17-11, cert. ef. 6-21-11 thru 6-24-11

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**Rule Caption:** Revised Cumulative Limits for the Limited Entry Fixed Gear Primary Sablefish Fishery.

**Adm. Order No.:** DFW 73-2011(Temp)

**Filed with Sec. of State:** 6-20-2011

**Certified to be Effective:** 6-20-11 thru 11-8-11

**Notice Publication Date:**

**Rules Amended:** 635-004-0019

**Rules Suspended:** 635-004-0019(T)

**Subject:** This amended rule adopts revised cumulative limits for the limited entry fixed gear primary sablefish fishery. These modifications, adopted by the federal government for the remainder of the 2011 Pacific ocean commercial groundfish fisheries, include but are not limited to: increases in the limited entry fixed gear primary sablefish fishery cumulative limit.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-004-0019

### Inclusions and Modifications

(1) OAR chapter 635, division 4, modifies or is in addition to provisions contained in **Code of Federal Regulations, Title 50, Part 660, Subpart G, West Coast Groundfish Fisheries.**

(2) The **Code of Federal Regulations (CFR), Title 50, Part 660, Subpart G,** provides requirements for commercial groundfish fishing in the Pacific Ocean off the Oregon coast. However, additional regulations may be promulgated subsequently, and these supersede, to the extent of any inconsistency, the **Code of Federal Regulations.**

(3) Notwithstanding the regulations as defined in OAR 635-004-0018, the National Oceanic and Atmospheric Administration (NOAA), by means of Federal Register/Vol. 75, No. 162/Monday, August 23, 2010, announced inseason management measures effective August 18, 2010, including, but not limited to, changes to cumulative trip limits for the limited entry fixed-gear sablefish fishery and lincod retention allowances for vessels fishing in the salmon troll fishery and operating outside of the non-trawl RCA.

(4) Notwithstanding the regulations as defined in OAR 635-004-0018, the National Oceanic and Atmospheric Administration (NOAA), by means of Federal Register/Vol. 75, No. 191/Monday, October 4, 2010, announced inseason management measures effective October 1, 2010, including, but not limited to, changes to cumulative trip limits for the limited entry non-whiting trawl fishery.

(5) Notwithstanding the regulations as defined in OAR 635-004-0018, the National Oceanic and Atmospheric Administration (NOAA), by means of Federal Register/Vol. 75, No. 232/Friday, December 3, 2010, announced inseason management measures effective December 1, 2010, including, but not limited to, changes in cumulative trip limits and RCA boundaries for limited entry non-whiting trawl fisheries and cumulative trip limits for commercial fixed gear fisheries.

(6) Notwithstanding the regulations as defined in OAR 635-004-0018, the National Oceanic and Atmospheric Administration (NOAA), by means of National Marine Fisheries Service (NMFS) Public Notice/NMFS-SEA-10-22/December 27, 2010, announced inseason adjustments and new management measures effective January 1, 2010, including, but not limited to: a) temporary closure of the limited entry trawl fishery; b) replacement of previously used trip limit tables for limited entry trawl gear with incidental landing allowances for vessels registered to a Federal limited entry trawl permit and using groundfish trawl or groundfish non-trawl gears to harvest individual fishing quota (IFQ) species; c) adjustment of the trawl RCA; and d) adjustments to RCAs and cumulative trip limits for the limited entry and open access fixed-gear fisheries.

(7) Notwithstanding the regulations as defined in OAR 635-004-0018, the National Oceanic and Atmospheric Administration (NOAA), by means of National Marine Fisheries Service (NMFS) Public Notice/NMFS-SEA-11-01/January 7, 2011, announced inseason adjustments effective January 11, 2011, including, but not limited to, the start of the Trawl Rationalization Program; fishing will begin under the Shorebased Individual Fishing Quota (IFQ) Program on January 11, 2011.

(8) Notwithstanding, the regulations as defined in OAR 635-004-0018, the National Marine Fisheries Service (NMFS), by means of Federal Register/Vol. 76, No. 41/Wednesday, March 2, 2011, announced inseason management measures effective March 1, 2011, including, but not limited to: a) changes in cumulative trip limits and RCA boundaries for commercial fixed gear fisheries; and b) the annual tier limits for the limited entry fixed gear sablefish primary fishery north of 36° N. Latitude.

(9) Notwithstanding, the regulations as defined in OAR 635-004-0018, the National Marine Fisheries Service (NMFS), by means of Federal Register/Vol. 76, No.91/Wednesday, May 11, 2011, announced the 2011-2012 harvest specifications for most of the species in the groundfish fishery and management measures for that fishery off the coasts of Washington, Oregon, and California effective May 11, 2011, including, but not limited to: a) changes in cumulative trip limits and RCA boundaries for commercial groundfish fisheries; b) changes in annual catch limits and allocations of groundfish for the various commercial groundfish fisheries; and c) changes to other management measures.

(10) Notwithstanding, the regulations as defined in OAR 635-004-0018, the National Marine Fisheries Service, by means of Federal Register/Vol. 76, No. 115/Wednesday, June 15, 2011, announced revised cumulative limits for the limited entry fixed gear primary sablefish fishery effective June 10, 2011.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 76-1999(Temp), f. 9-30-99, cert. ef. 10-1-99 thru 12-31-99; DFW 81-1999(Temp), f. & cert. ef. 10-12-99 thru 12-31-99; DFW 98-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 23-2005(Temp), F. & cert. ef. 4-8-05 thru 10-4-05; DFW 30-2005(Temp), f. 4-29-



# ADMINISTRATIVE RULES

05, cert. ef. 5-1-05 thru 10-27-05; DFW 43-2005(Temp), f. & cert. ef. 5-13-05 thru 10-17-05; DFW 68-2005(Temp), 6-30-05, cert. ef. 7-1-05 thru 12-27-05; DFW 114-2005(Temp), f. 9-30-05, cert. ef. 10-1-05 thru 12-31-05; DFW 125-2005(Temp), f. & cert. ef. 10-19-05 thru 12-31-05; DFW 134-2005(Temp), f. & cert. ef. 11-30-05 thru 12-31-05; DFW 147-2005(Temp), f. 12-28-05, cert. ef. 1-1-06 thru 6-28-06; DFW 8-2006(Temp), f. 2-28-06, cert. ef. 3-1-06 thru 8-25-06; DFW 25-2006(Temp), f. 4-28-06, cert. ef. 5-1-06 thru 10-27-06; DFW 55-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-27-06; DFW 110-2006(Temp), f. 9-29-06, cert. ef. 10-1-06 thru 12-31-06; Administrative Correction 1-16-07; DFW 29-2007(Temp), f. & cert. ef. 5-1-07 thru 10-27-07; DFW 58-2007(Temp), f. 7-18-07, cert. ef. 8-1-07 thru 12-31-07; DFW 106-2007(Temp), f. 10-5-07, cert. ef. 10-6-07 thru 12-31-07; DFW 123-2007(Temp), f. 11-26-07, cert. ef. 11-28-07 thru 12-31-07; DFW 126-2007(Temp), f. & cert. ef. 12-11-07 thru 12-31-07; DFW 41-2008(Temp), f. 4-23-08, cert. ef. 5-1-08 thru 10-27-08; DFW 88-2008(Temp), f. & cert. ef. 8-1-08 thru 12-31-08; DFW 146-2008(Temp), f. & cert. ef. 12-4-08 thru 12-31-08; DFW 1-2009(Temp), f. & cert. ef. 1-5-09 thru 5-1-09; DFW 29-2009(Temp), f. & cert. ef. 3-18-09 thru 5-1-09; DFW 41-2009(Temp), f. 4-29-09, cert. ef. 5-1-09 thru 10-27-09; DFW 39-2009, f. & cert. ef. 4-27-09; DFW 81-2009(Temp), f. & cert. ef. 7-2-09 thru 12-28-09; DFW 136-2009, f. 10-28-09 thru 12-31-09; DFW 138-2009(Temp), f. & cert. ef. 11-2-09 thru 12-31-09; Administrative correction 1-25-10; DFW 25-2010(Temp), f. & cert. ef. 3-3-10 thru 8-29-10; DFW 59-2010(Temp), f. & cert. ef. 5-12-10 thru 11-7-10; DFW 109-2010(Temp), f. & cert. ef. 7-30-10 thru 11-30-10; DFW 122-2010(Temp), f. & cert. ef. 8-25-10 thru 11-30-10; DFW 138-2010(Temp), f. & cert. ef. 10-4-10 thru 12-31-10; DFW 157-2010, f. 12-6-10, cert. ef. 1-1-11; DFW 160-2010(Temp), f. & cert. ef. 12-7-10 thru 12-31-10; DFW 167-2010(Temp), f. 12-29-10, cert. ef. 1-1-11 thru 1-31-11; DFW 2-2011(Temp), f. & cert. ef. 1-11-11 thru 7-9-11; DFW 20-2011(Temp), f. & cert. ef. 3-3-11 thru 8-29-11; DFW 47-2011(Temp), f. & cert. ef. 5-13-11 thru 11-8-11; DFW 73-2011(Temp), f. & cert. ef. 6-20-11 thru 11-8-11

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**Rule Caption:** Recreational White Sturgeon Fishery Opens June 27, 2011 in Bonneville Pool.

**Adm. Order No.:** DFW 74-2011(Temp)

**Filed with Sec. of State:** 6-24-2011

**Certified to be Effective:** 6-27-11 thru 7-31-11

**Notice Publication Date:**

**Rules Amended:** 635-023-0095

**Rules Suspended:** 635-023-0095(T)

**Subject:** This amended rule opens two three-day recreational sturgeon seasons in the Bonneville Pool of the Columbia River, Thursdays through Saturdays, beginning 12:01 a.m. June 30 through July 9. Modifications to the recreational sturgeon season in the area from the Wauna powerlines downstream to the mouth at Buoy 10, including Youngs Bay, open the fishing periods Monday, June 27 through Thursday, June 30 and Tuesday, July 5 through Sunday, July 31 (or until the preseason harvest guideline is reached). Modifications are consistent with action taken June 23, 2011 by the Columbia River Compact agencies of Oregon and Washington.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-023-0095

### Sturgeon Season

(1) The 2011 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 2011 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, Multnomah Channel, and the Gilbert River, 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 8 through December 31.

(3) The retention of white sturgeon in the area identified in section (2) of this rule is prohibited August 1 through October 7.

(4) The mainstem 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; and

(b) May 14 through July 31 (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 13, and from August 1 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 subsection (4)(b) of this rule, only white sturgeon with a fork length of 41-54 inches may be retained.

(8) Angling for sturgeon is prohibited from:

(a) 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 Washington shore during May 1 through August 31;

(b) Highway 395 Bridge upstream to McNary Dam; and

(c) From the west end of the grain silo at Rufus upstream to John Day Dam during May 1 through July 31.

(d) The upper and lower ends of Sand Island and corresponding markers on the Oregon shoreline (slough at Rooster Rock State Park) from January 1 through April 30, 2011.

(9) Effective 12:01 a.m. Saturday, February 19 through Wednesday, June 29, 2011 the retention of white sturgeon in Bonneville Reservoir and tributaries is prohibited. Beginning Thursday, June 30 through Saturday, July 2, 2011 and from Thursday, July 7 through Saturday, July 9, 2011 (6 days) the Bonneville Pool upstream to The Dalles Dam is open for retention of white sturgeon between 38-54 inches in fork length.

(10) Effective 12:01 a.m. Sunday April 10, 2011 the retention of sturgeon in the John Day Pool and tributaries is prohibited.

(11) The mainstem Columbia River from McNary Dam upstream to the Oregon-Washington border at river mile 309.5 is open to retention of white sturgeon with a fork length of 43-54 inches, seven days per week from February 1 through July 31.

(12) The retention of white sturgeon in the area identified in section (11) of this rule is prohibited August 1 through January 31.

(13) 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; DFW 165-2010(Temp), f. 12-28-10, cert. ef. 1-1-11 thru 6-29-11; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 11-2011(Temp), f. 2-10-11, cert. ef. 2-11-11 thru 7-31-11; DFW 23-2011, f. & cert. ef. 3-21-11; DFW 26-2011(Temp), f. 4-5-11, cert. ef. 4-10-11 thru 9-30-11; DFW 74-2011(Temp), f. 6-24-11, cert. ef. 6-27-11 thru 7-31-11

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**Rule Caption:** Columbia River Treaty Indian Commercial Gill Net Summer Season Implemented.

**Adm. Order No.:** DFW 75-2011(Temp)

**Filed with Sec. of State:** 6-24-2011

**Certified to be Effective:** 6-27-11 thru 10-31-11

**Notice Publication Date:**

**Rules Amended:** 635-041-0076

**Rules Suspended:** 635-041-0076(T)

**Subject:** Rule modifications set a Treaty Indian commercial gill net fishing period in Zone 6 of the Columbia River and allow the sales of fish caught during that period. Revisions are consistent with action taken June 23, 2011 by the Columbia River Compact agencies of Oregon and Washington in cooperation with the Columbia River Treaty Tribes.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

# ADMINISTRATIVE RULES

635-041-0076

## Spring Salmon Season

(1) Commercial sales of platform and hook-and-line caught fish from Zone 6 of the mainstem Columbia River are allowed beginning 6:00 p.m. Tuesday, May 10, 2011 until further notice.

(a) Chinook, steelhead, sockeye, coho, walleye, shad, carp, bass, catfish and yellow perch landed during an open commercial fishing period may be sold at any time or retained for subsistence purposes. Sturgeon may not be sold or retained prior to 6:00 a.m. Monday, June 27, 2011. White sturgeon between 43 and 54 inches in fork length taken in The Dalles and John Day pools and white sturgeon between 38 and 54 inches in fork length taken in the Bonneville Pool from 6:00 a.m. Monday, June 27, through 6:00 p.m. Thursday, June 30, 2011 may be sold or retained for subsistence use.

(b) Gear is restricted to subsistence fishing gear: hoopnets, dipnets and rod and reel with hook-and-line are allowed.

(c) Closed areas in Zone 6, except the Spring Creek sanctuary, are as set forth in OAR 635-041-0045 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. Thursday, June 16 through 6:00 p.m. Saturday, June 18, 2011 (2.5 days); from 6:00 a.m. Monday, June 20 through 6:00 p.m. Thursday, June 23, 2011 (3.5 days); and from 6:00 a.m. Monday, June 27 through 6:00 p.m. Thursday, June 30, 2011 (3.5 days).

(a) Salmon, steelhead, shad, yellow perch, bass, walleye, catfish and carp landed during any open gill net fishing period may be sold at any time or retained for subsistence purposes. Sturgeon may not be sold or retained prior to 6:00 a.m. Monday, June 27, 2011. 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 from 6:00 a.m. Monday, June 27, through 6:00 p.m. Thursday, June 30, 2011 may be sold or retained for subsistence use. Fish landed during an open commercial period may be sold at any time. Commercial buyers may only purchase sturgeon in the round.

(b) Gear is restricted to gill nets. Beginning 6:00 a.m. Monday, June 27, 2011 only floating gill nets may be used, no diver gill nets are allowed. No minimum mesh size restriction is in effect.

(c) Closed areas in Zone 6, except the Spring Creek sanctuary, are as set forth in OAR 635-041-0045 and remain in effect.

(3) Sales of fish caught in Yakama Nation tributary fisheries in the Klickitat River; Wind River; Drano Lake; and Big White Salmon River are allowed during those days and hours when the tributaries are open under lawfully enacted tribal fishing periods and concurrent with periods when sales from Zone 6 platform and hook-and-line fisheries are allowed.

Stat. Auth.: ORS 496.118 & 506.119

Stats. Implemented: ORS 506.109, 506.129 & 507.030

Hist.: DFW 5-2006, f. & cert. ef. 2-15-06; DFW 39-2006(Temp), f. & cert. ef. 6-8-06 thru 7-31-06; DFW 46-2006(Temp), f. & cert. ef. 6-20-06 thru 7-31-06; DFW 49-2006(Temp), f. 6-26-06, cert. ef. 6-27-06 thru 7-31-06; DFW 56-2006(Temp), f. 6-30-06, cert. ef. 7-3-06 thru 7-31-06; DFW 58-2006(Temp), f. 7-6-06, cert. ef. 7-10-06 thru 7-31-06; Administrative correction 8-22-06; DFW 46-2007(Temp), f. 6-15-07, cert. ef. 6-16-07 thru 9-13-07; DFW 49-2007(Temp), f. 6-22-07, cert. ef. 6-26-07 thru 9-13-07; DFW 53-2007(Temp), f. & cert. ef. 7-6-07 thru 7-31-07; Administrative correction 9-16-07; DFW 45-2008(Temp), f. 5-2-08, cert. ef. 5-5-08 thru 7-31-08; DFW 47-2008(Temp), f. 5-9-08, cert. ef. 5-11-08 thru 7-31-08; DFW 62-2008(Temp), f. 6-13-08, cert. ef. 6-16-08 thru 8-31-08; DFW 68-2008(Temp), f. 6-20-08, cert. ef. 6-21-08 thru 8-31-08; DFW 71-2008(Temp), f. 6-27-08, cert. ef. 6-28-08 thru 8-31-08; DFW 80-2008(Temp), f. & cert. ef. 7-10-08 thru 8-31-08; DFW 87-2008(Temp), f. & cert. ef. 7-25-08 thru 8-31-08; DFW 94-2008(Temp), f. & cert. ef. 8-14-08 thru 9-30-08; Administrative correction 10-21-08; DFW 50-2009(Temp), f. 5-14-09, cert. ef. 5-16-09 thru 7-31-09; DFW 56-2009(Temp), f. 5-26-09, cert. ef. 5-27-09 thru 7-31-09; DFW 71-2009(Temp), f. 6-15-09, cert. ef. 6-16-09 thru 7-31-09; DFW 76-2009(Temp), f. 6-26-09, cert. ef. 6-30-09 thru 7-31-09; DFW 82-2009(Temp), f. 7-6-09, cert. ef. 7-8-09 thru 7-31-09; DFW 84-2009(Temp), f. 7-13-09, cert. ef. 7-15-09 thru 7-31-09; Administrative correction 8-21-09; DFW 48-2010(Temp), f. 4-26-10, cert. ef. 4-27-10 thru 7-31-10; DFW 51-2010(Temp), f. & cert. ef. 4-29-10 thru 7-31-10; DFW 56-2010(Temp), f. 5-10-10, cert. ef. 5-11-10 thru 7-31-10; DFW 68-2010(Temp), f. 5-18-10, cert. ef. 5-19-10 thru 7-31-10; DFW 71-2010(Temp), f. 5-19-10, cert. ef. 5-21-10 thru 6-16-10; DFW 74-2010(Temp), f. & cert. ef. 6-2-10 thru 7-31-10; DFW 80-2010(Temp), f. 6-14-10, cert. ef. 6-16-10 thru 7-31-10; DFW 87-2010(Temp), f. 6-25-10, cert. ef. 6-29-10 thru 7-31-10; DFW 97-2010(Temp), f. 7-8-10, cert. ef. 7-13-10 thru 7-31-10; DFW 101-2010(Temp), f. 7-19-10, cert. ef. 7-20-10 thru 7-31-10; DFW 105-2010(Temp), f. 7-23-10, cert. ef. 7-26-10 thru 7-31-10; Administrative correction 8-18-10; DFW 43-2011(Temp), f. & cert. ef. 5-10-11 thru 10-31-11; DFW 66-2011(Temp), f. 6-14-11, cert. ef. 6-16-11 thru 10-31-11; DFW 75-2011(Temp), f. 6-24-11, cert. ef. 6-27-11 thru 10-31-11

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**Rule Caption:** Youngs Bay Select Area Closed to Retention of White Sturgeon Effective June 27, 2011.

**Adm. Order No.:** DFW 76-2011(Temp)

**Filed with Sec. of State:** 6-24-2011

**Certified to be Effective:** 6-27-11 thru 7-29-11

**Notice Publication Date:**

**Rules Amended:** 635-042-0145

**Rules Suspended:** 635-042-0145(T)

**Subject:** Amended rule prohibits the commercial harvest of white sturgeon in the Youngs Bay Select Area fishery beginning at 6:00 p.m. Monday, June 27, 2011. Modifications are consistent with action taken June 23, 2011 by the state of Oregon during a meeting of the Columbia River Compact agencies of Oregon and Washington.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

**635-042-0145**

## Youngs Bay Salmon Season

(1) Salmon, white sturgeon, and shad may be taken for commercial purposes in those waters of Youngs Bay. From 4:00 p.m. Wednesday, May 18 through midnight Sunday, May 22, 2011 retention of non-adipose fin-clipped Chinook salmon is prohibited (104 hours).

(a) The open fishing periods are established in three segments categorized as the winter fishery, subsection (1)(a)(A); the spring fishery, subsection (1)(a)(B); and summer fishery, subsection (1)(a)(C), as follows:

(A) Winter Season:

(i) Entire Youngs Bay: Sunday, Tuesday and Thursday days from February 13 through March 10 (12 days) starting at 12:00 noon through 6:00 a.m. the following morning (18 hours).

(ii) Upstream of old Youngs Bay Bridge: 2:00 p.m. to 8:00 p.m. Monday, March 14, 2011 (6 hours) and 2:00 p.m. to 8:00 p.m. Wednesday, March 16, 2011 (6 hours).

(B) Spring Season:

(i) Entire Youngs Bay: 6:00 p.m. to midnight Monday, April 18, 2011 (6 hours); 4:00 p.m. to 9:00 p.m. Thursday, April 28 (5 hours); 4:00 p.m. to 9:00 p.m. Sunday, May 1, 2011 (5 hours); 6:00 p.m. Tuesday, May 3 to noon Wednesday, May 4, 2011 (18 hours); 6:00 p.m. Thursday, May 5 to noon Friday, May 6, 2011 (18 hours); and Mondays at noon through Fridays at noon (4 days), beginning Monday, May 9 through Friday, June 10, 2011 (20 days total).

(C) Summer Season:

(i) Entire Youngs Bay: 6:00 a.m. Wednesdays to 6:00 a.m. Fridays (48 hours) beginning Wednesday, June 15 through Friday, July 29, 2011 (14 fishing days).

(b) The fishing areas for the winter, spring and summer fisheries are:

(A) From February 13 through March 11 and from April 18 through July 29, 2011, the fishing area is identified as the waters of Youngs Bay from the Highway 101 Bridge upstream to the upper boundary markers at the confluence of the Klaskanine and Youngs rivers; except for those waters which are closed southerly of the alternate Highway 101 Bridge (Lewis and Clark River).

(B) On March 14 and 16, 2011, the fishing area extends from the old Youngs Bay Bridge upstream to the upper boundary markers at the confluence of the Youngs and Klaskanine rivers.

(2) Gill nets may not exceed 1,500 feet (250 fathoms) in length and weight may not exceed two pounds per any fathom. A red cork must be placed on the corkline every 25 fathoms as measured from the first mesh of the net. Red corks at 25-fathom intervals must be in color contrast to the corks used in the remainder of the net.

(a) It is *unlawful* to use a gill net having a mesh size that is less than 7-inches during the winter season. It is *unlawful* to use a gill net having a mesh size that is more than 9.75-inches during the spring and summer seasons. Nets that are fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required.

(b) The use of additional weights or anchors attached directly to the leadline is allowed upstream of markers located approximately 200 yards upstream of the mouth of the Walluski River during all Youngs Bay commercial fisheries.

(3) A maximum of two white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) until 6:00 p.m. Monday June 27, 2011. Effective 6:00 p.m. Monday June 27, 2011 retention of white sturgeon is prohibited for the remainder of the summer season. During the fishing periods identified in subsections (1)(a)(A), (1)(a)(B) and (1)(a)(C), the weekly white sturgeon limit applies to combined possessions and sales for all open Select Area fisheries.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.129 & 507.030

Hist.: FWC 32-1979, f. & ef. 8-22-79; FWC 28-1980, f. & ef. 6-23-80; FWC 42-1980(Temp), f. & ef. 8-22-80; FWC 30-1981, f. & ef. 8-14-81; FWC 42-1981(Temp), f. & ef. 11-5-81; FWC 54-1982, f. & ef. 8-17-82; FWC 37-1983, f. & ef. 8-18-83; FWC 61-1983(Temp), f. &

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ef. 10-19-83; FWC 42-1984, f. & cert. ef. 8-20-84; FWC 39-1985, f. & cert. ef. 8-15-85; FWC 37-1986, f. & cert. ef. 8-11-86; FWC 72-1986(Temp), f. & cert. ef. 10-31-86; FWC 64-1987, f. & cert. ef. 8-7-87; FWC 73-1988, f. & cert. ef. 8-19-88; FWC 55-1989(Temp), f. 8-7-89, cert. ef. 8-20-89; FWC 82-1990(Temp), f. 8-14-90, cert. ef. 8-19-90; FWC 86-1991, f. 8-7-91, cert. ef. 8-18-91; FWC 123-1991(Temp), f. & cert. ef. 10-21-91; FWC 30-1992(Temp), f. & cert. ef. 4-27-92; FWC 35-1992(Temp), f. 5-22-92, cert. ef. 5-25-92; FWC 74-1992 (Temp), f. 8-10-92, cert. ef. 8-16-92; FWC 28-1993(Temp), f. & cert. ef. 4-26-93; FWC 48-1993, f. 8-6-93, cert. ef. 8-9-93; FWC 21-1994(Temp), f. 4-22-94, cert. ef. 4-25-94; FWC 51-1994, f. 8-19-94, cert. ef. 8-22-94; FWC 64-1994(Temp), f. 9-14-94, cert. ef. 9-15-94; FWC 66-1994(Temp), f. & cert. ef. 9-20-94; FWC 27-1995, f. 3-29-95, cert. ef. 4-1-95; FWC 48-1995(Temp), f. & cert. ef. 6-5-95; FWC 66-1995, f. 8-22-95, cert. ef. 8-27-95; FWC 69-1995, f. 8-25-95, cert. ef. 8-27-95; FWC 8-1995, f. 2-28-96, cert. ef. 3-1-96; FWC 37-1996(Temp), f. 6-11-96, cert. ef. 6-12-96; FWC 41-1996, f. & cert. ef. 8-12-96; FWC 45-1996(Temp), f. 8-16-96, cert. ef. 8-19-96; FWC 54-1996(Temp), f. & cert. ef. 9-23-96; FWC 4-1997, f. & cert. ef. 1-30-97; FWC 47-1997, f. & cert. ef. 8-15-97; DFW 8-1998(Temp), f. & cert. ef. 2-5-98 thru 2-28-98; DFW 14-1998, f. & cert. ef. 3-3-98; DFW 18-1998(Temp), f. 3-9-98, cert. ef. 3-11-98 thru 3-31-98; DFW 60-1998(Temp), f. & cert. ef. 8-7-98 thru 8-21-98; DFW 67-1998, f. & cert. ef. 8-24-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 52-1999(Temp), f. & cert. ef. 8-2-99 thru 8-6-99; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 66-2001(Temp), f. 8-2-01, cert. ef. 8-6-01 thru 8-14-01; DFW 76-2001(Temp), f. & cert. ef. 8-20-01 thru 10-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 82-2002(Temp), f. 8-5-02, cert. ef. 8-7-02 thru 9-1-02; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 17-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 8-1-03; DFW 32-2003(Temp), f. & cert. ef. 4-23-03 thru 8-1-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 37-2003(Temp), f. & cert. ef. 5-7-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 19-2004(Temp), f. & cert. ef. 3-12-04 thru 3-31-04; DFW 22-2004(Temp), f. & cert. ef. 3-18-04 thru 3-31-04; DFW 28-2004(Temp), f. 4-8-04, cert. ef. 4-12-04 thru 4-15-04; DFW 39-2004(Temp), f. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 15-2005(Temp), f. & cert. ef. 3-10-05 thru 7-31-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 28-2005(Temp), f. & cert. ef. 4-28-05 thru 6-16-05; DFW 37-2005(Temp), f. & cert. ef. 5-5-05 thru 10-16-05; DFW 40-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 46-2005(Temp), f. 5-17-05, cert. ef. 5-18-05 thru 10-16-05; DFW 73-2005(Temp), f. 7-8-05, cert. ef. 7-11-05 thru 7-31-05; DFW 77-2005(Temp), f. 7-14-05, cert. ef. 7-18-05 thru 7-31-05; DFW 85-2005(Temp), f. 8-1-05, cert. ef. 8-3-05 thru 12-31-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. ef. 9-26-05 thru 12-31-05; DFW 116-2005(Temp), f. 10-4-05, cert. ef. 10-5-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; DFW 124-2005(Temp), f. & cert. ef. 10-18-05 thru 12-31-05; Administrative correction 1-20-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 14-2006(Temp), f. 3-15-06, cert. ef. 3-16-06 thru 7-27-06; DFW 15-2006(Temp), f. & cert. ef. 3-23-06 thru 7-27-06; DFW 17-2006(Temp), f. 3-29-06, cert. ef. 3-30-06 thru 7-27-06; DFW 29-2006(Temp), f. & cert. ef. 5-16-06 thru 7-31-06; DFW 32-2006(Temp), f. & cert. ef. 5-23-06 thru 7-31-06; DFW 35-2006(Temp), f. & cert. ef. 5-30-06 thru 7-31-06; DFW 52-2006(Temp), f. & cert. ef. 6-28-06 thru 7-27-06; DFW 73-2006(Temp), f. 8-1-06, cert. ef. 8-2-06 thru 12-31-06; DFW 103-2006(Temp), f. 9-15-06, cert. ef. 9-18-06 thru 12-31-06; DFW 119-2006(Temp), f. & cert. ef. 10-18-06 thru 12-31-06; Administrative correction 1-16-07; 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 13-2007(Temp), f. & cert. ef. 3-6-07 thru 9-1-07; DFW 16-2007(Temp), f. & cert. ef. 3-14-07 thru 9-9-07; DFW 25-2007(Temp), f. 4-17-07, cert. ef. 4-18-07 thru 7-26-07; DFW 45-2007(Temp), f. 6-15-07, cert. ef. 6-25-07 thru 7-31-07; DFW 50-2007(Temp), f. 6-29-07, cert. ef. 7-4-07 thru 7-31-07; DFW 61-2007(Temp), f. 7-30-07, cert. ef. 8-1-07 thru 10-31-07; DFW 108-2007(Temp), f. 10-12-07, cert. ef. 10-14-07 thru 12-31-07; Administrative correction 1-24-08; DFW 6-2008(Temp), f. 1-29-08, cert. ef. 1-31-08 thru 7-28-08; DFW 16-2008(Temp), f. 2-26-08, cert. ef. 3-2-08 thru 8-28-08; DFW 30-2008(Temp), f. 3-27-08, cert. ef. 3-30-08 thru 8-28-08; DFW 48-2008(Temp), f. & cert. ef. 5-12-08 thru 8-28-08; DFW 58-2008(Temp), f. & cert. ef. 6-4-08 thru 8-31-08; DFW 85-2008(Temp), f. 7-24-08, cert. ef. 8-1-08 thru 12-31-08; DFW 108-2008(Temp), f. 9-8-08, cert. ef. 9-9-08 thru 12-31-08; Administrative correction 1-23-09; DFW 12-2009(Temp), f. 2-13-09, cert. ef. 2-15-09 thru 7-31-09; DFW 24-2009(Temp), f. 3-10-09, cert. ef. 3-11-09 thru 7-31-09; DFW 49-2009(Temp), f. 5-14-09, cert. ef. 5-17-09 thru 7-31-09; DFW 89-2009(Temp), f. 8-3-09, cert. ef. 8-4-09 thru 12-31-09; DFW 107-2009(Temp), f. 9-2-09, cert. ef. 9-5-09 thru 10-31-09; Administrative correction 11-19-09; DFW 17-2010(Temp), f. & cert. ef. 2-22-10 thru 7-31-10; DFW 20-2010(Temp), f. & cert. ef. 2-26-10 thru 7-31-10; DFW 30-2010(Temp), f. 3-11-10, cert. ef. 3-14-10 thru 7-31-10; DFW 35-2010(Temp), f. 3-23-10, cert. ef. 3-24-10 thru 7-31-10; DFW 40-2010(Temp), f. & cert. ef. 4-1-10 thru 7-31-10; DFW 46-2010(Temp), f. & cert. ef. 4-21-10 thru 7-31-10; DFW 53-2010(Temp), f. & cert. ef. 5-4-10 thru 7-31-10; DFW 57-2010(Temp), f. & cert. ef. 5-11-10 thru 7-31-10; DFW 69-2010(Temp), f. & cert. ef. 5-18-10 thru 7-31-10; DFW 113-2010(Temp), f. 8-2-10, cert. ef. 8-4-10 thru 10-31-10; DFW 129-2010(Temp), f. & cert. ef. 9-10-10 thru 10-31-10; Administrative correction 11-23-10; DFW 12-2011(Temp), f. 2-10-11, cert. ef. 2-13-11 thru 7-29-11; DFW 23-2011, f. & cert. ef. 3-21-11; DFW 32-2011(Temp), f. 4-20-11, cert. ef. 4-21-11 thru 7-29-11; DFW 35-2011(Temp), f. & cert. ef. 4-28-11 thru 7-29-11; DFW 46-2011(Temp), f. & cert. ef. 5-12-11 thru 7-29-11; DFW 52-2011(Temp), f. & cert. ef. 5-18-11 thru 7-29-11; DFW 76-2011(Temp), f. 6-24-11, cert. ef. 6-27-11 thru 7-29-11

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**Rule Caption:** Cumulative Trip Limits Increased for Black and Blue Rockfish Combined.

**Adm. Order No.:** DFW 77-2011(Temp)

**Filed with Sec. of State:** 6-28-2011

**Certified to be Effective:** 7-5-11 thru 12-31-11

**Notice Publication Date:**

**Rules Amended:** 635-004-0033

**Subject:** This amended rule increases the commercial groundfish cumulative trip limits for black rockfish and blue rockfish combined by 200 pounds in each of the harvest periods 4, 5 and 6.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-004-0033

### Groundfish Restrictions

(1) The season for most species of ocean food fish is open year-round, until catch quotas are met (where applicable). Regulations for the following species or species groups of ocean food fish change throughout the season and the Oregon Administrative Rules and federal regulations should be consulted before fishing:

- (a) Minor Shelf Rockfish
- (b) Minor Slope Rockfish
- (c) Black and Yellow Rockfish
- (d) Brown Rockfish
- (e) Calico Rockfish
- (f) China Rockfish
- (g) Copper Rockfish
- (h) Gopher Rockfish
- (i) Grass Rockfish
- (j) Kelp Rockfish
- (k) Olive Rockfish
- (l) Quillback Rockfish
- (m) Treefish
- (n) Black Rockfish
- (o) Blue Rockfish
- (p) Cabezon
- (q) Canary Rockfish
- (r) Greenling
- (s) Tiger Rockfish
- (t) Vermilion Rockfish
- (u) Widow Rockfish
- (v) Yelloweye Rockfish
- (w) Yellowtail Rockfish
- (x) Darkblotched Rockfish
- (y) Pacific Ocean Perch
- (z) Longspine Thornyhead
- (aa) Shortspine Thornyhead
- (bb) Arrowtooth Flounder
- (cc) Dover Sole
- (dd) Petrale Sole
- (ee) Rex Sole
- (ff) Other Flatfish
- (gg) Lingcod
- (hh) Sablefish
- (ii) Pacific Whiting

(2) For the purpose of this rule, "Other nearshore rockfish" means: black and yellow (*Sebastes chrysomelas*); brown (*S. auriculatus*); calico (*S. dalli*); China (*S. nebulosus*); copper (*S. caurinus*); gopher (*S. carnatus*); grass (*S. rastelliger*); kelp (*S. atrovirens*); olive (*S. serranoides*); quillback (*S. maliger*); and treefish (*S. sericeps*).

(3) For the purpose of this rule a "commercial harvest cap" is defined as the total fishery-related mortality for a given species, or species group, that may occur in a single calendar year in Oregon commercial fisheries. For 2011, the commercial harvest cap for black rockfish is 139.2 metric tons.

(4) For the purpose of this rule a "commercial landing cap" is defined as the total landed catch of a given species, or species group, that may be taken in a single calendar year in Oregon commercial fisheries. For 2011, the commercial landing caps are:

- (a) Black rockfish, 137.9 metric tons.
- (b) Black rockfish and blue rockfish combined of 141.9 metric tons.
- (c) Other nearshore rockfish, 14.3 metric tons.
- (d) Cabezon, 31.3 metric tons.
- (e) Greenling, 23.4 metric tons.

(5) For the purpose of this rule, the periods to which cumulative trip limits apply are: January through February (period 1); March through April (period 2); May through June (period 3); July through August (period 4); September through October (period 5); and November through December (period 6).

(6) For black and blue rockfish combined, no vessel may land more than:

- (a) 800 pounds in period 1;
- (b) 1,000 pounds in period 2;



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- (c) 1,400 pounds in period 3;
- (d) 1,600 pounds in period 4;
- (e) 1,200 pounds in period 5; and
- (f) 1,000 pounds in period 6.
- (7) In each period, no vessel may land more than:
  - (a) 700 pounds of other nearshore rockfish, combined;
  - (b) 1,500 pounds of cabezon; or
  - (c) 250 pounds of greenling species in periods 1-6.

Stat. Auth.: ORS 506.109 & 506.119

Stats. Implemented: ORS 506.129

Hist.: FWC 73-1982(Temp), f. & ef. 10-27-82; FWC 1-1983 (Temp), f. & ef. 1-6-83; FWC 10-1983, f. & ef. 3-1-83; FWC 23-1983(Temp), f. & ef. 6-14-83; FWC 41-1983(Temp), f. & ef. 9-6-83; FWC 3-1984, f. & ef. 1-26-84; FWC 18-1984 (Temp), f. 5-4-84, ef. 5-6-84; FWC 36-1984(Temp), f. 7-31-84, ef. 8-1-84; FWC 1-1985(Temp), f. & ef. 1-4-85; FWC 5-1985, f. & ef. 2-19-85; FWC 18-1985(Temp), f. 4-26-85, ef. 4-27-85; FWC 52-1985(Temp), f. 8-30-85, ef. 9-1-85; FWC 65-1985 (Temp), f. & ef. 10-4-85; FWC 82-1985, f. 12-16-85, ef. 1-1-86; FWC 50-1986(Temp), f. & ef. 8-29-86; FWC 81-1986, f. 12-31-86, ef. 1-1-87; FWC 57-1987(Temp), f. & ef. 7-24-87; FWC 104-1987, f. 12-18-87, ef. 1-1-88; FWC 97-1988(Temp), f. & cert. ef. 1-6-88; FWC 103-1988, f. 12-29-88, cert. ef. 1-1-89; FWC 49-1989(Temp), f. & cert. ef. 7-26-89; FWC 69-1990 (Temp), f. 7-24-90, cert. ef. 7-25-90; FWC 122-1990, f. 11-26-90, cert. ef. 11-29-90; FWC 130-1990, f. 12-31-90, cert. ef. 1-1-91; FWC 48-1991(Temp), f. & cert. ef. 5-3-91; FWC 82-1991(Temp), f. 7-30-91, cert. ef. 7-31-91; FWC 83-1991, f. 8-1-91, cert. ef. 7-31-91; FWC 58-1992(Temp), f. & cert. ef. 7-29-92; FWC 141-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 9-1992, f. 2-20-92, cert. ef. 2-21-92; FWC 58-1992(Temp), f. & cert. ef. 7-29-92; FWC 6-1993, f. 1-28-93, cert. ef. 2-1-93; FWC 10-1993, f. & cert. ef. 2-10-93; FWC 1-1994, f. & cert. ef. 1-14-94; FWC 32-1994, f. & cert. ef. 6-3-94; FWC 44-1994, f. 7-26-94, cert. ef. 8-1-94; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 45-1995, f. & cert. ef. 6-1-95; FWC 94-1995(Temp), f. 12-29-95, cert. ef. 1-1-96; FWC 9-1996, f. 3-5-96, cert. ef. 3-8-96; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 119-2002(Temp), f. 10-24-02, cert. ef. 10-25-02 thru 12-31-02; DFW 135-2002, f. 12-23-02, cert. ef. 1-1-03; DFW 14-2003(Temp), f. 2-20-03, cert. ef. 2-21-03 thru 8-19-03; DFW 25-2003, f. & cert. ef. 3-26-03; DFW 60-2003(Temp), f. 7-15-03, cert. ef. 7-16-03 thru 12-31-03; DFW 79-2003(Temp), f. & cert. ef. 8-18-03 thru 12-31-03; DFW 102-2003(Temp), f. 9-30-03, cert. ef. 10-1-03 thru 12-31-03; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 76-2004(Temp), f. 7-23-04, cert. ef. 7-28-04 thru 12-31-04; DFW 100-2004(Temp), f. & cert. ef. 9-28-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 120-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 31-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 82-2005(Temp), f. 7-29-05, cert. ef. 8-1-05 thru 12-31-05; DFW 86-2005(Temp), f. & cert. ef. 8-3-05 thru 12-31-05; DFW 119-2005(Temp), f. 10-10-05, cert. ef. 10-11-05 thru 12-31-05; DFW 135-2005(Temp), f. 11-30-05, cert. ef. 12-1-05 thru 12-31-05; DFW 138-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 50-2006(Temp), f. 6-28-06, cert. ef. 7-1-06 thru 12-27-06; DFW 83-2006(Temp), f. 8-10-06, cert. ef. 8-11-06 thru 2-6-07; DFW 108-2006(Temp), f. 9-29-06, cert. ef. 10-1-06 thru 12-31-06; DFW 133-2006(Temp), f. 12-21-06, cert. ef. 1-1-07 thru 6-29-07; DFW 3-2007, f. & cert. ef. 1-12-07; DFW 83-2007(Temp), f. 8-31-07, cert. ef. 9-1-07 thru 12-31-07; DFW 120-2007(Temp), f. 10-30-07, cert. ef. 11-1-07 thru 12-31-07; DFW 123-2007(Temp), f. 11-26-07, cert. ef. 11-28-07 thru 12-31-07; DFW 128-2007, f. 12-13-07, cert. ef. 1-1-08; Administrative Correction 1-24-08; DFW 70-2008(Temp), f. 6-26-08, cert. ef. 7-1-08 thru 12-27-08; DFW 123-2008(Temp), f. 9-30-08, cert. ef. 10-2-08 thru 12-31-08; DFW 154-2008(Temp), f. 12-29-08, cert. ef. 1-1-09 thru 6-29-09; DFW 21-2009(Temp), f. 2-26-09, cert. ef. 3-1-09 thru 8-27-09; DFW 39-2009, f. & cert. ef. 4-27-09; DFW 75-2009(Temp), f. 6-26-09, cert. ef. 7-1-09 thru 12-28-09; DFW 127-2009(Temp), f. 10-8-09, cert. ef. 10-10-09 thru 12-31-09; DFW 155-2009, f. 12-28-09, cert. ef. 1-1-10; DFW 110-2010(Temp), f. 7-30-10, cert. ef. 8-1-10 thru 12-31-10; DFW 148-2010(Temp), f. & cert. ef. 10-15-10 thru 12-31-10; Administrative correction 1-25-11; DFW 77-2011(Temp), f. 6-28-11, cert. ef. 7-5-11 thru 12-31-11

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**Rule Caption:** Marine Reserve Administrative Rules Effective Dates Postponed Until January 1, 2012.

**Adm. Order No.:** DFW 78-2011(Temp)

**Filed with Sec. of State:** 6-28-2011

**Certified to be Effective:** 6-29-11 thru 12-25-11

**Notice Publication Date:**

**Rules Amended:** 635-012-0020

**Rules Suspended:** 635-012-0030, 635-012-0040, 635-012-0050, 635-012-0060

**Subject:** This amended rule delays the effective date for the Division 012 rules for Marine Reserves and Protected Areas that will regulate hunting and fishing activities in the Otter Rock and Redfish Rocks Marine Reserves and the Redfish Rocks Marine Protected Area. The suspended rules prohibit take or attempts to take, including fishing or hunting, any fish or wildlife species in the marine reserves; and allow for removing crab pots and other fishing gear; and allow scientific take for research with valid permit. In the marine protected area, the suspended rules prohibit and allow the same activities as in the marine reserves, with additional allowances for commercial or recreational troll and take of salmon and fishing for and take of crab in authorized fisheries.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-012-0020

### Purpose

(1) The purpose of the regulations in this section are to implement Oregon House Bill 3013 (2009) by regulating activities in areas of Oregon's territorial sea designated as marine reserves or marine protected areas.

(2) These rules are effective January 1, 2012.

Stat. Auth.: ORS 506.119, 506.129

Stats. Implemented: HB 3013 (2009)

Hist.: DFW 157-2009, f. 12-30-09, cert. ef. 6-30-11; DFW 6-2010, f. 1-22-10, cert. ef. 6-30-11; DFW 78-2011(Temp), f. 6-28-11, cert. ef. 6-29-11 thru 12-25-11

## 635-012-0030

### Definitions

For the purposes of OAR 635, Division 012 the following definitions apply:

(1) "Commission" means the Oregon Fish and Wildlife Commission.

(2) "Department" means the Oregon Department of Fish and Wildlife.

(3) "Fish" means all game fish as defined by ORS 496.009 and food fish as defined by ORS 506.036.

(4) "Fishing gear" has the meaning given in OAR 635-004-0020.

(5) "Take" means to kill or obtain possession or control.

(6) "Wildlife" means all wild birds, amphibians, reptiles, and wild mammals.

Stat. Auth.: ORS 506.119, 506.129

Stats. Implemented: HB 3013 (2009)

Hist.: DFW 157-2009, f. 12-30-09, cert. ef. 6-30-11; DFW 6-2010, f. 1-22-10, cert. ef. 6-30-11; Suspended by DFW 78-2011(Temp), f. 6-28-11, cert. ef. 6-29-11 thru 12-25-11

## 635-012-0040

### Marine Reserve and Marine Protected Area Boundaries

(1) The Otter Rock Marine Reserve encompasses the area bounded by the points described in OAR 141-142-0030.

(2) The Redfish Rocks Marine Reserve encompasses the area bounded by the points described in OAR 141-142-0035.

(3) The Redfish Rocks Marine Protected Area encompasses the area bounded by the points described in OAR 141-142-0040.

Stat. Auth.: ORS 506.119, 506.129

Stats. Implemented: HB 3013 (2009)

Hist.: DFW 157-2009, f. 12-30-09, cert. ef. 6-30-11; Suspended by DFW 78-2011(Temp), f. 6-28-11, cert. ef. 6-29-11 thru 12-25-11

## 635-012-0050

### Marine Reserve Prohibitions and Allowances

(1) Except as specified in section (2) below, the following activities are prohibited within the Otter Rock and Redfish Rocks marine reserve areas: Take or attempt to take, including fishing or hunting, of any fish or wildlife species.

(2) Notwithstanding the prohibitions in section (1) above, person(s) may:

(a) Remove fishing gear from within the marine reserve boundary, provided that the retrieving vessel operator must notify the Oregon State Police at 1-800-452-7888 and receive permission before retrieving the gear and no fish or wildlife species from the retrieved gear shall be retained. Specific to commercial crab pots:

(A) If the pot(s) do not belong to the retrieving vessel, the vessel operator must follow the retrieval requirements set forth in OAR 635-005-0055(9)(b).

(B) If the pot(s) do belong to the retrieving vessel, the vessel operator may re-set the pot(s) outside of the reserve area.

(b) Take fish and wildlife species if authorized by a valid scientific taking permit as required by OAR divisions 635-007 and 635-043.

(c) Have catch onboard while transiting or anchoring in the marine reserve area. Except as allowed by subsection (2)(b) above, fishing gear shall not be deployed in the water at any time within the marine reserve.

(3) Nothing in this rule supersedes the Agreement between the Siletz Tribe, the United States and the State of Oregon, recorded at OAR 635-041-0500, defining specified tribal hunting, fishing, trapping and gathering rights by the Siletz Tribe and its members.

Stat. Auth.: ORS 506.119, 506.129

Stats. Implemented: HB 3013 (2009)

Hist.: DFW 157-2009, f. 12-30-09, cert. ef. 6-30-11; DFW 6-2010, f. 1-22-10, cert. ef. 6-30-11; Suspended by DFW 78-2011(Temp), f. 6-28-11, cert. ef. 6-29-11 thru 12-25-11

## 635-012-0060

### Marine Protected Area Prohibitions and Allowances

(1) Except as specified in section (2) below, the following activities are prohibited within the Redfish Rocks marine protected areas:

(a) Take or attempt to take any fish species.

# ADMINISTRATIVE RULES

(2) Notwithstanding the prohibitions in section (1) above, person(s) may:

(a) Commercially or recreationally troll for and take salmon in fisheries otherwise authorized by Commission rule.

(b) Commercially or recreationally fish for and take crab in fisheries otherwise authorized by Commission rule.

(c) Take fish and wildlife species if authorized by a valid scientific taking permit as required by OAR divisions 635-007 and 635-043.

(d) Have catch onboard while transiting or anchoring in the marine protected area. Except as allowed by subsections (2)(a), (2)(b), and (2)(c) above, fishing gear shall not be deployed in the water at any time within the marine protected area.

(3) It is *unlawful* to fish for or take any legal species in the marine protected area while possessing onboard any species not allowed to be taken in the marine protected area.

Stat. Auth.: ORS 506.119, 506.129  
Stats. Implemented: HB 3013 (2009)  
Hist.: DFW 157-2009, f. 12-30-09, cert. ef. 6-30-11; DFW 6-2010, f. 1-22-10, cert. ef. 6-30-11; Suspended by DFW 78-2011(Temp), f. 6-28-11, cert. ef. 6-29-11 thru 12-25-11

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**Rule Caption:** Tillamook Bay Commercial Cockle Clam Dive Fishery Closure.

**Adm. Order No.:** DFW 79-2011(Temp)

**Filed with Sec. of State:** 6-29-2011

**Certified to be Effective:** 7-3-11 thru 12-29-11

**Notice Publication Date:**

**Rules Amended:** 635-005-0020

**Subject:** Amended rule closes the Tillamook Bay commercial cockle clam dive fishery at 12:01 a.m. Sunday, July 3, 2011 due to a projected attainment of the 90,000 pound annual harvest quota allowed under bay clam dive permits. Modifications are consistent with requirements described in OAR 635-005-0032 sections (2) and (3).

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-005-0020

### Closed Seasons and Areas

It is *unlawful* to take for commercial purposes:

(1) Gaper clams from January 1 through June 30, except under a limited entry bay clam dive fishery permit (OAR 635-006-1015), an incidental catch of one gaper clam per eight butter clams, or 25 pounds of gaper clams per 100 pounds of butter clams, whichever allows the greater gaper clam incidental catch.

(2) Razor clams from July 15 through September 30 in the area north of Tillamook Head in Clatsop County.

(3) Any clams from:

(a) Little Nestucca Bay;

(b) Big Nestucca Bay;

(c) Netarts Bay, except cockles may be taken;

(d) Salmon River and Bay;

(e) Siletz River and Bay;

(f) All state parks south of Tillamook Head.

(4) Bay clams in Tillamook Bay, under a bay clam dive permit (OAR 635-006-1015), from the following areas:

(a) The "Ghost Hole" from the floating toilet site south to Sandstone Point and 500 feet westward from the Highway 101 shoreline;

(b) The area east of a line connecting the Coast Guard tower on the north jetty and buoy marker 13;

(c) The area above mean lower low water near Kincheloe Point.

(5) Cockle clams in Netarts Bay, under a bay clam dive permit (OAR 635-006-1015), from the following areas:

(a) An area extending 500 feet to the north adjacent to Oregon State University's shellfish reserve and across the entire width of the bay;

(b) The area above mean lower low water.

(6) Bay clams in Coos Bay, under a bay clam dive permit (OAR 635-006-1015), from the following areas:

(a) In depths less than 10 feet from mean lower low water;

(b) The area of South Slough east of the Charleston bridge.

(7) Cockle clams in Tillamook Bay, under a bay clam dive permit (OAR 635-006-1015), after 12:01 a.m. Sunday July 3, 2011, when the annual bay clam dive fishery quota of 90,000 pounds (OAR 635-005-0032(2) and (3)) is projected to have been attained.

Stat. Auth.: ORS 506.109 & 506.119  
Stats. Implemented: ORS 506.129  
Hist.: FC 241, f. 4-5-72, ef. 4-15-72; Renumbered from 625-010-0065, 1975; Renumbered from 635-036-0090, 1979; FWC 30-1985, f. 6-27-85, ef. 7-1-85; FWC 137-1991(Temp), f.

12-20-91, cert. ef. 12-23-91; FWC 39-1992(Temp), f. & cert. ef. 6-19-92; FWC 94-1992(Temp), f. 9-18-92, cert. ef. 9-19-92; FWC 102-1992 (Temp), f. 10-1-92, cert. ef. 10-2-92; FWC 121-1992(Temp), f. & cert. ef. 11-9-92; DFW 30-1998(Temp), f. & cert. ef. 5-6-98 thru 10-23-98; DFW 92-1998, f. & cert. ef. 11-25-98; DFW 61-2002, f. & cert. ef. 6-14-02; DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 133-2008(Temp), f. 10-17-08, cert. ef. 10-18-08 thru 12-31-08; Administrative correction 1-23-09; DFW 135-2010(Temp), f. 9-23-10, cert. ef. 9-27-10 thru 12-31-10; DFW 141-2010(Temp), f. 10-6-10, cert. ef. 10-7-10 thru 12-31-10; DFW 79-2011(Temp), f. 6-29-11, cert. ef. 7-3-11 thru 12-29-11

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**Rule Caption:** Amend rule to make consistent with the Wildlife Rehabilitation Rules which were adopted on June 2, 2011.

**Adm. Order No.:** DFW 80-2011(Temp)

**Filed with Sec. of State:** 6-29-2011

**Certified to be Effective:** 7-1-11 thru 12-28-11

**Notice Publication Date:**

**Rules Amended:** 635-435-0035

**Subject:** The rule describes the process of relocation of nuisance wildlife and makes consistent with the Wildlife Rehabilitation Rules adopted on June 2, 2011.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-435-0035

### Relocation of Nuisance Wildlife

(1) A permittee must humanely euthanize prohibited species. Prohibited species cannot be relocated off site except to humanely euthanize them. Prohibited species cannot be relocated to other sites.

(2) A permittee may either release raccoons on site or humanely euthanize them. Raccoons must not be relocated off site except to humanely euthanize them. Raccoons cannot be relocated to other sites except as authorized by the Department.

(3) Predatory animals, furbearers except raccoons and nongame wildlife nonprotected may be released on site, humanely euthanized or (as directed by the Department) relocated into suitable habitat.

Stat. Auth.: ORS 496.012, 496.138, 496.146, & 496.162  
Stats. Implemented: ORS 496.012, 496.138, 496.146, & 496.162  
Hist.: DFW 117-2006, f. & cert. ef. 10-16-06; DFW 80-2011(Temp), f. 6-29-11, cert. ef. 7-1-11 thru 12-28-11

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**Rule Caption:** Boundary changes for Controlled Bighorn Sheep and Controlled Rocky Mountain Goat.

**Adm. Order No.:** DFW 81-2011

**Filed with Sec. of State:** 6-29-2011

**Certified to be Effective:** 8-20-11

**Notice Publication Date:** 3-1-2011

**Rules Amended:** 635-067-0030, 635-067-0040

**Subject:** Amend rule to expand the Controlled Bighorn Sheep Hunts (hunt numbers 568A1 and 568A2) to include part of Unit 68 and the entire Owyhee unit (Unit 67).

Amend rule to expand the Controlled Rocky Mountain Goat Hunt (hunt number 960B) to include parts of units 60 and 61 and part of unit 59.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-067-0030

### Controlled Bighorn Sheep Hunts

Notwithstanding the provisions of the 2011 Oregon Big Game Regulations, the open area described on page 40 for the Upper Owyhee hunts (hunt numbers 568A1 and 568A2) is expanded to include that part of Unit 68 south and east of Hwy 95, and the entire Owyhee Unit (unit 67).

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162  
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162  
Hist.: FWC 32-1978, f. & ef. 6-30-78; FWC 12-1979, f. & ef. 3-28-79; FWC 29-1979, f. & ef. 8-2-79; FWC 14-1980, f. & ef. 4-8-80; FWC 10-1981, f. & ef. 3-31-81; FWC 22-1981, f. & ef. 6-29-81; FWC 21-1982, f. & ef. 3-31-82, Renumbered from 635-060-0610; FWC 15-1983, f. & ef. 4-19-83; FWC 16-1984, f. 4-6-84, ef. 4-15-84; FWC 21-1985, f. & ef. 5-7-85; FWC 29-1986, f. & ef. 7-23-86; FWC 11-1987, f. & ef. 3-6-87; FWC 14-1988, f. & cert. ef. 3-10-88; FWC 16-1989, f. & cert. ef. 3-28-89; FWC 65-1989, f. & cert. ef. 8-15-89; FWC 25-1990, f. & cert. ef. 3-21-90; FWC 21-1991, f. & cert. ef. 3-12-91; FWC 45-1992, f. & cert. ef. 7-15-92; FWC 61-1992, f. & cert. ef. 7-30-92; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 46-1993, f. & cert. ef. 8-4-93; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 40-1994, f. & cert. ef. 6-28-94; FWC 6-1995, f. 1-23-95, cert. ef. 4-1-95; FWC 54-1995, f. & cert. ef. 6-20-95; FWC 17-1996, f. 4-10-96, cert. ef. 4-15-96; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; DFW 99-2006(Temp), f. & cert. ef. 9-11-06 thru 9-30-06; Administrative correction 10-16-06; DFW 109-2009(Temp), f. & cert. ef. 9-9-09 thru 9-30-09; Administrative correction 10-22-09; DFW 81-2011, f. 6-29-11, cert. ef. 8-20-11

# ADMINISTRATIVE RULES

635-067-0040

## Controlled Rocky Mountain Goat Hunt Regulations

Rocky Mountain goat taken by hunters shall be inspected by department personnel prior to the hunter leaving the hunt area. Party applications are not allowed. All hunters are required to attend an orientation class with department personnel prior to hunting and to check out through the local district office of ODFW within 72 hours of completion of their hunt.

Notwithstanding the provisions of the 2011 Oregon Big Game Regulations, the open area described on page 38 for the Cusick Mt hunt (hunt number 960B) is expanded to include that part of units 60 and 61 as follows: beginning at Wallowa Lake Trailhead; southeast along 1804 to Tenderfoot Pass; southeast along trail 1814 to trail 1801; south along 1801 to trail 1816 to Hawkins Pass; north along trail 1820 to Wallowa Lake trailhead and that part of unit 59 south of Freezeout Creek Rd 4230 and Saddle Creek Trail 1776.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162  
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162  
Hist.: FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 81-2011, f. 6-29-11, cert. ef. 8-20-11

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**Rule Caption:** Oregon Ocean Sport Pacific Halibut All-Depth Spring Season Closure, Cape Falcon to Humbug Mountain.

**Adm. Order No.:** DFW 82-2011(Temp)

**Filed with Sec. of State:** 6-30-2011

**Certified to be Effective:** 7-1-11 thru 8-4-11

**Notice Publication Date:**

**Rules Amended:** 635-039-0085

**Rules Suspended:** 635-039-0085(T)

**Subject:** Amended rule closes the all-depth spring sport fishery for Pacific halibut in the area between Cape Falcon and Humbug Mountain, Oregon at 11:59 p.m. on Friday, July 1, 2011 when the quota of 115,578 pounds is projected to have been taken. This rule is consistent with regulations that have been implemented by the federal government and the International Pacific Halibut Commission for the 2011 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:

(a) **Title 50 of the Code of Federal Regulations, Part 300, Subpart E** (October 1, 2010 ed.), as amended; and

(b) **Federal Register Vol. 76, No. 51**, dated March 16, 2011 (76 FR 14300).

(2) Therefore, persons must consult all publications referenced in this rule in addition to Division 039 to determine applicable halibut fishing seasons.

(3) Effective 11:59 p.m., Saturday, June 4, 2011 the Columbia River sub-area (Cape Falcon, OR to Leadbetter Pt., WA) is closed to the retention of Pacific halibut.

(4) Effective 11:59 p.m., Friday, July 1, 2011, the Central Oregon sub-area (Cape Falcon to Humbug Mountain) all-depth spring season is closed to the retention of Pacific halibut.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 496.138, 496.162, 506.036, 506.109, 506.119 & 506.129  
Stats. Implemented: ORS 496.162 & 506.129  
Hist.: DFW 56-2005, f. 6-21-05, cert. ef. 7-1-05; DFW 89-2005(Temp), f. & cert. ef. 8-12-05 thru 12-12-05; DFW 107-2005(Temp), f. 9-14-05, cert. ef. 9-15-05 thru 10-31-05; DFW 121-2005(Temp), f. 10-12-05, cert. ef. 10-18-05 thru 12-31-05; Administrative correction 1-19-06; DFW 34-2006(Temp), f. 5-25-06, cert. ef. 5-27-06 thru 8-3-06; Administrative correction 8-22-06; DFW 3-2007, f. & cert. ef. 1-12-07; DFW 35-2007(Temp), f. 5-25-07, cert. ef. 5-26-07 thru 8-2-07; DFW 67-2007(Temp), f. 8-9-07, cert. ef. 8-12-07 thru 9-30-07; DFW 76-2007(Temp), f. 8-17-07, cert. ef. 8-24-07 thru 9-30-07; DFW 84-2007(Temp), f. 9-5-07, cert. ef. 9-15-07 thru 9-30-07; DFW 87-2007(Temp), f. 9-10-07, cert. ef. 9-14-07 thru 10-28-07; DFW 90-2007(Temp), f. 9-19-07, cert. ef. 9-20-07 thru 10-31-07; Administrative correction 11-17-07; DFW 57-2008(Temp), f. 5-30-08, cert. ef. 6-1-08 thru 7-31-08; DFW 81-2008(Temp), f. 7-11-08, cert. ef. 8-2-08 thru 9-30-08; DFW 92-2008(Temp), f. & cert. ef. 8-11-08 thru 9-30-08; DFW 101-2008(Temp), f. 8-25-08, cert. ef. 8-29-08 thru 9-30-08; DFW 107-2008(Temp), f. 9-5-08, cert. ef. 9-7-08 thru 12-31-08; DFW 111-2008(Temp), f. & cert. ef. 9-16-08 thru 12-31-08; DFW 120-2008(Temp), f. 9-25-08, cert. ef. 9-27-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 39-2009, f. & cert. ef. 4-27-09; DFW 55-2009(Temp), f. & cert. ef. 5-22-09 thru 8-6-09; DFW 94-2009(Temp), f. 8-14-09, cert. ef. 8-16-09 thru 12-31-09; Administrative correction 1-25-10; DFW 32-2010, f. & cert. ef. 3-15-10; DFW 37-2010, f. 3-30-10, cert. ef. 4-1-10; DFW 100-2010(Temp), f. 7-15-10, cert. ef. 7-17-10 thru 10-31-10; DFW 118-2010(Temp), f. & cert. ef. 8-13-10 thru 10-31-10; Administrative correction 11-23-10; DFW 24-2011, f. & cert. ef. 3-22-11; DFW 58-

2011(Temp), f. 5-27-11, cert. ef. 6-4-11 thru 8-4-11; DFW 82-2011(Temp), f. 6-30-11, cert. ef. 7-1-11 thru 8-4-11

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**Rule Caption:** Oregon Ocean Commercial, Terminal Area, and Coastal Zone Sport Salmon Fisheries.

**Adm. Order No.:** DFW 83-2011

**Filed with Sec. of State:** 6-30-2011

**Certified to be Effective:** 7-1-11

**Notice Publication Date:** 5-1-2011

**Rules Amended:** 635-003-0085, 635-013-0007, 635-013-0009, 635-014-0090, 635-016-0090

**Subject:** Amended rules for sport and commercial fishing regulations for coastal fall Chinook in Tillamook, Elk, Chetco, and Coos-Coquille ocean terminal areas. Amended rules for sport angling regulations for coastal fall Chinook in bays and rivers. Also amended sport angling regulations to provide terminal recreational fisheries for non adipose fin-clipped coho in the Nehalem, Tillamook Bay, Nes-tucca, Siletz, Tenmile, Yaquina, Alesia, Siu-slaw, Umpqua, Coos and Coquille basins with open areas, bag limits, seasons, and quotas. Modifications to regulations for 2011 also conform to recent federal regulation changes. Housekeeping and technical corrections to the regulations were made to ensure rule consistency.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

635-003-0085

## Extended Commercial Seasons

In addition to the open seasons prescribed in OAR 635-003-0003 there are open seasons for Chinook salmon as follows:

(1) Elk River Ocean Terminal Area — from November 1 through November 30 in the area described in section (1)(a) of this rule.

(a) The open area is all Pacific Ocean waters shoreward of a line drawn from Cape Blanco (42°50'20" N. Lat.) thence SW to Black Rock (42°49'24" N. Lat. 124°35'00" W. Long.), thence SSW to Best Rock (42°47'24" N. Lat. 124°35'42" W. Long.), thence SE to 42°40'30" N. Lat. 124°29'00" W. Long., thence to shore (Humbug Mountain).

(b) During the season described in this section (1), it is *unlawful* to take Chinook salmon less than 24 inches in total length; it is *unlawful* to use multipoint or barbed hooks or to fish more than four spreads per line; it is *unlawful* to make more than one landing of Chinook per day; and it is *unlawful* to have in possession or to land more than 20 Chinook per day taken in this fishery. Landings are restricted to Port Orford.

(2) Tillamook Bay Ocean Terminal Area — from September 1 through September 30 in the area described in section (2)(a) of this rule:

(a) The open area is all Pacific Ocean waters inside an area between Twin Rocks (45°35'54" N. Lat.) and Pyramid Rock (45°29'48" N. Lat.) and seaward three nautical miles offshore;

(b) During the season described in this section (2), it is *unlawful* to take Chinook salmon less than 28 inches in total length and it is *unlawful* to use multipoint or barbed hooks or to fish more than four spreads per line; and it is *unlawful* to have in possession or to land more than 25 Chinook per calendar week (Sunday through Saturday). Landings are restricted to Garibaldi.

(3) Chetco River Ocean Terminal Area — from October 13 through the earlier of October 31 or quota of 750 Chinook in the area described in section (3)(a) of this rule:

(a) The open area is all Pacific Ocean waters inside an area south of the north shore of Twin Rocks (42°05'36" N. Lat.) to the Oregon/California border (42°00'00" N. Lat.) and seaward three nautical miles offshore;

(b) During the season described in this section (3) it is *unlawful* to take Chinook salmon less than 28 inches in total length; it is *unlawful* to use multipoint or barbed hooks, or to fish more than four spreads per line; it is *unlawful* to make more than one landing of Chinook per day; and it is *unlawful* to have in possession or to land more than 20 Chinook per day taken in this fishery. Landings are restricted to Brookings.

(c) All vessels landing salmon caught in this season must report to ODFW within one hour of delivery or prior to transport away from the port of landing by either calling (541) 867-0300, ext. 252 or by e-mail to kmzorr.trollreport@state.or.us. Notification shall include vessel name and number, number of salmon by species, port of landing, location of delivery, and estimated time of delivery.

(4) Coos-Coquille Ocean Terminal Area — Open for Chinook salmon harvest from September 1 through September 30, within the area described in section (4)(a) of this rule.



# ADMINISTRATIVE RULES

(a) The open area is all Pacific Ocean waters shoreward of the 30 fathom depth contour between 43°31'00" N. Latitude line and 43°16'00" N. Latitude and within all State Waters (0-3 nautical miles from shore) between 43°16'00" N. Latitude and Crooked Creek (43°04'50" N. Lat.).

(b) During the season described in this section (4), it is *unlawful* to take Chinook salmon less than 28 inches in total length. It is *unlawful* to use multipoint or barbed hooks or to fish more than four spreads per line. And, it is *unlawful* to have in possession or to land more than 50 Chinook taken in this fishery per calendar week. Landings are restricted to Charleston (Coos Bay) or Bandon.

Stat. Auth.: ORS 496.138, 496.146, & 506.119  
Stats. Implemented: ORS 506.129

Hist.: FWC 48-1984(Temp), f. & ef. 8-31-84; 57-1984(Temp), f. & ef. 9-15-84; FWC 59-1986(Temp), f. & ef. 9-19-86; FWC 106-1992(Temp), f. 10-8-92, cert. ef. 10-24-92; FWC 111-1992(Temp), f. 10-26-92, cert. ef. 10-27-92; FWC 62-1993, f. & cert. ef. 10-1-93; FWC 56-1994, f. 8-30-94, cert. ef. 9-1-94; FWC 80-1994(Temp), f. 10-25-94, cert. ef. 10-26-94; FWC 82-1994(Temp), f. 10-28-94, cert. ef. 10-30-94; FWC 81-1995, f. 9-29-95, cert. ef. 10-1-95; FWC 85-1995(Temp), f. & cert. ef. 10-20-95; FWC 56-1996, f. 9-27-96, cert. ef. 10-1-96; FWC 30-1997, f. & cert. ef. 5-5-97; FWC 66-1997(Temp), f. 10-24-97, cert. ef. 10-26-97; FWC 67-1997(Temp), f. 10-28-97, cert. ef. 10-29-97; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 26-2006(Temp), f. 4-20-06, cert. ef. 5-1-06 thru 10-27-06; DFW 78-2006(Temp), f. 8-7-06, cert. ef. 9-1-06 thru 12-15-06; Administrative correction 12-16-06; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 65-2008(Temp), f. 6-20-08, cert. ef. 9-1-08 thru 12-31-08; DFW 128-2008(Temp), f. 10-9-08, cert. ef. 10-12-08 thru 12-31-08; Administrative correction 1-23-09; DFW 52-2009, f. & cert. ef. 5-18-09; DFW 102-2009(Temp), f. 8-27-09, cert. ef. 9-1-09 thru 12-31-09; DFW 132-2009(Temp), f. & cert. ef. 10-19-09 thru 10-31-09; Administrative correction 11-19-09; DFW 76-2010, f. 6-8-10, cert. ef. 8-1-10; DFW 147-2010(Temp), f. & cert. ef. 10-15-10 thru 10-31-10; DFW 151-2010(Temp), f. 10-19-10, cert. ef. 10-20-10 thru 10-31-10; DFW 153-2010(Temp), f. & cert. ef. 10-29-10 thru 10-31-10; Administrative correction 11-23-10; DFW 83-2011, f. 6-30-11, cert. ef. 7-1-11

## 635-013-0007

### Special South Coast Seasons

In addition to the open seasons prescribed in OAR 635-013-0005 there are open seasons for Chinook salmon as follows:

#### (1) Elk River Area.

(a) From November 1 through November 30 in all Pacific Ocean waters shoreward of a line drawn from Cape Blanco (42°50'20" N. Lat.) thence SW to Black Rock (42°49'24" N. Lat. 124°35'00" W. Long.), thence SSW to Best Rock (42°47'24" N. Lat. 124°35'42" W. Long.), thence SE to 42°40'30" N. Lat. 124°29'00" W. Long., thence to shore (Humbug Mountain);

(b) During the season described for the Elk River Area in section (1)(a) of this rule it is *unlawful* to take Chinook salmon less than 24 inches in length. No more than one non fin-clipped Chinook salmon per day and 10 non fin-clipped Chinook salmon in the seasonal aggregate when combined with waters of the Sixes River and Elk River may be retained during the November 1-30 season. It is *unlawful* to use multipoint or barbed hooks.

#### (2) Chetco River Area.

(a) From October 1-12 in an area south of the north shore of Twin Rocks (42°05'36" N. Lat.) to the Oregon/California border (42°00'00" N. Lat.) and seaward three nautical miles offshore.

(b) During the seasons described in section (2)(a) of this rule it is *unlawful* to take Chinook salmon less than 24 inches in length. No more than one Chinook salmon may be retained per day and no more than 5 fish may be retained during the October 1-12 season. It is *unlawful* to use multipoint or barbed hooks.

Stat. Auth.: ORS 496.138, 496.146, & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: FWC 25-1982, f. & ef. 4-30-82; FWC 62-1983(Temp), f. & ef. 11-1-83; FWC 69-1984(Temp), f. & ef. 10-2-84; FWC 59-1985(Temp), f. & ef. 9-13-85; FWC 59-1986(Temp), f. & ef. 9-19-86; FWC 77-1986(Temp), f. & ef. 11-26-86; FWC 76-1987, f. & ef. 9-15-87; FWC 84-1988, f. & cert. ef. 9-9-88; FWC 83-1989, f. 8-31-89, cert. ef. 9-16-89; FWC 86-1990, f. 8-24-90, cert. ef. 9-1-90; FWC 42-1991, f. 4-29-91, cert. ef. 5-1-91; FWC 101-1992, f. 9-29-92, cert. ef. 10-1-92; FWC 114-1992(Temp), f. 10-26-92, cert. ef. 10-27-92; FWC 62-1993, f. & cert. ef. 10-1-93; FWC 56-1994, f. 8-30-94, cert. ef. 9-1-94; FWC 78-1994(Temp), f. 10-20-94, cert. ef. 10-21-94; FWC 81-1995, f. 9-29-95, cert. ef. 10-1-95; FWC 84-1995(Temp), f. 10-13-95, cert. ef. 10-16-95; FWC 86-1995(Temp), f. 10-20-95, cert. ef. 10-21-95; FWC 56-1996, f. 9-27-96, cert. ef. 10-1-96; FWC 30-1997, f. & cert. ef. 5-5-97; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 67-2008(Temp), f. 6-20-08, cert. ef. 8-1-08 thru 12-31-08; DFW 121-2008(Temp), f. & cert. ef. 10-2-08 thru 12-31-08; Administrative correction 1-23-09; DFW 52-2009, f. & cert. ef. 5-18-09; DFW 87-2009(Temp), f. 7-31-09, cert. ef. 8-1-09 thru 12-31-09; Administrative correction 1-25-10; DFW 76-2010, f. 6-8-10, cert. ef. 8-1-10; DFW 83-2011, f. 6-30-11, cert. ef. 7-1-11

## 635-013-0009

### Tillamook Terminal Area Ocean Fishery

(1) In addition to the open seasons prescribed in OAR 635-013-0004 there are open seasons for Chinook salmon in the areas described in Section (2) of this rule.

(2) The Pacific Ocean waters inside an area south of Twin Rocks (45°35'54" N. Lat.) and north of Pyramid Rock (45°29'48" N. Lat.) and

seaward three nautical miles offshore are open for Chinook salmon September 1 through October 31.

(3) During the open season for coho salmon in the ocean, the Terminal Area described in section (2) of this rule is open to angling for salmon consistent with federal sport salmon management measures for the area from Cape Falcon to Humbug Mountain.

(4) During the period of October 1 through October 31, in the area described in section (2) above no more than 1 non fin-clipped Chinook salmon may be retained per day and no more than 10 non fin-clipped Chinook salmon may be retained in the seasonal aggregate when combined with all other waters in the Northwest Zone with a 10 Chinook salmon seasonal aggregate limit. Seasonal aggregate applies to all non fin-clipped Chinook salmon retained between August 1 and December 31, except in the Nehalem Basin where the seasonal aggregate applies to all adult non fin-clipped Chinook salmon retained between July 1 and December 31. For purposes of this rule, adult salmon are Chinook having a length greater than 24 inches.

(5) No more than two single-point, single-shank barbless hooks are required in the ocean when these ocean waters are open for the coho salmon fishery and in the ocean outside the Terminal Area at all times.

Stat. Auth.: ORS 496.138, 496.146, & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: FWC 45-1983(Temp), f. & ef. 9-16-84; FWC 57-1984(Temp), f. & ef. 9-15-84; FWC 64-1984(Temp), f. & ef. 9-21-84; FWC 59-1985(Temp), f. & ef. 9-13-85; FWC 59-1986(Temp), f. & ef. 9-19-86; FWC 76-1987, f. & ef. 9-15-87; FWC 84-1988, f. & cert. ef. 9-9-88; FWC 83-1989, f. 8-31-89, cert. ef. 9-16-89; FWC 86-1990, f. 8-24-90, cert. ef. 9-1-90; FWC 42-1991, f. 4-29-91, cert. ef. 5-1-91; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 19-1997(Temp), f. 3-17-97, cert. ef. 4-15-97; FWC 30-1997, f. & cert. ef. 5-5-97; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 18-2003(Temp), f. 2-28-03, cert. ef. 3-1-03 thru 4-30-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 25-2005, f. & cert. ef. 4-15-05; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; 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; Administrative correction 1-23-09; DFW 27-2009(Temp), f. 3-11-09, cert. ef. 3-15-09 thru 9-10-09; DFW 87-2009(Temp), f. 7-31-09, cert. ef. 8-1-09 thru 12-31-09; Administrative correction 1-25-10; DFW 33-2010(Temp), f. 3-12-10, cert. ef. 3-15-10 thru 9-10-10; DFW 76-2010, f. 6-8-10, cert. ef. 8-1-10; DFW 83-2011, f. 6-30-11, cert. ef. 7-1-11

## 635-014-0090

### Inclusions and Modifications

(1) The **2011 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 **2011 Oregon Sport Fishing Regulations** pamphlet.

(2) Notwithstanding all other requirements provided in the **2011 Oregon Sport Fishing Regulations** pamphlet, the following additional rules apply to adult salmon angling in waters of the Northwest Zone:

(a) All waters of the Necanicum River Basin, Nehalem River Basin (including North Fork), Tillamook Bay Basin, (including the Miami, Kilchis, Wilson, Trask, and Tillamook rivers), and the Nestucca River Basin (including the Little Nestucca and Three Rivers) and Salmon River that are open for Chinook salmon are limited to no more than 1 adult non fin-clipped Chinook salmon per day, or 2 adult non fin-clipped Chinook salmon per day from the Siletz or Yaquina rivers, and 10 adult non fin-clipped Chinook salmon in the seasonal aggregate when combined with all other waters in the Northwest Zone and all state waters terminal area seasons in the Marine Zone with a 10 adult non fin-clipped Chinook salmon seasonal aggregate limit. Seasonal aggregate applies to all adult non fin-clipped Chinook salmon retained between August 1 and December 31 except in the Nehalem Basin where the seasonal aggregate applies to all adult non fin-clipped Chinook salmon retained between July 1 and December 31 and except in the Tillamook Terminal Area where the seasonal aggregate applies to all adult non fin-clipped Chinook salmon retained between October 1-31.

(b) Within the Nehalem Basin (including the North Fork) the following additional rules apply:

(A) Mainstem (bay) closed to all salmon and steelhead angling seaward from a line extending from Nehalem Bay State Park Boat Ramp to Fishery Point July 1 through September 14 and closed to all Chinook salmon angling upstream of Peterson Creek (RM 10.2) July 1 through December 31.

(B) Nehalem tidewater from the jetty tips upstream to Peterson Creek (RM 10.2) on South Fork and North Fork Road Bridge on the North Fork is open for non adipose fin-clipped coho salmon from September 15 through the earlier of November 30 or attainment of an adult coho salmon quota of 1,200 non adipose fin-clipped coho salmon.

(C) The daily catch limit may include one adult non adipose fin-clipped coho salmon per day and one non adipose fin-clipped jack coho

# ADMINISTRATIVE RULES

salmon per day, and no more than 2 total adult non adipose fin-clipped coho salmon in the seasonal aggregate from all waters in the Northwest Zone and Southwest Zone with a 2 adult non adipose fin-clipped coho salmon seasonal aggregate limit.

(c) Within the Tillamook Bay Basin the following additional rules apply:

(A) Tillamook Bay tidewater from the jetty tips upstream to Hwy. 101 Bridge on Miami, Kilchis, Wilson, and Trask rivers and Burton Bridge on Tillamook River is open for non adipose fin-clipped coho salmon from September 15 through the earlier of November 30 or attainment of an adult coho salmon quota of 600 non adipose fin-clipped coho salmon.

(B) The daily catch limit may include one adult non adipose fin-clipped coho salmon per day and one non adipose fin-clipped jack coho salmon per day, and no more than 1 total adult non adipose fin-clipped coho salmon in the seasonal aggregate from all waters in the Northwest Zone and Southwest Zone with a 1 adult non adipose fin-clipped coho salmon seasonal aggregate limit.

(d) Within the Nestucca Basin (including the Little Nestucca River and Three Rivers) the following rules apply:

(A) Mainstem Nestucca upstream of First Bridge (RM 15.8) near Beaver closed to all Chinook angling August 1 through December 31.

(B) Nestucca Bay tidewater (excluding Little Nestucca tidewater) from the bay mouth upstream to the Cloverdale Bridge (RM 7.1) is open for non adipose fin-clipped coho salmon from September 15 through the earlier of November 30 or attainment of an adult coho salmon quota of 200 non adipose fin-clipped coho salmon.

(C) The daily catch limit may include one adult non adipose fin-clipped coho salmon per day and one non adipose fin-clipped jack coho salmon per day, and no more than 1 total adult non adipose fin-clipped coho salmon in the seasonal aggregate from all waters in the Northwest Zone and Southwest Zone with a 1 adult non adipose fin-clipped coho salmon seasonal aggregate limit.

(e) Within the Siletz River Basin the following additional rules apply:

(A) Mainstem and tributaries above Ojalla Bridge (RM 31) closed to Chinook August 1-December 31; Drift Creek (Siletz River Basin) upstream of the confluence with Quarry Creek at RM 8 is closed for Chinook salmon from August 1 through December 31;

(B) Siletz River and Bay upstream to Ojalla Bridge (RM 31) is open for non adipose fin-clipped coho salmon from September 15 through the earlier of November 30 or attainment of an adult coho salmon quota of 700 non adipose fin-clipped coho salmon; and

(C) The daily catch limit may include one adult non adipose fin-clipped coho salmon per day and one non adipose fin-clipped jack coho salmon per day, and no more than 5 total adult non adipose fin-clipped coho salmon in the seasonal aggregate from all waters in the Northwest Zone and Southwest Zone.

(f) Within the Yaquina River Basin the following additional rules apply:

(A) All waters of the Yaquina River upstream of the confluence of the Yaquina River and Big Elk Creek at RM 18.3 and all waters of Big Elk Creek (Yaquina River Basin) are closed for Chinook salmon from August 1 through December 31;

(B) The Yaquina River and Bay upstream to the confluence of the Yaquina River and Big Elk Creek are open for non adipose fin-clipped coho salmon from September 15 through the earlier of November 30 or attainment of an adult coho salmon quota of 575 non adipose fin-clipped coho salmon; and

(C) The daily catch limit may include one adult non adipose fin-clipped coho salmon per day and one non adipose fin-clipped jack coho salmon per day, and no more than 5 total adult non adipose fin-clipped coho salmon in the seasonal aggregate from all waters in the Northwest Zone and Southwest Zone.

(g) Within the Alsea River Basin the following additional rules apply:

(A) All waters of Drift Creek (Alsea River Basin) within the Drift Creek Wilderness Area and upstream are closed for Chinook salmon from August 1 through December 31;

(B) All waters of the Alsea River upstream of the confluence with Five Rivers at RM 21 are closed for Chinook salmon from August 1 through December 31;

(C) All waters of Five Rivers are closed for Chinook salmon from August 1 through December 31.

(D) The Alsea River and Bay upstream to the confluence of the Alsea River and Five Rivers are open for non adipose fin-clipped coho salmon from September 15 through the earlier of November 30 or attainment of an adult coho salmon quota of 675 non adipose fin-clipped coho salmon; and

(E) The daily catch limit may include one adult non adipose fin-clipped coho salmon per day and one non adipose fin-clipped jack coho salmon per day, and no more than 5 total adult non adipose fin-clipped coho salmon in the seasonal aggregate from all waters in the Northwest Zone and Southwest Zone.

(h) Within the Siuslaw River Basin the following additional rules apply:

(A) All waters of the Siuslaw River upstream of the confluence with Lake Creek at RM 30.0 are closed for Chinook salmon from August 1 through December 31;

(B) All waters of Lake Creek are closed for Chinook salmon August 1 through December 31 and all waters of Lake Creek downstream of Fish Creek are closed to all angling from September 1 through November 30;

(C) The Siuslaw River and Bay upstream to the confluence of the Siuslaw River and Lake Creek are open for non adipose fin-clipped coho salmon from September 15 through the earlier of November 30 or attainment of an adult coho salmon quota of 900 non adipose fin-clipped coho salmon; and

(D) The daily catch limit may include one adult non adipose fin-clipped coho salmon per day and one non adipose fin-clipped jack coho salmon per day, and no more than 5 total adult non adipose fin-clipped coho salmon in the seasonal aggregate from all waters in the Northwest Zone and Southwest Zone.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 21-1994(Temp), f. 4-22-94, cert. ef. 4-25-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 28-1995(Temp), f. 3-31-95, cert. ef. 5-1-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 39-1995, f. 5-10-95, cert. ef. 5-12-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 19-1996, f. & cert. ef. 5-16-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 29-1996, f. & cert. ef. 5-31-96; FWC 46-1996, f. & cert. ef. 8-23-96; FWC 55-1996(Temp), f. 9-25-96, cert. ef. 10-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 73-1996(Temp), f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 30-1997, f. & cert. ef. 5-5-97; FWC 58-1997, f. 9-8-97, cert. ef. 10-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 12-1998(Temp), f. & cert. ef. 2-24-98 thru 4-24-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 69-1998, f. 8-28-98, cert. ef. 9-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 36-1999, f. & cert. ef. 5-20-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 81-2001, f. & cert. ef. 8-29-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp), f. 1-11-02, cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 118-2002(Temp), f. 10-22-02, cert. ef. 12-1-02 thru 3-31-03; DFW 120-2002(Temp), f. 10-24-02, cert. ef. 10-26-02 thru 3-31-03; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 18-2003(Temp), f. 2-28-03, cert. ef. 3-1-03 thru 4-30-03; DFW 38-2003(Temp), f. 5-7-03, cert. ef. 5-10-03 thru 10-31-03; DFW 51-2003(Temp), f. & cert. ef. 6-13-03 thru 10-31-03; DFW 90-2003(Temp), f. 9-12-03, cert. ef. 9-13-03 thru 12-31-03; DFW 108-2003(Temp), f. 10-28-03, cert. ef. 12-1-03 thru 3-31-04; DFW 123-2003(Temp), f. 12-10-03, cert. ef. 12-11-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 126-2003(Temp), f. 12-11-03, cert. ef. 1-1-04 thru 3-31-04; DFW 60-2004(Temp), f. 6-29-04, cert. ef. 7-1-04 thru 7-15-04; DFW 90-2004(Temp), f. 8-30-04, cert. ef. 10-1-04 thru 12-31-04; DFW 103-2004(Temp), f. & cert. ef. 10-4-04 thru 12-31-04; DFW 108-2004(Temp), f. & cert. ef. 10-18-04 thru 12-31-04; DFW 111-2004(Temp), f. 11-16-04, cert. ef. 11-20-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 62-2005(Temp), f. 6-29-05, cert. ef. 7-1-05 thru 7-10-05; Administrative correction 7-20-05; DFW 105-2005(Temp), f. 9-12-05, cert. ef. 10-1-05 thru 12-15-05; DFW 127-2005(Temp), f. & cert. ef. 11-23-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 53-2006(Temp), f. 6-29-06, cert. ef. 7-1-06 thru 7-9-06; Administrative correction 7-20-06; DFW 64-2006(Temp), f. 7-17-06, cert. ef. 8-1-06 thru 12-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 104-2006(Temp), f. 9-19-06, cert. ef. 10-1-06 thru 12-31-06; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 63-2007(Temp), f. 8-6-07, cert. ef. 8-11-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 25-2008(Temp), f. 3-13-08, cert. ef. 3-15-08 thru 9-10-08; DFW 67-2008(Temp), f. 6-20-08, cert. ef. 8-1-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 43-2009(Temp), f. 5-5-09, cert. ef. 5-22-09 thru 10-31-09; DFW 67-2009(Temp), f. 6-9-09, cert. ef. 6-15-09 thru 10-31-09; DFW 87-2009(Temp), f. 7-31-09, cert. ef. 8-1-09 thru 12-31-09; DFW 99-2009(Temp), f. 8-26-09, cert. ef. 9-1-09 thru 12-31-09; DFW 115-2009(Temp), f. & cert. ef. 9-22-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 44-2010(Temp), f. 4-20-10, cert. ef. 4-21-10 thru 9-30-10; DFW 73-2010(Temp), f. 5-27-10, cert. ef. 6-1-10 thru 9-30-10; DFW 76-2010, f. 6-8-10, cert. ef. 8-1-10; DFW 89-2010(Temp), f. 6-28-10, cert. ef. 7-1-10 thru 9-30-10; Administrative correction 10-26-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 57-2011(Temp), f. 5-27-11, cert. ef. 6-1-11 thru 6-30-11; DFW 83-2011, f. 6-30-11, cert. ef. 7-1-11

## 635-016-0090

(1) The **2011 Oregon Sport Fishing Regulations** provide requirements for the Southwest Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2011 Oregon Sport Fishing Regulations**.

(2) Notwithstanding all other requirements provided in the **2011 Oregon Sport Fishing Regulations**, the following restrictions apply to angling in waters of the Southwest Zone:

# ADMINISTRATIVE RULES

(a) Within the Umpqua River Basin the following additional rules apply:

(A) Open for non adipose fin-clipped coho salmon in the Mainstem Umpqua River and Bay from the mouth to Scottsburg Bridge at RM 27.5 from September 15 through the earlier of November 30 or attainment of an adult coho quota of 1,300 non adipose fin-clipped coho. The daily catch limit may include one adult non adipose fin-clipped coho salmon per day and one non adipose fin-clipped jack coho, and no more than 2 total adult non adipose fin-clipped coho salmon in the seasonal aggregate from all waters in the Northwest Zone and Southwest Zone with a 2 adult non adipose fin-clipped coho salmon seasonal aggregate limit.

(b) Within the Coos River Basin the following additional rules apply:

(A) All waters of the South Fork Coos River upstream from the head of tidewater at Dellwood at RM 10.0 are closed for all salmon angling from August 1 through December 31 and closed for steelhead from August 1 through November 14; and

(B) Open for non adipose fin-clipped coho salmon upstream to the head of tide at Dellwood at RM 10.0 on the South Coos River and to the East Fork/West Fork Millicoma confluence from September 15 through the earlier of November 30 or attainment of an adult coho quota of 1,200 non adipose fin-clipped coho. The daily catch limit may include one adult non adipose fin-clipped coho salmon per day and one non adipose fin-clipped jack coho salmon, and no more than 5 total adult non adipose fin-clipped coho salmon in the seasonal aggregate from all waters in the Northwest Zone and Southwest Zone.

(c) Within the Coquille River Basin the following additional rules apply:

(A) Open for non adipose fin-clipped coho salmon in Coquille River and Bay upstream to the Highway 42S bridge (Sturdivant Park) at RM 24.0 from September 15 through the earlier of November 30 or attainment of an adult coho quota of 825 non adipose fin-clipped coho. The daily catch limit may include one adult non adipose fin-clipped coho salmon per day and one non adipose fin-clipped jack coho salmon, and no more than 5 total adult non adipose fin-clipped coho salmon in the seasonal aggregate from all waters in the Northwest Zone and Southwest Zone.

(d) Within the Tenmile Lakes Basin the following additional rules apply:

(A) Tenmile Lakes (Coos County) upstream from Hilltop Bridge are open for non adipose fin-clipped coho salmon from October 1 through the earlier of December 31 or attainment of an adult coho quota of 875 non adipose fin-clipped coho. The daily catch limit may include one adult non adipose fin-clipped coho salmon per day and one non adipose fin-clipped jack coho salmon, and no more than 5 total adult non adipose fin-clipped coho salmon in the seasonal aggregate from all waters in the Northwest Zone and Southwest Zone. Only one rod per angler may be used while angling for coho. Streams that empty into North and South Tenmile Lakes are not open to coho salmon angling, nor is the canal that connects North and South Tenmile Lakes.

(e) All waters of Floras Creek upstream of the County Road 124 bridge over Floras Creek at RM 5.0 are closed for Chinook salmon from August 1 through December 31.

(f) Within the Sixes River Basin the following additional rules apply:

(A) All waters of the Sixes River Basin that are open for Chinook salmon are limited to no more than 1 adult non fin-clipped Chinook salmon per day and 10 adult non fin-clipped Chinook salmon in the seasonal aggregate when combined with waters of the Elk River and Elk River Ocean Terminal Area. Seasonal aggregate applies to all adult non fin-clipped Chinook salmon retained between August 1 and December 31.

(B) Closed to Chinook salmon upstream of Edson Creek at RM 10.0 from August 1 through December 31.

(g) Within the Elk River Basin the following additional rules apply:

(A) All waters of the Elk River Basin that are open for Chinook salmon are limited to no more than 1 adult non fin-clipped Chinook salmon per day and 10 adult non fin-clipped Chinook salmon in the seasonal aggregate when combined with waters of the Sixes River and Elk River Ocean Terminal Area. Seasonal aggregate applies to all adult non fin-clipped Chinook salmon retained between August 1 and December 31.

(h) All waters of the Chetco River mainstem upstream of the power-line crossing at RM 2.2 are closed to angling from August 1 through November 4.

(i) All waters of the Winchuck River mainstem, including tidewater, are closed to angling from August 1 through November 4.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.138 & 496.146

Stats. Implemented: ORS 496.162

Hist.: FWC 80-1993(Temp), f. 12-21-93, cert. ef. 1-1-94; FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 79-1994(Temp), f. 10-21-94, cert.

ef. 7-22-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 57-1995(Temp), f. 7-3-95, cert. ef. 7-4-95; FWC 59-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 82-1995(Temp), f. 9-29-95, cert. ef. 10-1-95; FWC 90-1995(Temp), f. 11-29-95, cert. ef. 1-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 52-1996, f. & cert. ef. 9-11-96; FWC 61-1996, f. & cert. ef. 10-9-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 73-1996(Temp), f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 17-1997(Temp), f. 3-19-97, cert. ef. 4-1-97; FWC 32-1997(Temp), f. & cert. ef. 5-23-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 24-1998(Temp), f. & cert. ef. 3-25-98 thru 9-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 52-1998(Temp), f. 7-10-98, cert. ef. 7-11-98 thru 7-24-98; DFW 55-1998(Temp), f. & cert. ef. 7-24-98 thru 12-31-98; DFW 70-1998, f. & cert. ef. 8-28-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 36-1999, f. & cert. ef. 5-20-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 48-2000(Temp), f. 8-14-00, cert. ef. 8-15-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 8-2001, f. & cert. ef. 3-5-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 42-2001(Temp), f. 5-25-01, cert. ef. 5-29-01 thru 7-31-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 97-2001(Temp), f. 10-4-01, cert. ef. 11-1-01 thru 12-31-01; DFW 105-2001(Temp), f. 10-26-01, cert. ef. 11-1-01 thru 12-31-01; DFW 122-2001(Temp), f. & cert. ef. 12-31-01 thru 5-31-02; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp), f. 1-11-02 cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 55-2002(Temp), f. 5-28-02, cert. ef. 7-1-02 thru 11-31-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 124-2002(Temp), f. & cert. ef. 10-30-02 thru 12-31-02 (Suspended by DFW 125-2002(Temp), f. 11-8-02, cert. ef. 11-9-2002); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 90-2003(Temp), f. 9-12-03 cert. ef. 9-13-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 127-2004, f. 12-22-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 24-2006(Temp), f. 4-25-06, cert. ef. 5-13-06 thru 10-31-06; DFW 37-2006(Temp), f. 6-2-06, cert. ef. 6-5-06 thru 12-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 47-2007(Temp), f. 6-18-07, cert. ef. 6-21-07 thru 10-31-07; DFW 56-2007(Temp), 7-6-07, cert. ef. 8-1-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 137-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 54-2008(Temp), f. 5-28-08, cert. ef. 6-1-08 thru 7-31-08; DFW 67-2008(Temp), f. 6-20-08, cert. ef. 8-1-08 thru 12-31-08; DFW 138-2008(Temp), f. 10-28-08, cert. ef. 11-1-08 thru 11-30-08; DFW 140-2008(Temp), f. 11-4-08, cert. ef. 11-5-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 57-2009(Temp), f. 5-27-09, cert. ef. 6-1-09 thru 7-31-09; DFW 77-2009(Temp), f. 6-29-09, cert. ef. 7-1-09 thru 7-31-09; DFW 87-2009(Temp), f. 7-31-09, cert. ef. 8-1-09 thru 12-31-09; DFW 113-2009(Temp), f. & cert. ef. 9-18-09 thru 12-31-09; DFW 141-2009(Temp), f. 11-4-09, cert. ef. 11-7-09 thru 12-21-09; DFW 143-2009(Temp), f. 11-17-09, cert. ef. 11-19-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 65-2010(Temp), f. 5-18-10, cert. ef. 5-22-10 thru 5-31-10; DFW 76-2010, f. 6-8-10, cert. ef. 8-1-10; DFW 143-2010(Temp), f. 10-8-10, cert. ef. 10-10-10 thru 12-31-10; DFW 152-2010(Temp), f. 10-27-10, cert. ef. 10-30-10 thru 12-31-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 31-2011(Temp), f. 4-18-11, cert. ef. 5-1-11 thru 10-27-11; DFW 83-2011, f. 6-30-11, cert. ef. 7-1-11

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**Rule Caption:** Columbia River Treaty Indian Commercial Gill Net Summer Season Extended.

**Adm. Order No.:** DFW 84-2011(Temp)

**Filed with Sec. of State:** 7-1-2011

**Certified to be Effective:** 7-5-11 thru 10-31-11

**Notice Publication Date:**

**Rules Amended:** 635-041-0076

**Rules Suspended:** 635-041-0076(T)

**Subject:** Rule modifications set a Treaty Indian commercial gill net fishing period from 6:00 a.m. Tuesday, July 5 through Friday, July 8, 2011 (3.5 days) in Zone 6 of the Columbia River and allow the sales of fish caught during that period. Revisions are consistent with action taken June 30, 2011 by the Columbia River Compact agencies of Oregon and Washington in cooperation with the Columbia River Treaty Tribes.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-041-0076

### Summer Salmon Season

(1) Commercial sales of platform and hook-and-line caught fish from Zone 6 of the mainstem Columbia River are allowed beginning 6:00 p.m. Tuesday, May 10, 2011 until further notice.

(a) Chinook, steelhead, sockeye, coho, walleye, shad, carp, bass, catfish and yellow perch landed during an open commercial fishing period may be sold at any time or retained for subsistence purposes. Sturgeon may not be sold or retained prior to 6:00 a.m. Monday, June 27, 2011. White sturgeon between 43 and 54 inches in fork length taken in The Dalles and John Day pools and white sturgeon between 38 and 54 inches in fork length taken in the Bonneville Pool from 6:00 a.m. Monday, June 27, through 6:00 p.m. Thursday, June 30, 2011 may be sold or retained for subsistence use.

(b) Gear is restricted to subsistence fishing gear: hoopnets, dipnets and rod and reel with hook-and-line are allowed.

(c) Closed areas in Zone 6, except the Spring Creek sanctuary, are as set forth in OAR 635-041-0045 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. Thursday, June 16 through 6:00 p.m. Saturday, June 18, 2011 (2.5 days); from 6:00 a.m.



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Monday, June 20 through 6:00 p.m. Thursday, June 23, 2011 (3.5 days); from 6:00 a.m. Monday, June 27 through 6:00 p.m. Thursday, June 30, 2011 (3.5 days); and from 6:00 a.m. Tuesday, July 5 through 6:00 p.m. Friday, July 8, 2011 (3.5 days).

(a) Salmon, steelhead, shad, yellow perch, bass, walleye, catfish and carp landed during any open gill net fishing period may be sold at any time or retained for subsistence purposes. Sturgeon may not be sold or retained prior to 6:00 a.m. Monday, June 27, 2011. 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 from 6:00 a.m. Monday, June 27, through 6:00 p.m. Thursday, June 30, 2011 may be sold or retained for subsistence use. 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 landed after 6:00 a.m. Tuesday, July 5 may not be sold but may be retained for subsistence. Fish landed during an open commercial period may be sold at any time. Commercial buyers may only purchase sturgeon in the round.

(b) Gear is restricted to gill nets. No minimum mesh size restriction is in effect.

(c) Closed areas in Zone 6, except the Spring Creek Hatchery sanctuary, are as set forth in OAR 635-041-0045 and remain in effect.

(3) Sales of fish caught in Yakama Nation tributary fisheries in the Klickitat River; Wind River; Drano Lake; and Big White Salmon River are allowed during those days and hours when the tributaries are open under lawfully enacted tribal fishing periods and concurrent with periods when sales from Zone 6 platform and hook-and-line fisheries are allowed.

Stat. Auth.: ORS 496.118 & 506.119  
Stats. Implemented: ORS 506.109, 506.129 & 507.030  
Hist.: DFW 5-2006, f. & cert. ef. 2-15-06; DFW 39-2006(Temp), f. & cert. ef. 6-8-06 thru 7-31-06; DFW 46-2006(Temp), f. & cert. ef. 6-20-06 thru 7-31-06; DFW 49-2006(Temp), f. 6-26-06, cert. ef. 6-27-06 thru 7-31-06; DFW 56-2006(Temp), f. 6-30-06, cert. ef. 7-3-06 thru 7-31-06; DFW 58-2006(Temp), f. 7-6-06, cert. ef. 7-10-06 thru 7-31-06; Administrative correction 8-22-06; DFW 46-2007(Temp), f. 6-15-07, cert. ef. 6-16-07 thru 9-13-07; DFW 49-2007(Temp), f. 6-22-07, cert. ef. 6-26-07 thru 9-13-07; DFW 53-2007(Temp), f. & cert. ef. 7-6-07 thru 7-31-07; Administrative correction 9-16-07; DFW 45-2008(Temp), f. 5-2-08, cert. ef. 5-5-08 thru 7-31-08; DFW 47-2008(Temp), f. 5-9-08, cert. ef. 5-11-08 thru 7-31-08; DFW 62-2008(Temp), f. 6-13-08, cert. ef. 6-16-08 thru 8-31-08; DFW 68-2008(Temp), f. 6-20-08, cert. ef. 6-21-08 thru 8-31-08; DFW 71-2008(Temp), f. 6-27-08, cert. ef. 6-28-08 thru 8-31-08; DFW 80-2008(Temp), f. & cert. ef. 7-10-08 thru 8-31-08; DFW 87-2008(Temp), f. & cert. ef. 7-25-08 thru 8-31-08; DFW 94-2008(Temp), f. & cert. ef. 8-14-08 thru 9-30-08; Administrative correction 10-21-08; DFW 50-2009(Temp), f. 5-14-09, cert. ef. 5-16-09 thru 7-31-09; DFW 56-2009(Temp), f. 5-26-09, cert. ef. 5-27-09 thru 7-31-09; DFW 71-2009(Temp), f. 6-15-09, cert. ef. 6-16-09 thru 7-31-09; DFW 76-2009(Temp), f. 6-26-09, cert. ef. 6-30-09 thru 7-31-09; DFW 82-2009(Temp), f. 7-6-09, cert. ef. 7-8-09 thru 7-31-09; DFW 84-2009(Temp), f. 7-13-09, cert. ef. 7-15-09 thru 7-31-09; Administrative correction 8-21-09; DFW 48-2010(Temp), f. 4-26-10, cert. ef. 4-27-10 thru 7-31-10; DFW 51-2010(Temp), f. & cert. ef. 4-29-10 thru 7-31-10; DFW 56-2010(Temp), f. 5-10-10, cert. ef. 5-11-10 thru 7-31-10; DFW 68-2010(Temp), f. 5-18-10, cert. ef. 5-19-10 thru 7-31-10; DFW 71-2010(Temp), f. 5-19-10, cert. ef. 5-21-10 thru 6-16-10; DFW 74-2010(Temp), f. & cert. ef. 6-2-10 thru 7-31-10; DFW 80-2010(Temp), f. 6-14-10, cert. ef. 6-16-10 thru 7-31-10; DFW 87-2010(Temp), f. 6-25-10, cert. ef. 6-29-10 thru 7-31-10; DFW 97-2010(Temp), f. 7-8-10, cert. ef. 7-13-10 thru 7-31-10; DFW 101-2010(Temp), f. 7-19-10, cert. ef. 7-20-10 thru 7-31-10; DFW 105-2010(Temp), f. 7-23-10, cert. ef. 7-26-10 thru 7-31-10; Administrative correction 8-18-10; DFW 43-2011(Temp), f. & cert. ef. 5-10-11 thru 10-31-11; DFW 66-2011(Temp), f. 6-14-11, cert. ef. 6-16-11 thru 10-31-11; DFW 75-2011(Temp), f. 6-24-11, cert. ef. 6-27-11 thru 10-31-11; DFW 84-2011(Temp), f. 7-1-11, cert. ef. 7-5-11 thru 10-31-11

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**Rule Caption:** Oregon Ocean Sport Pacific Halibut Nearshore Season Closure from Cape Falcon to Humbug Mountain.

**Adm. Order No.:** DFW 85-2011(Temp)

**Filed with Sec. of State:** 7-5-2011

**Certified to be Effective:** 7-6-11 thru 10-31-11

**Notice Publication Date:**

**Rules Amended:** 635-039-0085

**Rules Suspended:** 635-039-0085(T)

**Subject:** Amended rule closes the nearshore sport fishery for Pacific halibut in the area between Cape Falcon and Humbug Mountain, Oregon at 11:59 p.m. on Wednesday, July 6, 2011 when the quota of 13,800 pounds is projected to have been taken. This rule is consistent with regulations that have been implemented by the federal government and the International Pacific Halibut Commission for the 2011 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:

(a) **Title 50 of the Code of Federal Regulations, Part 300, Subpart E** (October 1, 2010 ed.), as amended; and

(b) **Federal Register Vol. 76, No. 51**, dated March 16, 2011 (76 FR 14300).

(2) Therefore, persons must consult all publications referenced in this rule in addition to Division 039 to determine applicable halibut fishing seasons.

(3) Effective 11:59 p.m., Saturday, June 4, 2011 the Columbia River sub-area (Cape Falcon, OR to Leadbetter Pt., WA) is closed to the retention of Pacific halibut.

(4) Effective 11:59 p.m., Friday, July 1, 2011, the Central Oregon sub-area (Cape Falcon to Humbug Mountain) all-depth spring season is closed to the retention of Pacific halibut.

(5) Effective 11:59 p.m., Wednesday, July 6, 2011, the Central Oregon sub-area (Cape Falcon to Humbug Mountain) nearshore (inside 40 fathoms) season is closed to the retention of Pacific halibut.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.138, 496.162, 506.036, 506.109, 506.119 & 506.129

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 56-2005, f. 6-21-05, cert. ef. 7-1-05; DFW 89-2005(Temp), f. & cert. ef. 8-12-05 thru 12-12-05; DFW 107-2005(Temp), f. 9-14-05, cert. ef. 9-15-05 thru 10-31-05; DFW 121-2005(Temp), f. 10-12-05, cert. ef. 10-18-05 thru 12-31-05; Administrative correction 1-19-06; DFW 34-2006(Temp), f. 5-25-06, cert. ef. 5-27-06 thru 8-3-06; Administrative correction 8-22-06; DFW 3-2007, f. & cert. ef. 1-12-07; DFW 35-2007(Temp), f. 5-25-07, cert. ef. 5-26-07 thru 8-2-07; DFW 67-2007(Temp), f. 8-9-07, cert. ef. 8-12-07 thru 9-30-07; DFW 76-2007(Temp), f. 8-17-07, cert. ef. 8-24-07 thru 9-30-07; DFW 84-2007(Temp), f. 9-5-07, cert. ef. 9-15-07 thru 9-30-07; DFW 87-2007(Temp), f. 9-10-07, cert. ef. 9-14-07 thru 10-28-07; DFW 90-2007(Temp), f. 9-19-07, cert. ef. 9-20-07 thru 10-31-07; Administrative correction 11-17-07; DFW 57-2008(Temp), f. 5-30-08, cert. ef. 6-1-08 thru 7-31-08; DFW 81-2008(Temp), f. 7-11-08, cert. ef. 8-2-08 thru 9-30-08; DFW 92-2008(Temp), f. & cert. ef. 8-11-08 thru 9-30-08; DFW 101-2008(Temp), f. 8-25-08, cert. ef. 8-29-08 thru 9-30-08; DFW 107-2008(Temp), f. 9-5-08, cert. ef. 9-7-08 thru 12-31-08; DFW 111-2008(Temp), f. & cert. ef. 9-16-08 thru 12-31-08; DFW 120-2008(Temp), f. 9-25-08, cert. ef. 9-27-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 39-2009, f. & cert. ef. 4-27-09; DFW 55-2009(Temp), f. & cert. ef. 5-22-09 thru 8-6-09; DFW 94-2009(Temp), f. 8-14-09, cert. ef. 8-16-09 thru 12-31-09; Administrative correction 1-25-10; DFW 32-2010, f. & cert. ef. 3-15-10; DFW 37-2010, f. 3-30-10, cert. ef. 4-1-10; DFW 100-2010(Temp), f. 7-15-10, cert. ef. 7-17-10 thru 10-31-10; DFW 118-2010(Temp), f. & cert. ef. 8-13-10 thru 10-31-10; Administrative correction 11-23-10; DFW 24-2011, f. & cert. ef. 3-22-11; DFW 58-2011(Temp), f. 5-27-11, cert. ef. 6-4-11 thru 8-4-11; DFW 82-2011, f. 6-30-11, cert. ef. 7-1-11 thru 8-4-11; DFW 85-2011(Temp), f. 7-5-11, cert. ef. 7-6-11 thru 10-31-11

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**Rule Caption:** Federal In-season Actions and Management Measures Implemented for Commercial Groundfish Fisheries.

**Adm. Order No.:** DFW 86-2011(Temp)

**Filed with Sec. of State:** 7-6-2011

**Certified to be Effective:** 7-7-11 thru 12-31-11

**Notice Publication Date:**

**Rules Amended:** 635-004-0019

**Rules Suspended:** 635-004-0019(T)

**Subject:** This amended rule implements in-season actions adopted by the federal government for the remainder of the 2011 Pacific ocean commercial groundfish fisheries, including but not limited to: decreases in trip limits for limited entry and open access fixed gear sablefish "Daily Trip Limit" fisheries; and b) changes in the trawl rockfish conservation area (RCA).

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-004-0019

### Inclusions and Modifications

(1) OAR chapter 635, division 004, modifies or is in addition to provisions contained in **Code of Federal Regulations, Title 50, Part 660, Subpart G, West Coast Groundfish Fisheries**.

(2) The **Code of Federal Regulations (CFR), Title 50, Part 660, Subpart G**, provides requirements for commercial groundfish fishing in the Pacific Ocean off the Oregon coast. However, additional regulations may be promulgated subsequently, and these supersede, to the extent of any inconsistency, the **Code of Federal Regulations**.

(3) Notwithstanding the regulations as defined in OAR 635-004-0018, the National Oceanic and Atmospheric Administration (NOAA), by means of National Marine Fisheries Service (NMFS) Public Notice/NMFS-SEA-10-22/December 27, 2010, announced inseason adjustments and new management measures effective January 1, 2010, including, but not limited to: a) temporary closure of the limited entry trawl fishery; b) replacement of previously used trip limit tables for limited entry trawl gear with incidental landing allowances for vessels registered to a Federal limited entry trawl permit and using groundfish trawl or groundfish non-trawl gears

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to harvest individual fishing quota (IFQ) species; c) adjustment of the trawl RCA; and d) adjustments to RCAs and cumulative trip limits for the limited entry and open access fixed-gear fisheries.

(4) Notwithstanding the regulations as defined in OAR 635-004-0018, the National Oceanic and Atmospheric Administration (NOAA), by means of National Marine Fisheries Service (NMFS) Public Notice/NMFS-SEA-11-01/January 7, 2011, announced inseason adjustments effective January 11, 2011, including, but not limited to, the start of the Trawl Rationalization Program; fishing will begin under the Shorebased Individual Fishing Quota (IFQ) Program on January 11, 2011.

(5) Notwithstanding, the regulations as defined in OAR 635-004-0018, the National Marine Fisheries Service (NMFS), by means of Federal Register/Vol. 76, No. 41/Wednesday, March 2, 2011, announced inseason management measures effective March 1, 2011, including, but not limited to: a) changes in cumulative trip limits and RCA boundaries for commercial fixed gear fisheries; and b) the annual tier limits for the limited entry fixed gear sablefish primary fishery north of 36o N. Latitude.

(6) Notwithstanding, the regulations as defined in OAR 635-004-0018, the National Marine Fisheries Service (NMFS), by means of Federal Register/Vol. 76, No.91/Wednesday, May 11, 2011, announced the 2011-2012 harvest specifications for most of the species in the groundfish fishery and management measures for that fishery off the coasts of Washington, Oregon, and California effective May 11, 2011, including, but not limited to: a) changes in cumulative trip limits and RCA boundaries for commercial groundfish fisheries; b) changes in annual catch limits and allocations of groundfish for the various commercial groundfish fisheries; and c) changes to other management measures.

(7) Notwithstanding, the regulations as defined in OAR 635-004-0018, the National Marine Fisheries Service, by means of Federal Register/Vol. 76, No. 115/Wednesday, June 15, 2011, announced revised cumulative limits for the limited entry fixed gear primary sablefish fishery effective June 10, 2011.

(8) Notwithstanding, the regulations defined in OAR 635-004-0018, the National Marine Fisheries Service, by means of Federal Register/Vol. 76, No. 126/Thursday, June 30, 2011, announced inseason actions and management measures effective July 1, 2011, including, but not limited to: a) decreases in trip limits for limited entry and open access fixed gear sablefish "Daily Trip Limit" fisheries; and b) changes in the trawl rockfish conservation area (RCA).

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 76-1999(Temp), f. 9-30-99, cert. ef. 10-1-99 thru 12-31-99; DFW 81-1999(Temp), f. & cert. ef. 10-12-99 thru 12-31-99; DFW 98-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 23-2005(Temp), f. & cert. ef. 4-8-05 thru 10-4-05; DFW 30-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 43-2005(Temp), f. & cert. ef. 5-13-05 thru 10-17-05; DFW 68-2005(Temp), 6-30-05, cert. ef. 7-1-05 thru 12-27-05; DFW 114-2005(Temp), f. 9-30-05, cert. ef. 10-1-05 thru 12-31-05; DFW 125-2005(Temp), f. & cert. ef. 10-19-05 thru 12-31-05; DFW 134-2005(Temp), f. & cert. ef. 11-30-05 thru 12-31-05; DFW 147-2005(Temp), f. 12-28-05, cert. ef. 1-1-06 thru 6-28-06; DFW 8-2006(Temp), f. 2-28-06, cert. ef. 3-1-06 thru 8-25-06; DFW 25-2006(Temp), f. 4-28-06, cert. ef. 5-1-06 thru 10-27-06; DFW 55-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-27-06; DFW 110-2006(Temp), f. 9-29-06, cert. ef. 10-1-06 thru 12-31-06; Administrative Correction 1-16-07; DFW 29-2007(Temp), f. & cert. ef. 5-1-07 thru 10-27-07; DFW 58-2007(Temp), f. 7-18-07, cert. ef. 8-1-07 thru 12-31-07; DFW 106-2007(Temp), f. 10-5-07, cert. ef. 10-6-07 thru 12-31-07; DFW 123-2007(Temp), f. 11-26-07, cert. ef. 11-28-07 thru 12-31-07; DFW 126-2007(Temp), f. & cert. ef. 12-11-07 thru 12-31-07; DFW 41-2008(Temp), f. 4-23-08, cert. ef. 5-1-08 thru 10-27-08; DFW 88-2008(Temp), f. & cert. ef. 8-1-08 thru 12-31-08; DFW 146-2008(Temp), f. & cert. ef. 12-4-08 thru 12-31-08; DFW 1-2009(Temp), f. & cert. ef. 1-5-09 thru 5-1-09; DFW 29-2009(Temp), f. & cert. ef. 3-18-09 thru 5-1-09; DFW 41-2009(Temp), f. 4-29-09, cert. ef. 5-1-09 thru 10-27-09; DFW 39-2009, f. & cert. ef. 4-27-09; DFW 81-2009(Temp), f. & cert. ef. 7-2-09 thru 12-28-09; DFW 136-2009, f. 10-28-09 thru 12-31-09; DFW 138-2009(Temp), f. & cert. ef. 11-2-09 thru 12-31-09; Administrative correction 1-25-10; DFW 25-2010(Temp), f. & cert. ef. 3-3-10 thru 8-29-10; DFW 59-2010(Temp), f. & cert. ef. 5-12-10 thru 11-7-10; DFW 109-2010(Temp), f. & cert. ef. 7-30-10 thru 11-30-10; DFW 122-2010(Temp), f. & cert. ef. 8-25-10 thru 11-30-10; DFW 138-2010(Temp), f. & cert. ef. 10-4-10 thru 12-31-10; DFW 157-2010, f. 12-6-10, cert. ef. 1-1-11; DFW 160-2010(Temp), f. & cert. ef. 12-7-10 thru 12-31-10; DFW 167-2010(Temp), f. 12-29-10, cert. ef. 1-1-11 thru 1-31-11; DFW 2-2011(Temp), f. & cert. ef. 1-11-11 thru 7-9-11; DFW 20-2011(Temp), f. & cert. ef. 3-3-11 thru 8-29-11; DFW 47-2011(Temp), f. & cert. ef. 5-13-11 thru 11-8-11; DFW 73-2011(Temp), f. & cert. ef. 6-20-11 thru 11-8-11; DFW 86-2011(Temp), f. 7-6-11, cert. ef. 7-7-11 thru 12-31-11

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**Rule Caption:** Recreational White Sturgeon Fishery Closes July 9, 2011 in Bonneville Pool.

**Adm. Order No.:** DFW 87-2011(Temp)

**Filed with Sec. of State:** 7-8-2011

**Certified to be Effective:** 7-9-11 thru 7-31-11

**Notice Publication Date:**

**Rules Amended:** 635-023-0095

**Rules Suspended:** 635-023-0095(T)

**Subject:** This amended rule closes the recreational sturgeon season in the Bonneville Pool of the Columbia River effective at 12:01 a.m., Saturday July 9, 2011. The recreational sturgeon season in the area from the Wauna powerlines downstream to the mouth at Buoy 10, including Youngs Bay, remains open during the fishing period Thursday, July 7 through Sunday, July 31 (or until the preseason harvest guideline is reached). Modifications are consistent with action taken July 7, 2011 by the Columbia River Compact agencies of Oregon and Washington.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-023-0095

### Sturgeon Season

(1) The **2011 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 **2011 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, Multnomah Channel, and the Gilbert River, 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 8 through December 31.

(3) The retention of white sturgeon in the area identified in section (2) of this rule is prohibited August 1 through October 7.

(4) The mainstem 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; and

(b) May 14 through July 31(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 13, and from August 1 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 subsection (4)(b) of this rule, only white sturgeon with a fork length of 41-54 inches may be retained.

(8) Angling for sturgeon is prohibited from:

(a) 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 Washington shore during May 1 through August 31;

(b) Highway 395 Bridge upstream to McNary Dam; and

(c) From the west end of the grain silo at Rufus upstream to John Day Dam during May 1 through July 31.

(d) The upper and lower ends of Sand Island and corresponding markers on the Oregon shoreline (slough at Rooster Rock State Park) from January 1 through April 30, 2011.

(9) Effective 12:01 a.m. Saturday, February 19 through Wednesday, June 29, 2011 the retention of white sturgeon in Bonneville Reservoir and tributaries is prohibited. Beginning Thursday, June 30 through Saturday, July 2, 2011 and from Thursday, July 7 through Friday, July 8, 2011 (5 days) the Bonneville Pool upstream to The Dalles Dam is open for retention of white sturgeon between 38-54 inches in fork length.

(10) Effective 12:01 a.m. Sunday April 10, 2011 the retention of sturgeon in the John Day Pool and tributaries is prohibited.

(11) Effective 12:01 a.m. Saturday June 9, 2011 the retention of sturgeon in the Bonneville Pool and tributaries is prohibited.

(12) The mainstem Columbia River from McNary Dam upstream to the Oregon-Washington border at river mile 309.5 is open to retention of white sturgeon with a fork length of 43-54 inches, seven days per week from February 1 through July 31.

(13) The retention of white sturgeon in the area identified in section (12) of this rule is prohibited August 1 through January 31.

(14) Retention of green sturgeon is prohibited all year in all areas.

[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-



# ADMINISTRATIVE RULES

2005(Temp), f. 6-3-05, cert. ef. 6-11-05 thru 11-30-05; DFW 60-2005(Temp), f. 6-21-05, cert. ef. 6-24-05 thru 12-21-05; DFW 65-2005(Temp), f. 6-30-05, cert. ef. 7-10-05 thru 12-31-05; DFW 76-2005(Temp), f. 7-14-05, cert. ef. 7-18-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 19-2006(Temp), f. 4-6-06, cert. ef. 4-8-06 thru 7-31-06; DFW 54-2006(Temp), f. 6-29-06, cert. ef. 7-1-06 thru 12-27-06; DFW 62-2006(Temp), f. 7-13-06, cert. ef. 7-24-06 thru 12-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 20-2007(Temp), f. 3-26-07, cert. ef. 3-28-07 thru 7-30-07; DFW 38-2007(Temp), f. & cert. ef. 5-31-07 thru 11-26-07; DFW 59-2007(Temp), f. 7-18-07, cert. ef. 7-29-07 thru 12-31-07; DFW 75-2007(Temp), f. 8-17-07, cert. ef. 8-18-07 thru 12-31-07; DFW 102-2007(Temp), f. 9-28-07, cert. ef. 10-1-07 thru 12-31-07; DFW 135-2007(Temp), f. 12-28-07, cert. ef. 1-1-08 thru 6-28-08; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 8-2008, f. & cert. ef. 2-11-08; DFW 23-2008(Temp), f. 3-12-08, cert. ef. 3-15-08 thru 9-10-08; DFW 28-2008(Temp), f. 3-24-08, cert. ef. 3-26-08 thru 9-10-08; DFW 72-2008(Temp), f. 6-30-08, cert. ef. 7-10-08 thru 12-31-08; DFW 78-2008(Temp), f. 7-9-08, cert. ef. 7-12-08 thru 12-31-08; DFW 86-2008(Temp), f. & cert. ef. 7-25-08 thru 12-31-08; DFW 148-2008(Temp), f. 12-19-08, cert. ef. 1-1-09 thru 6-29-09; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 18-2009, f. & cert. ef. 2-26-09; DFW 33-2009(Temp), f. 4-2-09, cert. ef. 4-13-09 thru 10-9-09; DFW 63-2009(Temp), f. 6-3-09, cert. ef. 6-6-09 thru 10-9-09; DFW 83-2009(Temp), f. 7-8-09, cert. ef. 7-9-09 thru 12-31-09; DFW 86-2009(Temp), f. 7-22-09, cert. ef. 7-24-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 13-2010(Temp), f. 2-16-10, cert. ef. 2-21-10 thru 7-31-10; DFW 19-2010(Temp), f. 2-26-10, cert. ef. 3-1-10 thru 8-27-10; DFW 34-2010, f. 3-16-10, cert. ef. 4-1-10; DFW 49-2010(Temp), f. 4-27-10, cert. ef. 4-29-10 thru 7-31-10; DFW 50-2010(Temp), f. 4-29-10, cert. ef. 5-6-10 thru 11-1-10; DFW 88-2010(Temp), f. 6-25-10, cert. ef. 6-26-10 thru 7-31-10; DFW 91-2010(Temp), f. 6-29-10, cert. ef. 8-1-10 thru 12-31-10; DFW 99-2010(Temp), f. 7-13-10, cert. ef. 7-15-10 thru 12-31-10; DFW 165-2010(Temp), f. 12-28-10, cert. ef. 1-1-11 thru 6-29-11; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 11-2011(Temp), f. 2-10-11, cert. ef. 2-11-11 thru 7-31-11; DFW 23-2011, f. & cert. ef. 3-21-11; DFW 26-2011(Temp), f. 4-5-11, cert. ef. 4-10-11 thru 9-30-11; DFW 74-2011(Temp), f. 6-24-11, cert. ef. 6-27-11 thru 7-31-11; DFW 87-2011(Temp), f. 7-8-11, cert. ef. 7-9-11 thru 7-31-11

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**Rule Caption:** Columbia River Treaty Indian Commercial Gill Net Fishery Extended Through July 15, 2011.

**Adm. Order No.:** DFW 88-2011(Temp)

**Filed with Sec. of State:** 7-8-2011

**Certified to be Effective:** 7-10-11 thru 10-31-11

**Notice Publication Date:**

**Rules Amended:** 635-041-0045, 635-041-0076

**Rules Suspended:** 635-041-0045(T), 635-041-0076(T)

**Subject:** Rule modifications set a Treaty Indian commercial gill net fishing period from 6:00 a.m. Monday, July 11 through Friday, July 15, 2011 (4.5 days) in Zone 6 of the Columbia River and allow the sales of fish caught during that period. Further modifications prohibit the sale of sockeye salmon after 6:00 p.m. Sunday, July 10, 2011. Revisions are consistent with action taken July 7, 2011 by the Columbia River Compact agencies of Oregon and Washington in cooperation with the Columbia River Treaty Tribes.

**Rules Coordinator:** Theresé Kucera—(503) 947-6033

## 635-041-0045

### Closed Commercial Fishing Areas

Unless otherwise specified in this rule and OAR 635-041-0063, the following waters are closed to commercial fishing:

(1) All Oregon tributaries of the Columbia River.

(2) The Columbia River westerly and downstream of the Bridge of the Gods except:

(a) Fisheries conducted by the Yakama, Warm Springs, Umatilla and Nez Perce tribes downstream of Bonneville Dam (bank fishing only) under provisions of the agreements with the states of Oregon and Washington are open from 6:00 a.m. through 8:00 p.m. each day on Monday June 6, Tuesday June 7 and Wednesday June 8; and from 6:00 a.m. Thursday June 9 through midnight Wednesday June 15. The fisheries will reopen at 6:00 a.m. Thursday, June 16, 2011 and continue until further notice.

(A) Allowable sales include Chinook, steelhead, sockeye, coho, wall-eye, shad, catfish, yellow perch, bass and carp. However, sockeye caught after 6:00 p.m. Sunday, July 10, 2011 may not be sold, but may be retained for subsistence. Sturgeon caught in the tribal fisheries below Bonneville Dam may not be retained or sold. 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 which includes hoop-nets, dipnets, spears, gaffs, clubs, fouling hooks and rod and reel with hook-and-line. Beginning at 6:00 a.m. Thursday, June 16, 2011 gear is restricted to hook-and-line or as defined by each tribe's MOU/MOA until further notice.

(C) Salmon (except sockeye), steelhead, walleye, shad, carp, bass, catfish, and yellow perch landed during an open treaty commercial fishing period may be sold at any time.

(b) Platform and hook-and-line fisheries from the Bridge of the Gods downstream to the subsistence fishing deadline as described in OAR 635-041-0020(1) are open to commercial sales whenever sales are authorized for platform and hook-and-line fisheries in the remainder of Bonneville Pool.

(3) The Columbia River easterly and upstream of a line extending at a right angle across the thread of the river from a deadline marker one mile downstream of McNary Dam.

(4) The Columbia River between a line extending at a right angle across the thread of the river from a deadline marker at the west end of 3-Mile Rapids located approximately 1.8 miles below The Dalles Dam, upstream to a line from a deadline marker on the Oregon shore located approximately 3/4 mile above The Dalles Dam east fishway exit, thence at a right angle to the thread of the river to a point in midriver, thence downstream to Light "1" on the Washington shore; except that dip nets, bag nets, and hoop nets are permitted during commercial salmon and shad fishing seasons at the Lone Pine Indian fishing site located immediately above The Dalles Interstate Bridge.

(5) The Columbia River between a line extending at a right angle across the thread of the river from a deadline marker at Preachers Eddy light below the John Day Dam and a line approximately 4.3 miles upstream extending from a marker on the Oregon shore approximately one-half mile above the upper easterly bank of the mouth of the John Day River, Oregon, extending at a right angle across the thread of the river to a point in midriver, thence turning downstream to a marker located on the Washington shore approximately opposite the mouth of the John Day River.

(6) The Columbia River within areas at and adjacent to the mouths of the Deschutes River and the Umatilla River. The closed areas are along the Oregon side of the Columbia River and extend out to the midstream from a point one-half mile above the intersection of the upper bank of the tributary with the Columbia River to a point one mile downstream from the intersection of the lower bank of the tributary with the Columbia River. All such points are posted with deadline markers.

(7) The Columbia River within an area and adjacent to the mouth of the Big White Salmon River. The closed area is along the Washington side of the Columbia River and extends out to midstream at right angles to the thread of the Columbia River between a marker located 1/2 mile downstream from the west bank upstream to Light "35".

(8) The Columbia River within an area at and adjacent to the mouth of Drano Lake (Little White Salmon River). The closed area is along the Washington side of the Columbia River and extends out to midstream at right angles to the thread of the Columbia River between Light "27" upstream to a marker located approximately 1/2 mile upriver of the outlet of Drano Lake.

(9) The Columbia River within an area and adjacent to the mouth of the Wind River. The closed area is along the Washington side of the Columbia River and extends to midstream at right angles to the thread of the Columbia River between markers located 1 1/4 miles downstream from the west bank and 1/2 mile upstream from the east bank.

(10) The Columbia River within areas at and adjacent to the mouth of Hood River. The closed area is along the Oregon side of the Columbia River and extends to midstream at right angles to the thread of the Columbia River between markers located approximately 0.85 miles downriver from the west bank at end of the breakwall at the west end of the Port of Hood River and 1/2 mile upriver from the east bank.

(11) The Columbia River within a radius of 150 feet of the Spring Creek Hatchery fishway, except that during the period of August 25-September 20 inclusive the closed area is along the Washington side of the Columbia River and extends to midstream at right angles to the thread of the Columbia River between a marker located 1 1/2 miles downriver of the Spring Creek Hatchery fishway up to the downstream marker of the Big White Salmon sanctuary located approximately 1/2 mile upriver of the Spring Creek Hatchery fishway.

(12) Herman Creek upstream from a line between deadline markers near the mouth. One marker is located on the east bank piling and the other is located on the west bank to the north of the boat ramp.

(13) The Columbia River within an area and adjacent to the mouth of the Klickitat River. The closed area is along the Washington side of the Columbia River and extends to midstream at right angles to the thread of the Columbia River between the downstream margin of Lyle Landing downstream to a marker located near the railroad tunnel approximately 1 1/8 miles downstream from the west bank.

Stat. Auth.: ORS 183.325, 506.109 & 506.119  
Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 89, f. & ef. 1-28-77; FWC 133, f. & ef. 8-4-77; FWC 149(Temp), f. & ef. 9-21-77 thru 1-18-78; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 2-1979, f. & ef. 1-25-79, Renumbered from 635-035-0045; FWC 6-1980, f. & ef. 1-28-80; FWC 44-



# ADMINISTRATIVE RULES

1980(Temp), f. & cert. 8-22-80; FWC 1-1981, f. & cert. 1-19-81; FWC 6-1982, f. & cert. 1-28-82; FWC 49-1983(Temp), f. & cert. 9-26-83; FWC 4-1984, f. & cert. 1-31-84; FWC 55-1985(Temp), f. & cert. 9-6-85; FWC 4-1986 (Temp), f. & cert. 1-28-86; FWC 25-1986(Temp), f. & cert. 6-25-86; FWC 42-1986, f. & cert. 8-15-86; FWC 2-1987, f. & cert. 1-23-87; FWC 10-1988, f. & cert. 3-4-88; FWC 54-1989 (Temp), f. & cert. 8-7-89; FWC 90-1989, f. & cert. 9-6-89; FWC 80-1990(Temp), f. & cert. 8-7-90, cert. 8-8-90; DFW 142-2008, f. & cert. 11-21-08; DFW 23-2011, f. & cert. 3-21-11; DFW 40-2011(Temp), f. & cert. 5-5-11 thru 10-31-11; DFW 43-2011(Temp), f. & cert. 5-10-11 thru 10-31-11; DFW 60-2011(Temp), f. & cert. 6-2-11, cert. 6-6-11 thru 10-31-11; DFW 63-2011(Temp), f. & cert. 6-8-11, cert. 6-9-11 thru 10-31-11; DFW 66-2011(Temp), f. & cert. 6-14-11, cert. 6-16-11 thru 10-31-11; DFW 88-2011(Temp), f. & cert. 7-8-11, cert. 7-10-11 thru 10-31-11

## 635-041-0076

### Summer Salmon Season

(1) Commercial sales of platform and hook-and-line caught fish from Zone 6 of the mainstem Columbia River are allowed beginning 6:00 p.m. Tuesday, May 10, 2011 until further notice.

(a) Chinook, steelhead, sockeye (through 6:00 p.m. July 10, 2011), coho, walleye, shad, carp, bass, catfish and yellow perch landed during an open commercial fishing period may be sold at any time or retained for subsistence purposes. Sockeye may not be sold after 6:00 p.m. Sunday, July 10, 2011, but may be retained for subsistence.

(b) Sturgeon may not be sold or retained prior to 6:00 a.m. Monday, June 27, 2011. White sturgeon between 43 and 54 inches in fork length taken in The Dalles and John Day pools and white sturgeon between 38 and 54 inches in fork length taken in the Bonneville Pool from 6:00 a.m. Monday, June 27, through 6:00 p.m. Thursday, June 30, 2011 may be sold or retained for subsistence use.

(c) Gear is restricted to subsistence fishing gear: hoopnets, dipnets and rod and reel with hook-and-line are allowed.

(d) Closed areas in Zone 6, except the Spring Creek sanctuary, are as set forth in OAR 635-041-0045 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. Thursday, June 16 through 6:00 p.m. Saturday, June 18, 2011 (2.5 days); from 6:00 a.m. Monday, June 20 through 6:00 p.m. Thursday, June 23, 2011 (3.5 days); from 6:00 a.m. Monday, June 27 through 6:00 p.m. Thursday, June 30, 2011 (3.5 days); from 6:00 a.m. Tuesday, July 5 through 6:00 p.m. Friday, July 8, 2011 (3.5 days); and from 6:00 a.m. Monday, July 11 through Friday, July 15 (4.5 days).

(a) Salmon, steelhead, shad, yellow perch, bass, walleye, catfish and carp landed during any open gill net fishing period may be sold at any time or retained for subsistence purposes.

(b) Sturgeon may not be sold or retained prior to 6:00 a.m. Monday, June 27, 2011. 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 from 6:00 a.m. Monday, June 27, through 6:00 p.m. Thursday, June 30, 2011 may be sold or retained for subsistence use. 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 landed after 6:00 a.m. Tuesday, July 5 may not be sold but may be retained for subsistence. Fish landed during an open commercial period may be sold at any time. Commercial buyers may only purchase sturgeon in the round.

(c) Gear is restricted to gill nets. No minimum mesh size restriction is in effect through July 10, 2011. Beginning 6:00 a.m. Monday, July 11, 2011 only gill nets with a minimum mesh size of 7.25 inches may be used.

(d) Closed areas in Zone 6, except the Spring Creek Hatchery sanctuary, are as set forth in OAR 635-041-0045 and remain in effect.

(3) Sales of fish caught in Yakama Nation tributary fisheries in the Klickitat River; Wind River; Drano Lake; and Big White Salmon River are allowed during those days and hours when the tributaries are open under lawfully enacted tribal fishing periods and concurrent with periods when sales from Zone 6 platform and hook-and-line fisheries are allowed.

Stat. Auth.: ORS 496.118 & 506.119

Stats. Implemented: ORS 506.109, 506.129 & 507.030

Hist.: DFW 5-2006, f. & cert. 2-15-06; DFW 39-2006(Temp), f. & cert. 6-8-06 thru 7-31-06; DFW 46-2006(Temp), f. & cert. 6-20-06 thru 7-31-06; DFW 49-2006(Temp), f. & cert. 6-26-06, cert. 6-27-06 thru 7-31-06; DFW 56-2006(Temp), f. & cert. 6-30-06, cert. 6-30-06 thru 7-31-06; DFW 58-2006(Temp), f. & cert. 7-10-06 thru 7-31-06; Administrative correction 8-22-06; DFW 46-2007(Temp), f. & cert. 6-15-07, cert. 6-16-07 thru 9-13-07; DFW 49-2007(Temp), f. & cert. 6-22-07, cert. 6-26-07 thru 9-13-07; DFW 53-2007(Temp), f. & cert. 7-6-07 thru 7-31-07; Administrative correction 9-16-07; DFW 45-2008(Temp), f. & cert. 5-2-08, cert. 5-5-08 thru 7-31-08; DFW 47-2008(Temp), f. & cert. 5-9-08, cert. 5-11-08 thru 7-31-08; DFW 62-2008(Temp), f. & cert. 6-13-08, cert. 6-16-08 thru 8-31-08; DFW 68-2008(Temp), f. & cert. 6-20-08, cert. 6-21-08 thru 8-31-08; DFW 71-2008(Temp), f. & cert. 6-27-08, cert. 6-28-08 thru 8-31-08; DFW 80-2008(Temp), f. & cert. 7-10-08 thru 8-31-08; DFW 87-2008(Temp), f. & cert. 7-25-08 thru 8-31-08; DFW 94-2008(Temp), f. & cert. 8-14-08 thru 9-30-08; Administrative correction 10-21-08; DFW 50-2009(Temp), f. & cert. 5-14-09, cert. 5-16-09 thru 7-31-09; DFW 56-2009(Temp), f. & cert. 5-26-09, cert. 5-27-09 thru 7-31-09; DFW 71-2009(Temp), f. & cert. 6-15-09, cert. 6-16-09 thru 7-31-09; DFW 76-2009(Temp), f. & cert. 6-26-09,

cert. 6-30-09 thru 7-31-09; DFW 82-2009(Temp), f. & cert. 7-6-09, cert. 7-8-09 thru 7-31-09; DFW 84-2009(Temp), f. & cert. 7-13-09, cert. 7-15-09 thru 7-31-09; Administrative correction 8-21-09; DFW 48-2010(Temp), f. & cert. 4-26-10, cert. 4-27-10 thru 7-31-10; DFW 51-2010(Temp), f. & cert. 4-29-10 thru 7-31-10; DFW 56-2010(Temp), f. & cert. 5-10-10, cert. 5-11-10 thru 7-31-10; DFW 68-2010(Temp), f. & cert. 5-18-10, cert. 5-19-10 thru 7-31-10; DFW 71-2010(Temp), f. & cert. 5-19-10, cert. 5-21-10 thru 6-16-10; DFW 74-2010(Temp), f. & cert. 6-2-10 thru 7-31-10; DFW 80-2010(Temp), f. & cert. 6-14-10, cert. 6-16-10 thru 7-31-10; DFW 87-2010(Temp), f. & cert. 6-25-10, cert. 6-29-10 thru 7-31-10; DFW 97-2010(Temp), f. & cert. 7-8-10, cert. 7-13-10 thru 7-31-10; DFW 101-2010(Temp), f. & cert. 7-19-10, cert. 7-20-10 thru 7-31-10; DFW 105-2010(Temp), f. & cert. 7-23-10, cert. 7-26-10 thru 7-31-10; Administrative correction 8-18-10; DFW 43-2011(Temp), f. & cert. 5-10-11 thru 10-31-11; DFW 66-2011(Temp), f. & cert. 6-14-11, cert. 6-16-11 thru 10-31-11; DFW 75-2011(Temp), f. & cert. 6-24-11, cert. 6-27-11 thru 10-31-11; DFW 84-2011(Temp), f. & cert. 7-1-11, cert. 7-5-11 thru 10-31-11; DFW 88-2011(Temp), f. & cert. 7-8-11, cert. 7-10-11 thru 10-31-11

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**Rule Caption:** Directed Commercial Sardine Fishery Second Allocation Period Closes July 12, 2011.

**Adm. Order No.:** DFW 89-2011(Temp)

**Filed with Sec. of State:** 7-11-2011

**Certified to be Effective:** 7-12-11 thru 9-14-11

**Notice Publication Date:**

**Rules Amended:** 635-004-0017

**Subject:** This amended rule closes the Second Allocation Period of the directed commercial sardine fishery effective July 12 through September 14, 2011. These modifications conform state regulations to federal rule changes posted for public inspection July 11, 2011 with intent to publish these changes in the Federal Register on July 12, 2010.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-004-0017

### Inclusions and Modifications

(1) OAR chapter 635, division 004, modifies or is in addition to provisions contained in **Code of Federal Regulations, Title 50, Part 660, Subpart I** (October 1, 2010 ed.).

(2) The **Code of Federal Regulations (CFR), Title 50, Part 660, Subpart I** (October 1, 2010 ed.) provides requirements for commercial sardine fishing in the Pacific Ocean. However, additional regulations may be promulgated subsequently, and these supersede, to the extent of any inconsistency, the **Code of Federal Regulations**.

(3) Notwithstanding the regulations as defined in OAR 635-004-0016, the National Oceanic and Atmospheric Administration (NOAA), by means of Docket No. 0912281446-0111-02 dated 7/7/11, for public inspection at <http://www.federalregister.gov/inspection.aspx> with intent to publish in the Federal Register on day, July 12, 2011, announced inseason management measures effective 12:01 a.m. Pacific Daylight Time, July 12, 2011, including but not limited to, closure of the directed sardine fishery through 11:59 p.m., September 14, 2011. The directed sardine fishery will open for the third allocation period on September 15, 2011.

[Publications: Publications references are available from the agency.]

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 38-2009, f. & cert. 4-22-09; DFW 78-2009(Temp), f. & cert. 7-1-09 thru 12-28-09; DFW 85-2009(Temp), f. & cert. 7-17-09, cert. 7-18-09 thru 12-31-09; DFW 116-2009(Temp), f. & cert. 9-23-09 thru 12-31-09; Administrative correction 1-25-10; DFW 79-2010(Temp), f. & cert. 6-11-10, cert. 6-12-10 thru 6-30-10; Administrative correction 7-27-10; DFW 104-2010(Temp), f. & cert. 7-21-10, cert. 7-22-10 thru 9-14-10; Administrative correction 9-22-10; DFW 133-2010(Temp), f. & cert. 9-22-10, cert. 9-24-10 thru 12-31-10; Administrative correction 1-25-11; DFW 19-2011(Temp), f. & cert. 3-2-11, cert. 3-4-11 thru 6-30-11; DFW 56-2011, f. & cert. 5-26-11; DFW 89-2011(Temp), f. & cert. 7-11-11, cert. 7-12-11 thru 9-14-11

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**Rule Caption:** Increase Daily Bag Limits for Chinook Salmon In the Imnaha and Wallowa Rivers.

**Adm. Order No.:** DFW 90-2011(Temp)

**Filed with Sec. of State:** 7-11-2011

**Certified to be Effective:** 7-11-11 thru 9-1-11

**Notice Publication Date:**

**Rules Amended:** 635-019-0090

**Rules Suspended:** 635-019-0090(T)

**Subject:** This amended rule allows recreational anglers to harvest higher daily limits of adipose fin-clipped adult and jack Chinook salmon in the Imnaha and Wallowa rivers, where unseasonably high water has limited opportunity to date. Harvest of salmon in excess of the Department's hatchery production needs is necessary to provide social benefits and manage numbers of hatchery salmon that escape into the spawning grounds.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

# ADMINISTRATIVE RULES

635-019-0090

## Inclusions and Modifications

(1) The **2011 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 **2011 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 28 until further notice.

(a) The daily bag limit is four (4) adipose fin-clipped adult Chinook and five (5) adipose fin-clipped jacks. 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 **2011 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 28 until further notice.

(a) The daily bag limit is four (4) adipose fin-clipped adult Chinook and five (5) adipose fin-clipped jacks. 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 **2011 Oregon Sport Fishing Regulations**, remain in effect.

(4) Lookingglass Creek from the Moses Creek Lane Bridge (County Road 42) to the confluence of Jarboe Creek is open to angling for adipose fin-clipped adult Chinook salmon from May 28 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) During the duration of the spring Chinook angling season, the area closure listed for Lookingglass Creek in the Northeast Zone Special Regulations is modified to: Lookingglass Creek closed between Jarboe Creek and 200 feet upstream of the hatchery water intake.

(c) Hook gap restrictions listed in the Northeast Zone Special Regulations for Lookingglass Creek are removed for the duration of the spring Chinook angling season.

(d) All other General, Statewide and Northeast Zone Regulations, as provided in the **2011 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; DFW 102-2010(Temp), f. 7-20-10, cert. ef. 7-25-10 thru 9-1-10; Administrative correction 9-22-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW

49-2011(Temp), f. 5-16-11, cert. ef. 5-28-11 thru 9-1-11; DFW 64-2011(Temp), f. 6-10-11, cert. ef. 6-13-11 thru 9-1-11; DFW 90-2011(Temp), f. & cert. ef. 7-11-11 thru 9-1-11

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**Rule Caption:** Adopted rule regarding the requirement of hunters to wear fluorescent orange exterior garment.

**Adm. Order No.:** DFW 91-2011

**Filed with Sec. of State:** 7-12-2011

**Certified to be Effective:** 8-1-11

**Notice Publication Date:** 9-1-2010

**Rules Adopted:** 635-065-0012

**Subject:** Rules require hunters younger than 18 years of age, while hunting game mammals and upland game birds (except turkeys) with any firearm, to wear hunter orange upper garment or hat.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-065-0012

### Mandatory Fluorescent Orange Garments

No person younger than 18 years of age shall hunt with any firearm any game mammal or upland game bird (excluding turkey) unless the person is wearing in a manner visible from all directions a hat or exterior garment of fluorescent orange. "Exterior garment" means a shirt, jacket, coat, vest or sweater. Fluorescent orange camouflage patterns are acceptable. "Hat" means any head covering. Not subject to this rule are:

(1) Department employees and agents and the Oregon State Police while acting in their official capacities.

(2) Persons taking wildlife for damage under authority of ORS 498.012.

(3) Persons taking a wolf or wolves under authority of OAR chapter 635, division 110.

(4) Persons taking helpless or crippled wildlife under authority of ORS 498.016.

Stat. Auth.: 496.012, 496.138 & 496.162

Stat. Implemented: 496.012, 496.138 & 496.162

Hist.: DFW 91-2011, f. 7-12-11, cert. ef. 8-1-11

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**Rule Caption:** Fin-clipped Chinook Sport Fishery on Lookingglass Creek Closes July 16, 2011.

**Adm. Order No.:** DFW 92-2011(Temp)

**Filed with Sec. of State:** 7-12-2011

**Certified to be Effective:** 7-16-11 thru 10-31-11

**Notice Publication Date:**

**Rules Amended:** 635-019-0090

**Rules Suspended:** 635-019-0090(T)

**Subject:** This amended rule closes the on-going sport spring Chinook angling season on Lookingglass Creek that was previously established through temporary rule. The pre-season harvest allocation for this fishery is projected to be met by July 15, 2011.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-019-0090

### Inclusions and Modifications

(1) The **2011 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 **2011 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 28 until further notice.

(a) The daily bag limit is four (4) adipose fin-clipped adult Chinook and five (5) adipose fin-clipped jacks. 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 **2011 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 28 until further notice.

(a) The daily bag limit is four (4) adipose fin-clipped adult Chinook and five (5) adipose fin-clipped jacks. 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 **2011 Oregon Sport Fishing Regulations**, remain in effect.



# ADMINISTRATIVE RULES

(4) Lookingglass Creek from the Moses Creek Lane Bridge (County Road 42) to the confluence of Jarboe Creek is closed to angling for adipose fin-clipped adult Chinook salmon, effective 12:01 a.m. Saturday, July 16, 2011. All other General, Statewide and Northeast Zone Regulations, as provided in the 2011 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; DFW 102-2010(Temp), f. 7-20-10, cert. ef. 7-25-10 thru 9-1-10; Administrative correction 9-22-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 49-2011(Temp), f. 5-16-11, cert. ef. 5-28-11 thru 9-1-11; DFW 64-2011(Temp), f. 6-10-11, cert. ef. 6-13-11 thru 9-1-11; DFW 90-2011(Temp), f. & cert. ef. 7-11-11 thru 9-1-11; DFW 92-2011(Temp), f. 7-12-11, cert. ef. 7-16-11 thru 10-31-11

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**Rule Caption:** Lower Deschutes River Sport Fall Chinook Fishery Opens August 1st.

**Adm. Order No.:** DFW 93-2011(Temp)

**Filed with Sec. of State:** 7-13-2011

**Certified to be Effective:** 8-1-11 thru 10-31-11

**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 August 1, 2011.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

**635-018-0090**

**Inclusions and Modifications**

(1) The 2011 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 2011 Oregon Sport Fishing Regulations.

(2) The Hood River is open from the mouth to mainstem confluence with the East Fork and the West Fork from the confluence with the mainstem upstream to the angling deadline 200 feet downstream of Punchbowl Falls to retention of:

(a) Adipose fin-clipped coho salmon and adipose fin-clipped steelhead from January 1 through December 31. The catch limit is two adult adipose fin-clipped salmon or steelhead per day and five adipose fin-clipped jack salmon per day, with the exception that one additional adipose fin-clipped steelhead may be retained per day for a total aggregate of 3 adult fish harvested daily; and

(b) All salmon and steelhead that have not been adipose fin-clipped must be released unharmed. All other catch limits and restrictions remain

unchanged from those listed for Hood River in the 2011 Oregon Sport Fishing Regulations.

(3) 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 15 through July 31, 2011.

(a) The catch limit for Chinook salmon during the period described in section (3) above is one 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 one adult Chinook salmon.

(4) 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, 2011. The catch limit for Chinook salmon during the period described in section (4) above 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 2011 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

Stats. Implemented: ORS 496.162

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 20-1994(Temp), f. & cert. ef. 4-11-94; FWC 24-1994(Temp), f. 4-29-94, cert. ef. 4-30-94; FWC 34-1994(Temp), f. 6-14-94, cert. ef. 6-16-94; FWC 54-1994, f. 8-25-94, cert. ef. 9-1-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 67-1994(Temp), f. & cert. ef. 9-26-94; FWC 70-1994, f. 10-4-95, cert. ef. 11-1-94; FWC 18-1995, f. 3-2-95, cert. ef. 4-1-95; FWC 60-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 11-1996(Temp), f. 3-8-96, cert. ef. 4-1-96; FWC 32-1996(Temp), f. 6-7-96, cert. ef. 6-16-96; FWC 38-1996(Temp), f. 6-14-96, cert. ef. 7-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 20-1997, f. & cert. ef. 3-24-97; FWC 21-1997, f. & cert. ef. 4-1-97; FWC 27-1997(Temp), f. 5-2-97, cert. ef. 5-9-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 25-1998(Temp), f. & cert. ef. 3-25-98 thru 8-31-98; DFW 56-1998(Temp), f. 7-24-98, cert. ef. 8-1-98 thru 10-31-98; DFW 70-1998, f. & cert. ef. 8-28-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 12-2000(Temp), f. 3-20-00, cert. ef. 4-15-00 thru 7-31-00; DFW 27-2000(Temp), f. 5-15-00, cert. ef. 8-1-00 thru 10-31-00; DFW 28-2000, f. 5-23-00, cert. ef. 5-24-00 thru 7-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 13-2001(Temp), f. 3-12-01, cert. ef. 4-7-01 thru 7-31-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 44-2001(Temp), f. 5-25-01, cert. ef. 6-1-01 thru 7-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp), f. 1-11-02, cert. ef. 1-12-02 thru 7-11-02; DFW 23-2002(Temp), f. 3-21-02, cert. ef. 4-6-02 thru 7-31-02; DFW 25-2002(Temp), f. 3-22-02, cert. ef. 4-6-02 thru 7-31-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 62-2002, f. 6-14-02, cert. ef. 7-11-02; DFW 74-2002(Temp), f. 7-18-02, cert. ef. 8-1-02 thru 10-31-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 97-2002(Temp), f. & cert. ef. 8-29-02 thru 10-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 26-2003(Temp), f. 3-28-03, cert. ef. 4-15-03 thru 7-31-03; DFW 66-2003(Temp), f. 7-17-03, cert. ef. 8-1-03 thru 10-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 23-2004(Temp), f. 3-22-04, cert. ef. 4-1-04 thru 7-31-04; DFW 77-2004(Temp), f. 7-28-04, cert. ef. 8-1-04 thru 10-31-04; Administrative correction 11-22-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 19-2005(Temp), f. 3-16-05, cert. ef. 4-15-05 thru 7-31-05; DFW 41-2005(Temp), f. 5-13-05, cert. ef. 5-15-05 thru 7-31-05; DFW 83-2005(Temp), f. 7-29-05, cert. ef. 8-1-05 thru 10-31-05; DFW 84-2005(Temp), f. & cert. ef. 8-1-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 59-2006(Temp), f. 7-10-06, cert. ef. 8-1-06 thru 10-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 18-2007(Temp), f. 3-22-07, cert. ef. 4-15-07 thru 7-31-07; DFW 55-2007(Temp), f. 7-6-07, cert. ef. 8-1-07 thru 10-31-07; Administrative correction 11-17-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 26-2008(Temp), f. 3-17-08, cert. ef. 4-15-08 thru 7-31-08; DFW 27-2008(Temp), f. 3-24-08, cert. ef. 5-1-08 thru 10-27-08; Administrative correction 11-18-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 16-2009(Temp), f. 2-25-09, cert. ef. 4-15-09 thru 6-30-09; DFW 61-2009(Temp), f. 6-1-09, cert. ef. 8-1-09 thru 10-31-09; DFW 104-2009(Temp), f. 8-28-09, cert. ef. 9-1-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 7-2010(Temp), f. 1-25-10, cert. ef. 4-1-10 thru 7-31-10; DFW 27-2010(Temp), f. 3-8-10, cert. ef. 4-15-10 thru 7-31-10; DFW 66-2010(Temp), f. 5-18-10, cert. ef. 5-22-10 thru 10-31-10; DFW 86-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 10-31-10; DFW 106-2010(Temp), f. 7-26-10, cert. ef. 8-1-10 thru 12-31-10; DFW 164-2010(Temp), f. 12-28-10, cert. ef. 1-1-11 thru 6-29-11; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 16-2011(Temp), f. 2-16-11, cert. ef. 4-15-11 thru 7-31-11; DFW 17-2011(Temp), f. 2-17-11, cert. ef. 4-15-11 thru 7-31-11; DFW 42-2011(Temp), f. & cert. ef. 5-10-11 thru 10-31-11; DFW 93-2011(Temp), f. 7-13-11, cert. ef. 8-1-11 thru 10-31-11

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**Rule Caption:** Columbia River Treaty Indian Commercial Gill Net Fishery Extended Through July 21, 2011

**Adm. Order No.:** DFW 94-2011(Temp)

**Filed with Sec. of State:** 7-14-2011

**Certified to be Effective:** 7-18-11 thru 10-31-11

**Notice Publication Date:**

**Rules Amended:** 635-041-0076

**Rules Suspended:** 635-041-0076(T)

**Subject:** Rule modifications set a Treaty Indian commercial gill net fishing period from 6:00 a.m. Monday, July 18 through Thursday, July 21, 2011 (3.5 days) in Zone 6 of the Columbia River and allow the sales of fish except sockeye and white sturgeon caught during that period. Revisions are consistent with action taken July 13, 2011 by



# ADMINISTRATIVE RULES

the Columbia River Compact agencies of Oregon and Washington in cooperation with the Columbia River Treaty Tribes.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

**635-041-0076**

## Summer Salmon Season

(1) Commercial sales of platform and hook-and-line caught fish from Zone 6 of the mainstem Columbia River are allowed beginning 6:00 p.m. Tuesday, May 10, 2011 until further notice.

(a) Chinook, steelhead, sockeye (through 6:00 p.m. July 10, 2011), coho, walleye, shad, carp, bass, catfish and yellow perch landed during an open commercial fishing period may be sold at any time or retained for subsistence purposes. Sockeye may not be sold after 6:00 p.m. Sunday, July 10, 2011, but may be retained for subsistence.

(b) Sturgeon may not be sold or retained prior to 6:00 a.m. Monday, June 27, 2011. White sturgeon between 43 and 54 inches in fork length taken in The Dalles and John Day pools and white sturgeon between 38 and 54 inches in fork length taken in the Bonneville Pool from 6:00 a.m. Monday, June 27, through 6:00 p.m. Thursday, June 30, 2011 may be sold or retained for subsistence use.

(c) Gear is restricted to subsistence fishing gear: hoopnets, dipnets and rod and reel with hook-and-line are allowed.

(d) Closed areas in Zone 6, except the Spring Creek sanctuary, are as set forth in OAR 635-041-0045 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. Thursday, June 16 through 6:00 p.m. Saturday, June 18, 2011 (2.5 days); from 6:00 a.m. Monday, June 20 through 6:00 p.m. Thursday, June 23, 2011 (3.5 days); from 6:00 a.m. Monday, June 27 through 6:00 p.m. Thursday, June 30, 2011 (3.5 days); from 6:00 a.m. Tuesday, July 5 through 6:00 p.m. Friday, July 8, 2011 (3.5 days); from 6:00 a.m. Monday, July 11 through Friday, July 15 (4.5 days); and from 6:00 a.m. Monday, July 18 through Thursday, July 21 (3.5 days).

(a) Chinook and coho salmon, steelhead, shad, yellow perch, bass, walleye, catfish and carp landed during any open gill net fishing period may be sold at any time or retained for subsistence purposes, however, sockeye salmon landed after 6:00 p.m. Sunday, July 10 may not be sold, but may be retained for subsistence purposes.

(b) Sturgeon may not be sold or retained prior to 6:00 a.m. Monday, June 27, 2011. 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 from 6:00 a.m. Monday, June 27, through 6:00 p.m. Thursday, June 30, 2011 may be sold or retained for subsistence use. 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 landed after 6:00 a.m. Tuesday, July 5 may not be sold but may be retained for subsistence. Fish landed during an open commercial period may be sold at any time. Commercial buyers may only purchase sturgeon in the round.

(c) Gear is restricted to gill nets. No minimum mesh size restriction is in effect through July 10, 2011. Beginning 6:00 a.m. Monday, July 11, 2011 only gill nets with a minimum mesh size of 7.25 inches may be used.

(d) Closed areas in Zone 6, except the Spring Creek Hatchery sanctuary, are as set forth in OAR 635-041-0045 and remain in effect.

(3) Sales of fish caught in Yakama Nation tributary fisheries in the Klickitat River; Wind River; Drano Lake; and Big White Salmon River are allowed during those days and hours when the tributaries are open under lawfully enacted tribal fishing periods and concurrent with periods when sales from Zone 6 platform and hook-and-line fisheries are allowed.

Stat. Auth.: ORS 496.118 & 506.119

Stats. Implemented: ORS 506.109, 506.129 & 507.030

Hist.: DFW 5-2006, f. & cert. ef. 2-15-06; DFW 39-2006(Temp), f. & cert. ef. 6-8-06 thru 7-31-06; DFW 46-2006(Temp), f. & cert. ef. 6-20-06 thru 7-31-06; DFW 49-2006(Temp), f. 6-26-06, cert. ef. 6-27-06 thru 7-31-06; DFW 56-2006(Temp), f. 6-30-06, cert. ef. 7-3-06 thru 7-31-06; DFW 58-2006(Temp), f. 7-6-06, cert. ef. 7-10-06 thru 7-31-06; Administrative correction 8-22-06; DFW 46-2007(Temp), f. 6-15-07, cert. ef. 6-16-07 thru 9-13-07; DFW 49-2007(Temp), f. 6-22-07, cert. ef. 6-26-07 thru 9-13-07; DFW 53-2007(Temp), f. & cert. ef. 7-6-07 thru 7-31-07; Administrative correction 9-16-07; DFW 45-2008(Temp), f. 5-2-08, cert. ef. 5-5-08 thru 7-31-08; DFW 47-2008(Temp), f. 5-9-08, cert. ef. 5-11-08 thru 7-31-08; DFW 62-2008(Temp), f. 6-13-08, cert. ef. 6-16-08 thru 8-31-08; DFW 68-2008(Temp), f. 6-20-08, cert. ef. 6-21-08 thru 8-31-08; DFW 71-2008(Temp), f. 6-27-08, cert. ef. 6-28-08 thru 8-31-08; DFW 80-2008(Temp), f. & cert. ef. 7-10-08 thru 8-31-08; DFW 87-2008(Temp), f. & cert. ef. 7-25-08 thru 8-31-08; DFW 94-2008(Temp), f. & cert. ef. 8-14-08 thru 9-30-08; Administrative correction 10-21-08; DFW 50-2009(Temp), f. 5-14-09, cert. ef. 5-16-09 thru 7-31-09; DFW 56-2009(Temp), f. 5-26-09, cert. ef. 5-27-09 thru 7-31-09; DFW 71-2009(Temp), f. 6-15-09, cert. ef. 6-16-09 thru 7-31-09; DFW 76-2009(Temp), f. 6-26-09, cert. ef. 6-30-09 thru 7-31-09; DFW 82-2009(Temp), f. 7-6-09, cert. ef. 7-8-09 thru 7-31-09; DFW 84-2009(Temp), f. 7-13-09, cert. ef. 7-15-09 thru 7-31-09; Administrative correction 8-21-09; DFW 48-2010(Temp), f. 4-26-10, cert. ef. 4-27-10 thru 7-31-10; DFW 51-

2010(Temp), f. & cert. ef. 4-29-10 thru 7-31-10; DFW 56-2010(Temp), f. 5-10-10, cert. ef. 5-11-10 thru 7-31-10; DFW 68-2010(Temp), f. 5-18-10, cert. ef. 5-19-10 thru 7-31-10; DFW 71-2010(Temp), f. 5-19-10, cert. ef. 5-21-10 thru 6-16-10; DFW 74-2010(Temp), f. & cert. ef. 6-2-10 thru 7-31-10; DFW 80-2010(Temp), f. 6-14-10, cert. ef. 6-16-10 thru 7-31-10; DFW 87-2010(Temp), f. 6-25-10, cert. ef. 6-29-10 thru 7-31-10; DFW 97-2010(Temp), f. 7-8-10, cert. ef. 7-13-10 thru 7-31-10; DFW 101-2010(Temp), f. 7-19-10, cert. ef. 7-20-10 thru 7-31-10; DFW 105-2010(Temp), f. 7-23-10, cert. ef. 7-26-10 thru 7-31-10; Administrative correction 8-18-10; DFW 43-2011(Temp), f. & cert. ef. 5-10-11 thru 10-31-11; DFW 66-2011(Temp), f. 6-14-11, cert. ef. 6-16-11 thru 10-31-11; DFW 75-2011(Temp), f. 6-24-11, cert. ef. 6-27-11 thru 10-31-11; DFW 84-2011(Temp), f. 7-1-11, cert. ef. 7-5-11 thru 10-31-11; DFW 88-2011(Temp), f. 7-8-11, cert. ef. 7-10-11 thru 10-31-11; DFW 94-2011(Temp), f. 7-14-11, cert. ef. 7-18-11 thru 10-31-11

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**Rule Caption:** 2011 Columbia River Summer Salmon Recreational Fishery Modified.

**Adm. Order No.:** DFW 95-2011(Temp)

**Filed with Sec. of State:** 7-15-2011

**Certified to be Effective:** 7-18-11 thru 7-31-11

**Notice Publication Date:**

**Rules Amended:** 635-023-0128

**Rules Suspended:** 635-023-0128(T)

**Subject:** This amended rule modifies the summer recreational salmon fishing season in the Columbia River to prohibit the retention of adult Chinook and all sockeye salmon from the Astoria-Megler Bridge upstream to Bonneville Dam; and to prohibit the retention of all sockeye salmon from Bonneville Dam upstream to the Highway 395 Bridge near Pasco, Washington, effective Monday July 18, 2011. Modifications to regulations were made for consistency with preseason allocations developed through the Pacific Fishery Management Council/North of Falcon Process. Revisions are consistent with action taken July 15, 2011 by the Columbia River Compact agencies of Oregon and Washington.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

**635-023-0128**

## Summer Sport Fishery

(1) The 2011 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 **2011 Oregon Sport Fishing Regulations**.

(2) Notwithstanding all other specifications and restrictions in the **2011 Oregon Sport Fishing Regulations**:

(a) Effective 12:01 a.m. Monday, July 18 the mainstem Columbia River is closed to the retention of adult Chinook and all sockeye salmon from the Astoria-Megler Bridge upstream to Bonneville Dam. The fishery remains open for adipose fin-clipped steelhead and adipose fin-clipped Chinook jacks.

(b) Effective 12:01 a.m. Monday, July 18, the mainstem Columbia River from Bonneville Dam upstream to the Highway 395 Bridge near Pasco, Washington is closed to the retention of all sockeye salmon. The fishery remains open for adipose fin-clipped Chinook salmon (adults and jacks) and adipose fin-clipped steelhead.

(c) The combined daily bag limit for adult salmon and steelhead is two fish above Bonneville Dam. The daily bag limit below Bonneville Dam is two fish, of which none may be an adult Chinook or any sockeye salmon. Only adipose fin-clipped fish may be retained.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 52-2005(Temp), f. 6-3-05, cert. ef. 6-16-05 thru 7-31-05; DFW 64-2005(Temp), f. 6-30-05, cert. ef. 7-1-05 thru 7-31-05; Administrative correction 8-17-05; DFW 26-2006(Temp), f. 4-20-06, cert. ef. 5-1-06 thru 10-27-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 51-2007(Temp), f. 6-29-07, cert. ef. 7-2-07 thru 7-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 36-2008, f. 4-21-08, cert. ef. 5-1-08; DFW 61-2008(Temp), f. 6-13-08, cert. ef. 6-16-08 thru 7-31-08; DFW 68-2008(Temp), f. 6-20-08, cert. ef. 6-21-08 thru 8-31-08; DFW 71-2008(Temp), f. 6-27-08, cert. ef. 6-28-08 thru 8-31-08; Administrative correction 9-29-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 52-2009, f. & cert. ef. 5-18-09; DFW 69-2009(Temp), f. 6-11-09, cert. ef. 6-16-09 thru 7-31-09; Administrative correction 8-21-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 77-2010, f. 6-8-10, cert. ef. 6-16-10; DFW 88-2010(Temp), f. 6-25-10, cert. ef. 6-26-10 thru 7-31-10; Administrative correction 8-18-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 65-2011(Temp), f. 6-14-11, cert. ef. 6-16-11 thru 7-31-11; DFW 95-2011(Temp), f. 7-15-11, cert. ef. 7-18-11 thru 7-31-11

# ADMINISTRATIVE RULES

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

**Rule Caption:** Privacy Rules Setting Forth General Procedures Governing the Collection, Use and Disclosure of Protected Information.

**Adm. Order No.:** DHSD 2-2011(Temp)

**Filed with Sec. of State:** 7-1-2011

**Certified to be Effective:** 7-1-11 thru 12-27-11

**Notice Publication Date:**

**Rules Adopted:** 407-014-0015

**Rules Amended:** 407-014-0000, 407-014-0020, 407-014-0030, 407-014-0040, 407-014-0050, 407-014-0060, 407-014-0070

**Subject:** These rules govern the collection, use and disclosure of protected information by the Department about individuals and to explain the rights and specific actions that individuals may take or request to be taken regarding the uses and disclosures of their protected information. The adoption and amendment of these rules also set forth Department requirements governing the use and disclosure of protected health information for purposes of HIPAA, 42 USC 1320-d through 1320d-8, Pub L 104-191, sec. 262 and 264, and the implementing HIPAA privacy rules, 45 CFR parts 160 and 164.

These 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

### 407-014-0000

#### Definitions

The following definitions apply to OAR 407-014-0000 to 407-014-0070:

(1) "Administrative Hearing" means an oral proceeding before an administrative law judge in a contested case hearing.

(2) "Authority" means the Oregon Health Authority.

(3) "Authorization" means permission from an individual or his or her personal representative giving the Department of Human Services (Department) authorization to obtain, release or use information about the individual from third parties for specified purposes or to disclose information to a third party specified by the individual.

(4) "Business Associate" means an individual or entity performing any function or activity on behalf of the Authority, including the Department, involving the use or disclosure of protected health information (PHI) and is not a member of the Authority's workforce.

(a) For purposes of the definition of "Business Associate" "function or activity" includes but is not limited to program administration, claims processing or administration, data analysis, utilization review, quality assurance, billing, legal, actuarial, accounting, consulting, data processing, management, administrative, accreditation, financial services, and similar services for which the Authority may contract or obtain by interagency agreement, if access to PHI is involved.

(b) Business associates do not include licensees or providers unless the licensee or provider also performs some function or activity on behalf of the Authority.

(5) "Client" means an individual who requests or receives services from the Department. This includes but is not limited to applicants for or recipients of public assistance, minors and adults receiving protective services, individuals who are committed to the custody of the Department, children in the custody of the Department receiving services on a voluntary basis, and children committed to the custody of the Department.

(6) "Client Information" means personal information relating to a client that the Department may maintain in one or more locations and in various forms, reports, or documents, or stored or transmitted by electronic media.

(7) "Collect" or "Collection" means the assembling of personal information through interviews, forms, reports, or other information sources.

(8) "Contract" means a written agreement between the Department and a person or entity setting forth the rights and obligations of the parties including but not limited to contracts, licenses, agreements, interagency agreements, and intergovernmental agreements.

(9) "Correctional Institution" means any penal or correctional facility, jail, reformatory, detention center, work farm, halfway house, or residential community program center operated by contract with the federal

government, a state, or an Indian tribe for the confinement or rehabilitation of persons charged with or convicted of a criminal offense or other persons held in lawful custody. "Other persons held in lawful custody" include juvenile offenders, adjudicated delinquents, aliens detained awaiting deportation, witnesses, or others awaiting charges or trial.

(10) "Corrective Action" means an action that a business associate must take to remedy a breach or violation of the business associate's obligations under the business associate's contractual requirement, including but not limited to reasonable steps that must be taken to cure the breach or end the violation.

(11) "Covered Entity" means health plans, health care clearinghouses, and health care providers who transmit any health information in electronic form in connection with a transaction that is subject to federal Health Insurance Portability and Accountability Act (HIPAA) requirements, as those terms are defined and used in the HIPAA regulations, 45 CFR parts 160 and 164.

(12) "De-identified Data" means client information from which the Department or other entity has deleted, redacted, or blocked identifiers so the remaining information cannot reasonably be used to identify an individual.

(13) "Department" means the Department of Human Services.

(14) "Department Workforce" means employees, volunteers, trainees, and other persons whose conduct, in the performance of work for the Department, is under the direction and control of the Department, whether or not they are paid by the Department.

(15) "Disclose" means the release, transfer, relay, provision of access to, or conveying of client information to any individual or entity outside the Department.

(16) "Health Care" means care, services, or supplies related to the health of an individual. Health care includes but is not limited to preventive, diagnostic, therapeutic, rehabilitative, maintenance, palliative care, counseling services, assessment, or procedures with respect to the physical or mental condition, or functional status of an individual, or that affects the structure or function of the body and the sale or dispensing of a drug, device, equipment, or other prescribed item.

(17) "Health Care Operations" means any activities of a covered entity to the extent that the activities are related to health care, Medicaid, or any other health care related programs, services, or activities administered by the covered entity and includes:

(a) Conducting quality assessment and improvement activities, including income evaluation and development of clinical guidelines;

(b) Population-based activities related to improving health or reducing health care costs, protocol development, case management and care coordination, contacting health care providers and patients with information about treatment alternatives; and related functions that do not include treatment;

(c) Reviewing the competence of qualifications of health care professionals, evaluating practitioner, provider, and health plan performance; and conducting training programs in which students and trainees in areas of health care learn under supervision to practice or improve their skills, accreditation, certification, licensing, or credentialing activities;

(d) Underwriting, premium rating, and other activities relating to the creation, renewal, or replacement of a contract for Medicaid or health care related services;

(e) Conducting or arranging for medical review, legal services, and auditing functions, including fraud and abuse detection and compliance programs, and disclosure to the Medicaid Fraud Unit pursuant to 43 CFR part 455.21;

(f) Business planning and development, such as conducting cost-management and planning-related analyses related to managing and operating the covered entity, including administration, development, or improvement of methods of payments or health care coverage; and

(g) Business management and general administrative activities of the covered entity, including but not limited to:

(A) Management activities relating to implementation of and compliance with the requirements of HIPAA;

(B) Customer service, including providing data analysis;

(C) Resolution of internal grievances, including administrative hearings and the resolution of disputes from patients or enrollees regarding the quality of care and eligibility for services; and

(D) Creating de-identified data or a limited data set.

(18) "Health Oversight Agency" means an agency or authority of the federal government, a state, territory, political subdivision of a state or territory, Indian tribe, or a person or entity acting under a grant of authority from or by contract with the public agency, including employees or agents

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of the public agency or its contractors or grantees that is authorized by law to oversee the health care system or government programs in which health information is necessary to determine eligibility or compliance, or to enforce civil rights laws for which health information is relevant. When performing these functions, the Department acts as a health oversight agency for the purposes of these rules.

(19) "HIPAA" means the Title II, Subtitle F of the Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d et seq, and the federal regulations adopted to implement the Act.

(20) "Individual" means the person who is the subject of information collected, used, or disclosed by the Department.

(21) "Individually Identifying Information" means any single item or compilation of information or data that indicates or reveals the identity of an individual, either specifically (such as the individual's name or social security number), or from which the individual's identity can be reasonably ascertained.

(22) "Information" means personal information relating to an individual, a participant, or a Department client.

(23) "Inmate" means a person incarcerated in or otherwise confined in a correctional institution. An individual is no longer an inmate when released on parole, probation, supervised release, or is otherwise no longer in custody.

(24) "Institutional Review Board (IRB)" means a specially constituted review body established or designated by an entity in accordance with 45 CFR part 46 to protect the welfare of human subjects recruited to participate in biomedical or behavioral research. The IRB must be registered with the Office for Human Research Protection.

(25) "Law Enforcement Official" means an officer or employee of any agency or authority of the federal government, a state, territory, political subdivision of a state or territory, or Indian tribe who is empowered by law to:

(a) Investigate and conduct an official inquiry into a potential violation of law; or

(b) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.

(26) "Licensee" means a person or entity that applies for or receives a license, certificate, registration, or similar authority from the Department to perform or conduct a service, activity, or function.

(27) "Minimum Necessary" means the least amount of information, when using or disclosing confidential client information that is needed to accomplish the intended purpose of the use, disclosure, or request.

(28) "Participant" means individual's participating in Department population-based services, programs, and activities that serve the general population, but who do not receive program benefits or direct services received by a client. Examples of participants include individuals who contact Department hotlines or the ombudsman for general public information services.

(29) "Payment" means any activities undertaken by a covered entity related to a client to whom health care is provided in order to:

(a) Obtain premiums or to determine or fulfill its responsibility for coverage and provision of benefits under the Medicaid program or other publicly funded health care services; and

(b) Obtain or provide reimbursement for the provision of health care.

(30) "Payment activities" means:

(a) Determinations of eligibility or coverage, including coordination of benefits or the determination of cost sharing amounts, and adjudication of health benefit or health care claims;

(b) Risk adjusting amounts due which are based on enrollee health status and demographic characteristics;

(c) Billing, claims management, collection activities, obtaining payment under a contract for reinsurance, and related health care data processing;

(d) Review of health care services with respect to medical necessity, coverage under a health plan, appropriateness of care, or justification of charges;

(e) Utilization review activities, including pre-certification and pre-authorization of services, concurrent and retrospective review of services; and

(f) Disclosure to consumer reporting agencies relating to collection of premiums or reimbursement including name and address, date of birth, payment history, account number, and name and address of the health care provider or health plan.

(31) "Personal Representative" means a person who has authority to act on behalf of an individual in making decisions related to health care.

(32) "Protected Health Information (PHI)" means any individually identifiable health information, whether oral or recorded in any form or medium, that is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse and relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual. Any data transmitted or maintained in any other form or medium by covered entities, including paper records, fax documents, all oral communications, or any other form, such as screen prints of eligibility information, printed e-mails containing identified individual's health information, claim or billing information, or hard copy birth or death certificates. PHI does not include school records that are subject to the Family Educational Rights and Privacy Act and employment records held in the Department's role as an employer.

(33) "Protected Information" means any participant or client information that the Department may have in its records or files that must be safeguarded pursuant to federal or state law. This includes but is not limited to individually identifying information.

(34) "Provider" means a person or entity that may seek reimbursement from the Department as a provider of services to Department clients pursuant to a contract. For purposes of these rules, reimbursement may be requested on the basis of claims or encounters or other means of requesting payment.

(35) "Psychotherapy Notes" mean notes recorded in any medium by a health care provider who is a mental health professional documenting or analyzing the contents of conversations during a private counseling session, or group, joint, or family counseling session, when the notes are separated from the rest of the individual's record. Psychotherapy notes do not include medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of diagnosis, functional status, treatment plan, symptoms, prognosis, or progress to date.

(36) "Public Health Agency" means a public agency or a person or entity acting under a grant of authority from or by contract with the public agency that performs or conducts one or more of the following essential functions that characterize public health programs, services, or activities:

(a) Monitor health status to identify community health problems;

(b) Diagnose and investigate health problems and health hazards in the community;

(A) Inform, educate, and empower people about health issues;

(B) Mobilize community partnerships to identify and solve health problems;

(C) Develop policies and plans that support individual and community health efforts;

(D) Enforce laws and regulations that protect health and ensure safety;

(E) Direct individuals to needed personal health services and assure the provision of health care when otherwise unavailable;

(F) Ensure a competent public health and personal health care workforce;

(G) Evaluate the effectiveness, accessibility, and quality of personal and population-based health services; and

(H) Perform research for new insights and innovative solutions to health problems.

(37) "Public Health Authority" means an agency or authority of the federal government, a state, territory, political subdivision of a state or territory, Indian tribe, or a person or entity acting under a grant of authority from or by contract with the public agency, including the employees or agents of the public agency, or its contractors or persons or entities to whom it has granted authority, that is responsible for public health matters as part of its official mandate.

(38) "Re-disclosure" means the disclosure of information to a person, a Department program, a Department subcontracted entity, or other entity or person other than what was originally authorized.

(39) "Research" means systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalized knowledge.

(40) "Required by Law" means a duty or responsibility that federal or state law specifies that a person or entity must perform or exercise. Required by law includes but is not limited to court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health



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care providers participating in the program; and statutes or rules that require the production of information, including statutes or rules that require such information if payment is sought under a government program providing public benefits.

(41) "Treatment" means the provision, coordination, or management of health care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party, consultation between health care providers relating to a patient, or the referral of a patient for health care from one health care provider to another.

(42) "Use" means the sharing of individual information within a Department program or the sharing of individual information between program staff and administrative staff that support or oversee the program.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.010

Hist.: OMAP 26-2003, f. 3-31-03 cert. ef. 4-1-03; Renumbered from 410-014-0000 by DHSD 5-2009, f. & cert. ef. 7-1-09; DHSD 2-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 407-014-0015

### Information Governed by the HIPAA Privacy Rules

(1) These rules address information that, among other things, may be PHI that is protected by the HIPAA Privacy Rules. For purposes of HIPAA Privacy Rules, the Authority is a covered entity, primarily because of its role as the state Medicaid and Children's Health Insurance Program.

(2) The Authority administers many aspects of the medical assistance program with the assistance of the Department, including but not limited to eligibility determinations for the medical assistance program and supervising the long-term and community-based services for seniors and people with disabilities. The Department also provides certain health care operations services for the Authority. In doing so, the Department is a business associate of the Authority. As a business associate of the Authority, the Department is authorized to use and disclose protected health information to perform or assist the Authority in the performance of its covered functions, in a manner consistent with these rules.

(3) These rules only apply to information maintained by the Department as a business associate of the Authority.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.010

Hist.: ; DHSD 2-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 407-014-0020

### Uses and Disclosures of Client or Participant Protected Information

(1) Uses and disclosures with individual authorization. The Department must obtain a completed and signed authorization for release of information from the individual, or the individual's personal representative, before obtaining or using protected information about an individual from a third party or disclosing protected information about the individual to a third party.

(a) Uses and disclosures must be consistent with what the individual has approved on the signed authorization form approved by the Department.

(b) An individual may revoke an authorization at any time. The revocation must be in writing and signed by the individual, except that substance abuse treatment patients may orally revoke an authorization to disclose information obtained from substance abuse treatment programs. No revocation shall apply to information already released while the authorization was valid and in effect.

(2) Uses and disclosures without authorization. The Department may use and disclose information without written authorization in the following circumstances:

(a) The Department may disclose information to individuals who have requested disclosure to themselves of their information, if the individual has the right to access the information under OAR 407-014-0030(6).

(b) If the law requires or permits the disclosure, and the use and disclosure complies with, and is limited to, the relevant requirements of the relevant law.

(c) For treatment, payment, and health care operations the Department may disclose the following information:

(A) Activities involving the current treatment of an individual, for the Department or health care provider;

(B) Payment activities, for the Department, covered entity, or health care provider;

(C) Protected health information for the purpose of health care operations; and

(D) Substance abuse treatment information, if the recipient has a Qualified Service Organization Agreement with the Department.

(d) Psychotherapy notes. The Department may only use and disclose psychotherapy notes in the following circumstances:

(A) In the Department's supervised counseling training programs;

(B) In connection with oversight of the originator of the psychotherapy notes; or

(C) To defend the Department in a legal action or other proceeding brought by the individual.

(e) Public health activities.

(A) The Department may disclose an individual's protected information to appropriate entities or persons for governmental public health activities and for other purposes including but not limited to:

(i) A governmental public health authority that is authorized by law to collect or receive protected information for the purpose of preventing or controlling disease, injury, or disability. This includes but is not limited to reporting disease, injury, and vital events such as birth or death; and the conducting of public health surveillance, investigations, and interventions;

(ii) An official of a foreign government agency that is acting in collaboration with a governmental public health authority;

(iii) A governmental public health authority, or other government authority that is authorized by law to receive reports of child abuse or neglect;

(iv) A person subject to the jurisdiction of the federal Food and Drug Administration (FDA), regarding an FDA-regulated product or activity for which that person is responsible for activities related to the quality, safety, or effectiveness of an FDA-regulated product or activity; or

(v) A person who may have been exposed to a communicable disease, or may be at risk of contracting or spreading a disease or condition.

(B) Where state or federal law prohibits or restricts use and disclosure of information obtained or maintained for public health purposes, the Department shall deny the use and disclosure.

(f) Child abuse reporting and investigation. If the Department has reasonable cause to believe that a child is a victim of abuse or neglect, the Department may disclose protected information to appropriate governmental authorities authorized by law to receive reports of child abuse or neglect (including reporting to the Department protective services staff if appropriate). If the Department receives information as the child protective services agency, the Department may use and disclose the information consistent with its legal authority and in compliance with any applicable state and federal regulations.

(g) Adult abuse reporting and investigation. If the Department has reasonable cause to believe that a vulnerable adult is a victim of abuse or neglect, the Department may disclose information, as required by law, to a government authority or regulatory agency authorized by law to receive reports of abuse or neglect including but not limited to a social service or protective services agency (which may include the Department) authorized by law to receive such reports. Vulnerable adults are adults age 65 or older and persons with disabilities. If the Department receives information as the social services or protective services agency, the Department may use and disclose the information.

(h) Health oversight activities. The Department may disclose information without authorization for health oversight activities, including audits; civil, criminal, or administrative investigations, prosecutions, licensing or disciplinary actions; Medicaid fraud; or other necessary oversight activities.

(i) Administrative and court hearings, grievances, investigations, and appeals.

(A) The Department may use or disclose information for an investigation, administrative or court hearing, grievance, or appeal about an individual's eligibility or right to receive Department benefits or services.

(B) If the Department has obtained information in performing its duties as a health oversight agency, protective service entity, or public benefit program, the Department may use or disclose that information in an administrative or court hearing consistent with the other privacy requirements applicable to that program, service, or activity.

(j) Court orders. The Department may disclose information for judicial or administrative proceedings in response to a court order, subpoena, discovery request, or other legal process. If a court orders the Department to conduct a mental examination pursuant to ORS 161.315, 161.365, 161.370, or 419B.352, or orders the Department to provide any other report or evaluation to the court, the examination, report, or evaluation shall be deemed to be required by law for purposes of HIPAA.

(k) Law enforcement purposes. For limited law enforcement purposes, the Department may report certain injuries or wounds; provide information to identify or locate a suspect, victim, or witness; alert law enforcement

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of a death as a result of criminal conduct; and provide information which constitutes evidence of criminal conduct on Department premises.

(A) The Department may provide client information to a law enforcement officer in any of the following situations:

(i) The law enforcement officer is involved in carrying out any investigation, criminal, or civil proceedings connected with administering the program from which the information is sought;

(ii) A Department employee may disclose information from personal knowledge that does not come from the client's interaction with the Department;

(iii) The disclosure is authorized by statute or administrative rule;

(iv) The information informs law enforcement of a death as a result of criminal conduct;

(v) The information constitutes evidence of criminal conduct on Department premises; or

(vi) The disclosure is necessary to protect the client or others, and the client poses a threat to his or her safety or to the safety of others.

(B) Except as provided in section (2)(k)(C) of this rule, the Department may give a client's current address, Social Security number, and photo to a law enforcement officer if the law enforcement officer makes the request in the course of official duty, supplies the client's name, and states that the client:

(i) Is a fugitive felon or is violating parole, probation, or post-prison supervision;

(ii) For all public assistance programs, has information that is necessary for the officer to conduct official duties, and the location or apprehension of the client is within the officer's official duties; or

(iii) For clients only in the SNAP program, has information that is necessary to conduct an official investigation of a fugitive felon or person violating parole, probation, or post-prison supervision.

(C) If domestic violence has been identified in the household, the Department may not release information about a victim of domestic violence unless a member of the household is either wanted as a fugitive felon or is violating parole, probation, or post-prison supervision.

(D) For purposes of this subsection, a fugitive felon is a person fleeing to avoid prosecution or custody for a crime, or an attempt to commit a crime, that would be classified as a felony.

(E) For purposes of this section, a law enforcement officer is an employee of the Oregon State Police, a county sheriff's department, or a municipal police department, whose official duties include arrest authority.

(I) Use and disclosure of information about deceased individuals.

(A) The Department may disclose individual information to a coroner or medical examiner for the purpose of identifying a deceased individual, determining cause of death, or other duties authorized by law.

(B) The Department may disclose individual information to funeral directors as needed to carry out their duties regarding the decedent. The Department may also disclose individual information prior to, and in anticipation of, the death.

(m) Organ or tissue donation. The Department may disclose individual information to organ procurement organizations or other entities engaged in procuring, banking, or transplanting cadaver organs, eyes, or tissue for the purpose of facilitating transplantation.

(n) Research. The Department may disclose individual information without authorization for research purposes, as specified in OAR 407-014-0060.

(o) Threat to health or safety. To avert a serious threat to health or safety the Department may disclose individual information if:

(A) The Department believes in good faith that the information is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public; and

(B) The report is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat.

(p) National security and intelligence. The Department may disclose information to authorized federal officials for lawful intelligence, counterintelligence, and other national security activities.

(q) Correctional institutions and law enforcement custody situations. The Department may disclose information to a correctional institution or a law enforcement official having lawful custody of an inmate or other person, for the limited purpose of providing health care or ensuring the health or safety of the person or other inmates.

(r) Emergency treatment. In case of an emergency, the Department may disclose individual information to the extent needed to provide emergency treatment.

(s) Government entities providing public benefits. The Department may disclose eligibility and other information to governmental entities administering a government program providing public benefits.

(3) Authorization not required if opportunity to object given. The Department may use and disclose an individual's information without authorization if the Department informs the individual in advance and gives the individual an opportunity to either agree or refuse or restrict the use and disclosure.

(a) These disclosures are limited to disclosure of information to a family member, other relative, close personal friend of the individual, or any other person named by the individual, subject to the following limitations:

(A) The Department may disclose only the protected information that directly relates to the person's involvement with the individual's care or payment for care.

(B) The Department may use and disclose protected information for notifying, identifying, or locating a family member, personal representative, or other person responsible for care of the individual, regarding the individual's location, general condition, or death. For individuals who had resided at one time at the state training center, OAR 411-320-0090(6) addresses family reconnection.

(C) If the individual is present for, or available prior to, a use and disclosure, the Department may disclose the protected information if the Department:

(i) Obtains the individual's agreement;

(ii) Provides the individual an opportunity to object to the disclosure, and the individual does not object; or

(iii) Reasonably infers from the circumstances that the individual does not object to the disclosure.

(D) If the individual is not present, or the opportunity to object to the use and disclosure cannot practically be provided due to the individual's incapacity or an emergency situation, the Department may disclose the information if, using professional judgment, the Department determines that the use and disclosure is in the individual's best interests.

(b) Exception. For individuals referred to or receiving substance abuse treatment, mental health, or vocational rehabilitation services, the Department shall not use or disclose information without written authorization, unless disclosure is otherwise permitted under 42 CFR part 2, 38 CFR 361.38, or ORS 179.505.

(c) Personal representative. The Department must treat a personal representative as the individual for purposes of these rules, except that:

(A) A personal representative must be authorized under state law to act on behalf of the individual with respect to use and disclosure of information. The Department may require a personal representative to provide a copy of the documentation authorizing the person to act on behalf of the individual.

(B) The Department may elect not to treat a person as a personal representative of an individual if:

(i) The Department has a reasonable belief that the individual has been or may be subjected to domestic violence, abuse, or neglect by the person;

(ii) The Department, in the exercise of professional judgment, decides that it is not in the best interest of the individual to treat the person as the individual's personal representative.

(4) Rediscovery. The Department must inform the individual that information held by the Department and authorized by the individual for disclosure may be subject to rediscovery and no longer protected by these rules.

(5) Specific written authorization. If the use or disclosure of information requires an authorization, the authorization must specify that the Department may use or disclose vocational rehabilitation records, alcohol and drug records, HIV/AIDS records, genetics information, and mental health or developmental disability records held by publicly funded providers.

(a) Pursuant to federal regulations at 42 CFR part 2 and 34 CFR 361.38, the Department may not make further disclosure of vocational rehabilitation and alcohol and drug rehabilitation information without the specific written authorization of the individual to whom it pertains.

(b) Pursuant to ORS 433.045 and OAR 333-012-0270, the Department may not make further disclosure of individual information pertaining to HIV/AIDS.

(c) Pursuant to ORS 192.531 to 192.549, the Department may not make further disclosure pertaining to genetic information.

(6) Verification of person or entity requesting information. The Department may not disclose information about an individual without first

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verifying the identity of the person or entity requesting the information, unless the Department workforce member fulfilling the request already knows the person or has already verified identity.

(7) Whistleblowers. The Department may disclose an individual's protected health information under the HIPAA privacy rules under the following circumstances:

(a) The Department workforce member believes in good faith that the Department has engaged in conduct that is unlawful or that otherwise violates professional standards or Department policy, or that the care, services, or conditions provided by the Department could endanger Department staff, individuals in Department care, or the public; and

(b) The disclosure is to a government oversight agency or public health authority, or an attorney of a Department workforce member retained for the purpose of determining the legal options of the workforce member with regard to the conduct alleged under section (7)(a) above; and

(c) Nothing in this rule is intended to interfere with ORS 659A.200 to 659A.224 describing the circumstances applicable to disclosures by the Department's workforce.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.010, 433.045

Hist.: OMAP 26-2003, f. 3-31-03 cert. ef. 4-1-03; Renumbered from 410-014-0020 by DHSD 5-2009, f. & cert. ef. 7-1-09; DHSD 2-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

### 407-014-0030

#### Client Privacy Rights

(1) Rights of clients to access their information. Clients may access, inspect, and obtain a copy of information on their own cases in Department files or records, consistent with federal and state law.

(a) A client may request access by completing the Access to Records Request form, or by providing sufficient information to accomplish this request.

(b) Clients may request access to their own information that is kept by the Department by using a personal identifier such as the client's name or Department case number.

(c) If the Department maintains information in a record that includes information about other people, the client may see information only about himself or herself.

(d) If a person identified in the file is a minor child of the client, and the client is authorized under Oregon law to have access to the minor's information or to act on behalf of the minor for making decisions about the minor's care, the client may obtain information about the minor.

(e) If the requestor of information is recognized under Oregon law as a the client's guardian or custodian and is authorized under Oregon law to have access to the client's information or to act on behalf of the client for making decisions about the client's services or care, the Department shall release information to the requestor.

(f) For individuals with disabilities or mental illnesses, the named system in ORS 192.517, to protect and advocate the rights of individuals with developmental disabilities under Part C of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6041 et seq.) and the rights of individuals with mental illness under the Protection and Advocacy for Individuals with Mental Illness Act (42 U.S.C. 10801 et seq.), shall have access to all records defined in ORS 192.515.

(g) The Department may deny a client's access to their own PHI if federal law prohibits the disclosure. Clients may access, inspect, and obtain a copy of health information on their own case in Department files or records except for the following:

(A) Psychotherapy notes;

(B) Information compiled in reasonable anticipation of, or for use in civil, criminal, or administrative proceedings;

(C) Information that is subject to the federal Clinical Labs Improvement Amendments of 1988, or exempt pursuant to 42 CFR 493.3(a)(2);

(D) Information that the Department believes, in good faith, can cause harm to the client, participant, or to any other person; and

(E) Documents protected by attorney work-product privilege.

(h) The Department may deny a client access to information that was obtained under a promise of confidentiality from a person other than a health care provider to the extent that access would reveal the source of the information.

(i) The Department may deny a client access to information, if the Department gives the client a right to have the denial reviewed when:

(A) A licensed health care professional (for health information) or other designated staff (for other information) has determined, in the exercise of professional judgment, that the information requested may endanger the life or physical safety of the client or another person;

(B) The information makes reference to another person, and a licensed health care professional (for health information) or other designated staff (for other information) has determined, in the exercise of professional judgment, that the information requested may cause substantial harm to the client or to another person; or

(C) The request for access is made by the client's personal representative, and a licensed health care professional (for health information) or other designated staff (for other information) has determined, in the exercise of professional judgment, that allowing the personal representative access to the information may cause substantial harm to the client or to another person.

(j) If the Department denies access under section (1)(i) of this rule, the client may have the decision reviewed by a licensed health care professional (for health information) or other designated staff (for other information) not directly involved in making the original denial decision.

(A) The Department must promptly refer a client's request for review to the designated reviewer.

(B) The reviewer must determine, within the 30 or 60-day time limits stated in section (1)(k)(A) and (B) of this rule, whether to approve or deny the client's request for access.

(C) Based on the reviewer's decision, the Department shall:

(i) Promptly notify the client in writing of the reviewer's determination; and

(ii) If approved, take action to carry out the reviewer's determination.

(k) The Department must act on a client's request for access no later than 30 days after receiving the request, except as provided in this section and in the case of written accounts under ORS 179.505, which must be disclosed within five days.

(A) In cases where the information is not maintained or accessible to the Department on-site, and does not fall under ORS 179.505, the Department must act on the client's request no later than 60 days after receiving the request.

(B) If the Department is unable to act within the 30 or 60-day limits, the Department may extend this time period a maximum of 30 additional days, subject to the following:

(i) The Department must notify the client in writing of the reasons for the delay and the date by which the Department shall act on the request.

(ii) The Department shall use only one 30-day extension.

(l) If the Department grants the client's request, in whole or in part, the Department must inform the client of the access decision and provide the requested access.

(A) If the Department maintains the same information in more than one format or at more than one location, the Department may provide the requested information once.

(B) The Department must provide the requested information in a form or format requested by the client, if readily producible in that form or format. If not readily producible, the Department shall provide the information in a readable hard-copy format or other format as agreed to by the Department and the client.

(C) The Department may provide the client with a summary of the requested information, in lieu of providing access, or may provide an explanation of the information if access has been provided, if:

(i) The client agrees in advance; and

(ii) The client agrees in advance to pay any fees the Department may impose, under section (1)(L)(E) of this rule.

(D) The Department shall arrange with the client for providing the requested access in a time, place, and manner convenient for the client and the Department.

(E) If a client, or legal guardian or custodian, requests a copy, written summary, or explanation of the requested information, the Department may impose a reasonable cost-based fee, limited to the following:

(i) Copying the requested information, including the costs of supplies and the labor of copying;

(ii) Postage; and

(iii) Staff time for preparing an explanation or summary of the requested information.

(m) If the Department denies access, in whole or in part, to the requested information, the Department must:

(A) Give the client access to any other requested client information, after excluding the information to which access is denied; and

(B) Provide the client with a timely written denial. The denial must:

(i) Be provided within the time limits specified in section (1)(k)(A) and (B) of this rule;

(ii) State the basis of the denial in plain language;



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(iii) If the Department denies access under section (1)(i) of this rule, explain the client's review rights as specified in section (1)(j) of this rule, including an explanation of how the client may exercise these rights; and

(iv) Provide a description of how the client may file a complaint with the Department, and if the information is PHI, with the United States Department of Health and Human Services (DHHS), Office for Civil Rights, pursuant to section (7) of this rule.

(n) If the Department does not maintain the requested information, in whole or in part, and knows where the information is maintained (such as by a medical provider, insurer, other public agency, private business, or other non-Department entity), the Department must inform the client where to direct the request for access.

(2) Department Notice of Privacy Practices. The Department shall send clients notice about the Department's privacy practices as follows:

(a) The Department shall make available to each client a notice of Department privacy practices that describes the duty of the Department to maintain the privacy of PHI and include a description that clearly informs the client of the types of uses and disclosures the Department is permitted or required to make;

(b) The Department shall provide all clients in direct care settings a notice of Department privacy practices and shall request the client's signature on an acknowledgement of receipt form;

(c) If the Department revises its privacy practices, the Department shall make the revised notice available to all clients;

(d) The Department shall post a copy of the Department's Notice of Privacy Practices for public viewing at each Department worksite and on the Department website; and

(e) The Department shall give a paper copy of the Department's Notice of Privacy Practices to any individual upon request.

(3) Right to request restrictions on uses or disclosures. Clients may request restrictions on the use or disclosure of their information.

(a) The Department may deny the client's request or limit its agreement to a request.

(A) The Department may not agree to restrict uses or disclosures of information if the restriction would adversely affect the quality of the client's care or services.

(B) The Department shall not agree to restrict uses or disclosures of information that would limit or prevent the Department from making or obtaining payment for services.

(b) The Department may not deny a client's request to restrict the sharing of records of alcohol and drug treatment or records relating to vocational rehabilitation services with another Department program.

(c) The Department shall document the client's request, and the reasons for granting or denying the request, in the client's Department case file.

(d) If the client needs emergency treatment and the restricted protected information is needed to provide the treatment, the Department may use or disclose the restricted protected information to a provider, for the limited purpose of providing treatment. However, once the emergency situation subsides the Department shall ask the provider not to redisclose the information.

(e) The Department may terminate its agreement to a restriction if:

(A) The client agrees to or requests the termination in writing;

(B) The client orally requests or agrees to the termination, and the Department documents the oral request or agreement in the client's Department case file; or

(C) With or without the client's agreement, the Department informs the client that the Department is terminating its agreement to the restriction. Information created or received while the restriction was in place shall remain subject to the restriction.

(4) Rights of clients to request to receive information from the Department by alternative means or at alternative locations. The Department must accommodate reasonable requests by clients to receive communications from the Department by alternative means, such as by mail, e-mail, fax, or telephone, and at an alternative location.

(a) The client must specify the preferred alternative means or location.

(b) The client may submit the request for alternative means or locations either orally or in writing.

(A) If the client makes a request in-person, the Department shall document the request and ask for the client's signature.

(B) If the client makes a request by telephone or electronically, the Department shall document the request and verify the identity of the client.

(c) The Department may terminate its agreement to an alternative location or method of communication if:

(A) The client agrees to or requests termination of the alternative location or method of communication in writing or orally. The Department shall document the oral agreement or request in the client's Department case file; or

(B) The Department informs the client that the Department is terminating its agreement to the alternative location or method of communication because the alternative location or method of communication is not effective. The Department may terminate its agreement to communicate at the alternative location or by the alternate method if:

(i) The Department is unable to contact the client at the location or by the method requested; or

(ii) The client fails to respond to payment requests, if applicable.

(5) Right of clients to request amendment of their information. Clients may request that the Department amend information about themselves in Department files.

(a) For all amendment requests, the Department shall have the client complete the approved Department form.

(b) The Department may deny the request or limit its agreement to amend.

(c) The Department must act on the client's request no later than 60 days after receiving the request. If the Department is unable to act within 60 days, the Department may extend this time limit by a maximum of 30 additional days, subject to the following:

(A) The Department must notify the client in writing, within 60 days of receiving the request, of the reasons for the delay and the date by which the Department shall act on the request; and

(B) The Department shall use only one 30-day extension.

(d) The program's medical director, a licensed health care professional designated by the program administrator, or a Department staff person involved in the client's case must review the request and any related documentation prior to making a decision to amend a health or medical record.

(e) A staff person designated by the Department shall review the request and any related documentation prior to making a decision to amend any information that is not a health or medical record.

(f) If the Department grants the request, in whole or in part, the Department shall:

(A) Make the appropriate amendment to the information or records, and document the amendment in the client's Department file or record;

(B) Provide notice to the client that the amendment has been granted, pursuant to the time limits under section (5)(c) of this rule;

(C) Obtain the client's agreement to notify other relevant persons or entities with whom the Department has shared or needs to share the amended information; and

(D) Inform and provide the amendment within a reasonable time to:

(i) Persons named by the client who have received the information and who need the amendment; and

(ii) Persons, that the Department knows have the information that is the subject of the amendment and who may have relied, or could foreseeably rely, on the information to the client's detriment.

(g) The Department may deny the client's request for amendment if:

(A) The Department finds the information to be accurate and complete;

(B) The information was not created by the Department;

(C) The information is not part of Department records; or

(D) The information would not be available for inspection or access by the client, pursuant to section (1)(g) and (h) of this rule.

(h) If the Department denies the amendment request, in whole or in part, the Department must provide the client with a written denial. The denial must:

(A) Be sent within the time limits specified in section (5)(c) of this rule;

(B) State the basis for the denial, in plain language; and

(C) Explain the client's right to submit a written statement disagreeing with the denial and how to file the statement. If the client files a statement:

(i) The Department shall enter the written statement into the client's Department case file;

(ii) The Department may also enter a Department written rebuttal of the client's written statement into the client's Department case file. The Department shall send a copy of any written rebuttal to the client;

(iii) The Department shall include a copy of the statement and any Department written rebuttal with any future disclosures of the relevant information;

(iv) If a client does not submit a written statement of disagreement, the client may ask that if the Department makes any further disclosures of

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the relevant information that the Department shall also include a copy of the client's original request for amendment and a copy of the Department written denial; and

(v) The Department shall provide information on how the client may file a complaint with the Department and, if the information is PHI, with DHHS, Office for Civil Rights.

(6) Rights of clients to request an accounting of disclosures of PHI. Clients may receive an accounting of disclosures of PHI that the Department has made for any period of time, not to exceed six years, preceding the request date for the accounting.

(a) For all requests for an accounting of disclosures, the client may complete the authorized Department form "Request for Accounting of Disclosures of Health Records", or provide sufficient information to accomplish this request.

(b) The right to an accounting of disclosures does not apply when the request is:

- (A) Authorized by the client;
- (B) Made prior to April 14, 2003;
- (C) Made to carry out treatment, payment, or health care operations, unless these disclosures are made from an electronic health record;
- (D) Made to the client;
- (E) Made to persons involved in the client's care;
- (F) Made as part of a limited data set in accordance with OAR 407-014-0070;

(G) Made for national security or intelligence purposes; or  
(H) Made to correctional institutions or law enforcement officials having lawful custody of an inmate.

(c) For each disclosure, the accounting must include:

- (A) The date of the disclosure;
- (B) The name and address, if known, of the person or entity who received the disclosed information;
- (C) A brief description of the information disclosed; and
- (D) A brief statement of the purpose of the disclosure that reasonably informs the client of the basis for the disclosure, or, in lieu of a statement, a copy of the client's written request for a disclosure, if any.

(d) If, during the time period covered by the accounting, the Department has made multiple disclosures to the same person or entity for the same purpose, the Department may provide the required information for only the first disclosure. The Department need not list the same identical information for each subsequent disclosure to the same person or entity if the Department adds the following information:

(A) The frequency or number of disclosures made to the same person or entity; and

(B) The date of the most recent disclosure during the time period for which the accounting is requested.

(e) The Department must act on the client's request for an accounting no later than 60 days after receiving the request. If the Department is unable to act within 60 days, the Department may extend this time limit by a maximum of 30 additional days, subject to the following:

(A) The Department must notify the client in writing, within 60 days of receiving the request, of the reasons for the delay and the date by which the Department shall act on the request; and

(B) The Department shall use only one 30-day extension.

(f) The Department shall provide the first requested accounting in any 12-month period without charge. The Department may charge the client a reasonable cost-based fee for each additional accounting requested by the client within the 12-month period following the first request, if the Department:

(A) Informs the client of the fee before proceeding with any additional request; and

(B) Allows the client an opportunity to withdraw or modify the request in order to avoid or reduce the fee.

(g) The Department shall document the information required to be included in an accounting of disclosures, as specified in section (6)(c) of this rule, and retain a copy of the written accounting provided to the client.

(h) The Department shall temporarily suspend a client's right to receive an accounting of disclosures that the Department has made to a health oversight agency or to a law enforcement official, for a length of time specified by the agency or official, if the agency or official provides a written or oral statement to the Department that the accounting would be reasonably likely to impede their activities. If the agency or official makes an oral request, the Department shall:

(A) Document the oral request, including the identity of the agency or official making the request.

(B) Temporarily suspend the client's request to an accounting of disclosures; and

(C) Limit the temporary suspension to no longer than 30 days from the date of the oral request, unless the agency or official submits a written request specifying a longer time period.

(7) Filing a complaint. Clients may file a complaint with the Department or, if the information is PHI, with DHHS, Office for Civil Rights.

(a) Upon request, the Department shall give clients the name and address of the specific person or office of where to submit complaints to DHHS.

(b) The Department may not intimidate, threaten, coerce, discriminate against, or take any other form of retaliatory action against any individual filing a complaint or inquiring about how to file a complaint.

(c) The Department may not require clients to waive their rights to file a complaint as a condition of providing treatment, payment, enrollment in a health plan, or eligibility for benefits.

(d) The Department shall designate staff to review and determine action on complaints filed with the Department.

(e) The Department shall document, in the client's Department case file all complaints, the findings from reviewing each complaint, and the Department's actions resulting from the complaint. For each complaint the documentation shall include a description of corrective action that the Department has taken, if any are necessary, or why corrective action is not needed.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.010

Hist.: OMAP 26-2003, f. 3-31-03 cert. ef. 4-1-03; Renumbered from 410-014-0030 by DHSD 5-2009, f. & cert. ef. 7-1-09; DHSD 2-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 407-014-0040

### Minimum Necessary Standards

(1) The Department shall limit the use and disclosure of protected information to that which is reasonably necessary to accomplish the intended purpose of the use or disclosure which is referred to in these rules as the minimum necessary standard.

(2) This minimum necessary standard is not intended to impede essential Department activities.

(3) The minimum necessary standard applies:

- (a) When using protected information within the Department;
- (b) When disclosing protected information to a third party in response to a request; or
- (c) When requesting protected information from another covered entity.

(4) The minimum necessary standard does not apply to:

- (a) Disclosures to or requests by a health care provider for treatment;
- (b) Disclosures made to the individual, including disclosures made in response to a request for access or an accounting;
- (c) Disclosures made with a valid authorization;
- (d) Disclosures made to DHHS for the purposes of compliance and enforcement of federal regulations under 45 CFR part 160 and required for compliance with 45 CFR part 164.; or
- (e) Uses and disclosures required by law;

(5) When requesting protected information about an individual from another entity, the Department shall limit requests to those that are reasonably necessary to accomplish the purposes for which the request is made. The Department shall not request a person's entire medical record unless the Department can specifically justify the need for the entire medical record.

Stat. Auth.: ORS 409.050

Stats. Implemented: 409.010

Hist.: OMAP 26-2003, f. 3-31-03 cert. ef. 4-1-03; Renumbered from 410-014-0040 by DHSD 5-2009, f. & cert. ef. 7-1-09; DHSD 2-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 407-014-0050

### Business Associate

(1) The Department is a business associate of the Authority. The Authority is the single State Medicaid agency but the Department performs or assists in the performance of key components of the medical assistance program under the supervision of the Authority including but not limited to eligibility determinations for the medical assistance program and supervising the long-term and community-based services for seniors and people with disabilities. The Department also provides certain health care operations services for the Authority. In doing so, the Department is a business associate of the Authority. As a business associate of the Authority, the Department is authorized to use and disclose protected health information

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to perform or assist the Authority in the performance of its covered functions. However, as a business associate, the Department is subject to the privacy requirements described in these rules.

(2) As a business associate of the Authority implementing the requirements of the medical assistance program, the Department may disclose an individual's PHI to its contractors or providers, and may allow its contractors or providers to create or receive an individual's PHI on behalf of the Department if the contract or agreement that complies with applicable federal and state law. In some limited circumstances, the Department may determine that the Department is a business associate of a covered entity. A business associate relationship with the Department requires additional contractual disclosure and privacy provisions that must be incorporated into the contract pursuant to 45 CFR part 164.504 (e)(1)

(3) A contract with a business associate must comply with OAR 125-055-0100 to 125-055-0130 and the qualified service organization requirements in 42 CFR part 2.11.

Stat. Auth.: ORS 409.050  
Stats. Implemented: 409.010

Hist.: OMAP 26-2003, f. 3-31-03 cert. ef. 4-1-03; Renumbered from 410-014-0050 by DHSD 5-2009, f. & cert. ef. 7-1-09; DHSD 2-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 407-014-0060

### Uses and Disclosures of Protected Information for Research Purposes

The Department may use and disclose an individual's information for research purposes as specified in this rule.

(1) All research disclosures are subject to applicable requirements of federal and state laws and rules including but not limited to 45 CFR part 46 and 21 CFR part 50.0 to 50.56, relating to the protection of human research subjects.

(2) The Department may use and disclose de-identified information or a limited data set for research purposes, pursuant to OAR 407-014-0070.

(3) The Department may use and disclose information regarding an individual for research purposes with the specific written authorization of the individual. The authorization must meet all requirements in OAR 407-014-0030, and may indicate an expiration date with terms such as "end of research study" or similar language. An authorization for use and disclosure for a research study may be combined with other types of written authorization for the same research study. If research includes treatment, the researcher may require an authorization for use and disclosure for the research as a provision of providing research related treatment.

(4) Notwithstanding section (3) of this rule, the Department may use and disclose an individual's information for research purposes without the individual's written authorization, regardless of the source of funding for the research, provided that:

(a) The Department obtains documentation that a waiver of an individual's authorization for release of information requirements has been approved by an IRB registered with the Office for Human Research Protection. Documentation required of an IRB when granting approval of a waiver of an individual's authorization for release of information must include all criteria specified in 45 CFR part 164.512(i)(2).

(b) A researcher may request access to individual information maintained by the Department in preparation for research or to facilitate the development of a research protocol in anticipation of research. The Department may determine whether to permit such use or disclosure, without individual authorization or use of an IRB, pursuant to 45 CFR part 164.512(i)(1)(ii).

(c) A researcher may request access to individual information maintained by the Department about deceased individuals. The Department may determine whether to permit such use or disclosure of information about decedents, without individual authorization or use of an IRB, pursuant to 45 CFR part 164.512(i)(1)(iii).

(5) The Department may collect, use, or disclose information, without individual authorization, to the extent that the collection, use, or disclosure is required by law. When the Department uses information to conduct studies as required by law, no additional individual authorization is required nor does this rule require an IRB or privacy board waiver of authorization based on the HIPAA privacy rules.

(6) The Department may use and disclose information without individual authorization for studies and data analysis conducted for the Department's own quality assurance purposes or to comply with reporting requirements applicable to federal or state funding requirements in accordance with the definition of "Health Care Operations" in 45 CFR part 164.501.

Stat. Auth.: ORS 409.050  
Stats. Implemented: ORS 409.010

Hist.: OMAP 26-2003, f. 3-31-03 cert. ef. 4-1-03; Renumbered from 410-014-0060 by DHSD 5-2009, f. & cert. ef. 7-1-09; DHSD 2-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 407-014-0070

### De-identification of Client Information and Use of Limited Data Sets under Data Use Agreements

(1) The Department may use and disclose information as appropriate for the work of the Department, without further restriction, if the Department or another entity has taken steps to de-identify the information pursuant to 45 CFR part 164.514(a) and (b).

(2) The Department may assign a code or other means of record identification to allow the Department to re-identify the de-identified information provided that:

(a) The code or other means of record identification is not derived from or related to information about the individual and cannot otherwise be translated to identify the individual; and,

(b) The Department does not use or disclose the code or other means of record identification for any other purpose, and does not disclose the mechanism for re-identification.

(3) The Department may use and disclose a limited data set if the Department enters into a data use agreement with an entity requesting or providing the Department with a limited data set subject to the requirements of 45 CFR part 164.514(e).

(a) The Department may use and disclose a limited data set for the purposes of research. The Department may use limited data set for its own activities or operations if the Department has obtained a limited data set that is subject to a data use agreement.

(b) If the Department knows of a pattern of activity or practice of a limited data set recipient that constitutes a material breach or violation of a data use agreement, the Department shall take reasonable steps to cure the breach or end the violation. If such steps are unsuccessful, the Department shall discontinue disclosure of information to the recipient and report the problem to the appropriate authority.

Stat. Auth.: ORS 409.050  
Stats. Implemented: ORS 409.010

Hist.: OMAP 26-2003, f. 3-31-03 cert. ef. 4-1-03; Renumbered from 410-014-0070 by DHSD 5-2009, f. & cert. ef. 7-1-09; DHSD 2-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

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**Rule Caption:** Department of Human Services' Cooperative Relationship with the Oregon Health Authority.

**Adm. Order No.:** DHSD 3-2011(Temp)

**Filed with Sec. of State:** 7-1-2011

**Certified to be Effective:** 7-1-11 thru 12-27-11

**Notice Publication Date:**

**Rules Adopted:** 407-043-0020

**Subject:** HB 2009 (2009) created the Oregon Health Authority and transferred to the Authority the Department of Human Services' (Department) divisions with respect to health and health care. Effective July 1, 2011 the Department adopts these operational and programmatic rules to assure continuity as a part of the operational transfer from functions previously performed by the Department as a result of HB 2009 (2009).

Among the functions transferred to the Authority is the medical assistance program. This rule provides for continuity in the relationship between the Department and the Authority when working together in the administration of the medical assistance program and that the Department and the Authority shall work cooperatively in the administration of the medical assistance program, including making determinations of eligibility and service need for medical assistance. This rule also explains that the Authority designated the Department as the operating agency for home and community-based waiver services and as an Organized Health Care Delivery System.

This temporary rule is 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

## 407-043-0020

### Cooperative Relationship with Oregon Health Authority

(1) The Department of Human Services (Department) will cooperate and collaborate with Oregon Health Authority (Authority) in order to effectively coordinate services to individuals, families and communities and



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realize operational efficiencies in the administration of services that can be shared between them ("shared services").

(2) In any Department rules, policies, or procedures that refer to the programs, functions, and duties that were formerly part of the Department that were transferred to the Authority, such reference shall be considered a reference to the Authority.

(3) The Department acknowledges that the Authority is the state Medicaid agency and the state Children's Health Insurance Program agency, authorized by state statute to administer the medical assistance program. The Authority is also responsible for facilitating outreach and enrollment efforts to connect eligible individuals with all available publicly funded health programs.

(a) The Department and the Authority recognize that there are many points of interconnection between their programs and the individuals who receive services through these programs. In addition, there are areas of natural connection between the Department and the Authority based upon the former structure of the Department.

(b) The Department shall continue to work cooperatively with the Authority in the administration of the medical assistance program, including determinations of eligibility and service need for medical assistance. The Authority has designated the Department as the operating agency for the home and community-based waivers and as an Organized Health Care Delivery System.

(c) The Department and the Authority are authorized by state law to delegate to each other any duties, functions, and powers that they deem necessary for the efficient and effective operation of their respective functions. The Department and the Authority will work together to adopt rules to assure that medical assistance eligibility requirements, procedures, and determinations are consistent across both agencies. The Authority has authorized the Department to determine medical eligibility for medical assistance program. Where that responsibility is given to the Department under ORS Chapter 411, the Department has delegated to the Authority the duties, functions and powers to make medical eligibility determinations in accordance with OAR 410-120-0006.

(d) Where statute establishes duties and functions of the Department or the Authority in relation to medical assistance as a public assistance program, the Department and the Authority will cooperate in the effective administration of the program.

Stat. Auth.: ORS 409.050 & 2009 OL Ch. 595 sec. 19-25 (HB 2009)  
Stats. Implemented: ORS 413.032  
Hist.: DHSD 3-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

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**Rule Caption:** Amendment and Suspension of Abuse of Individuals in State Hospitals and Residential Training Centers Rules.

**Adm. Order No.:** DHSD 4-2011(Temp)

**Filed with Sec. of State:** 7-1-2011

**Certified to be Effective:** 7-1-11 thru 12-27-11

**Notice Publication Date:**

**Rules Amended:** 407-045-0400

**Rules Suspended:** 407-045-0410, 407-045-0420, 407-045-0430, 407-045-0440, 407-045-0450, 407-045-0460, 407-045-0470, 407-045-0480, 407-045-0490, 407-045-0500, 407-045-0510, 407-045-0520

**Subject:** HB 2009 (2009) created the Oregon Health Authority (Authority) and transferred to the Authority the Department of Human Services' (Department) divisions with respect to health and health care. Effective July 1, 2011, these rules (OAR 407-045-0400 to 407-045-0520) are being moved to the Authority's rule chapter, OAR 943-045-0400 to 943-0400, as part of the operational transfer from functions previously performed by the Department as a result of HB 2009 (2009). With the creation of this new agency, the administration of state hospitals has moved to the Authority. These rules are needed to reflect the separation of the Department and the Authority.

These 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

## 407-045-0400

### Purpose

These rules (OAR 407-045-0400 to 407-045-0520), which establish a policy prohibiting abuse and define procedures for reporting, investigating, and resolving alleged incidents of abuse of individuals in state hospitals and residential training centers, have been moved to the Oregon Health Authority rule chapter (OAR 943-045-0400 to 943-0520).

Stat. Auth.: ORS 179.040 & 409.050

Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735 - 430.765

Hist.: MHD 23, f. 8-5-74, ef. 8-25-74; MHD 19-1982(Temp), f. & ef. 9-10-82; MHD 4-1983, f. & ef. 3-4-83, Renumbered from 309-021-0010(1) and (2); MHD 3-1991, f. 6-21-91, cert. ef. 8-15-91; MHD 7-1995, f. 12-27-95, cert. ef. 1-1-96; Renumbered from 309-116-0000, OMAP 60-2005, f. 11-22-05, cert. ef. 1-1-06; Renumbered from 410-011-0000, DHSD 4-2007, f. 6-29-07, cert. ef. 7-1-07; DHSD 4-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 407-045-0410

### Definitions

(1) "Abuse" means any act or absence of action by a staff or visitor inconsistent with prescribed treatment and care, that violates the well-being or dignity of the individual.

(2) "Administrator" means the Assistant Department of Human Services Director for Seniors and People with Disabilities and the Office of Mental Health and Addiction Services or their designee.

(3) "Department" means Seniors & People with Disabilities or Office of Mental Health & Addiction Services, organizational units within the Department of Human Services.

(4) "Derogatory" means an expression of a low opinion or a disparaging remark.

(5) "Disrespectful" means lacking regard or concern; or to treat as unworthy or lacking value as a human being.

(6) "Employee" means an individual employed by the state and subject to rules for employee conduct.

(7) "Inconclusive" means the available evidence does not support a final decision that there was reasonable cause to believe that abuse occurred or did not occur.

(8) "Individual" means a person who is receiving services in a residential training center for people with developmental disabilities or at a state hospital for people with mental illness.

(9) "Not Substantiated" means the evidence does not support a conclusion that there is reasonable cause to believe that abuse occurred.

(10) "Office of Investigations and Training (OIT)" means the Department of Human Services office responsible for the investigation of allegations of abuse made at state hospitals and residential training centers.

(11) "Staff" means employees, contractors and their employees, and volunteers.

(12) "Substantiated" means the evidence supports a conclusion that there is reasonable cause to believe that abuse occurred.

(13) "Superintendent" refers to the chief executive officer of a state hospital or residential training center who serves as the designee of the Administrator to receive allegations of abuse concerning individuals and his or her designee.

(14) "Visitor" means all others persons not included as staff who visit the facility for business purposes or to visit individuals or staff.

Stat. Authority: ORS 179.040, 409.010, 409.050

Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.765

MHD 4-1983, f. & ef. 3-4-83, Renumbered from 309-021-0010(3); MHD 18-1985, f. & ef. 12-5-85; MHD 3-1987, f. & ef. 4-9-87; MHD 3-1991, f. 6-21-91, cert. ef. 8-15-91; MHD 7-1995, f. 12-27-95, cert. ef. 1-1-96; Renumbered from 309-116-0010, OMAP 60-2005, f. 11-22-05, cert. ef. 1-1-06; Renumbered from 410-011-0010, DHSD 4-2007, f. 6-29-07, cert. ef. 7-1-07; Suspended by DHSD 4-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 407-045-0420

### General Policy

(1) The Department believes every individual is deserving of safe, respectful and dignified treatment provided in a caring environment. To that end, all employees, volunteers, contractors and their employees, as well as visitors will conduct themselves in such a manner that individuals are free from abuse.

(2) In these rules, the term "abuse" is given a broad definition because of the unique vulnerability of individuals served by the Department. While some examples are listed later in these rules (including specific conduct listed in ORS 430.735(1)), it must be clearly understood that all possible situations cannot be anticipated and each case must be evaluated based on the particular facts available.

Stat. Authority: ORS 179.040, 409.010, 409.050

Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.765

Hist.: MHD 23, f. 8-5-74, ef. 8-25-74; MHD 19-1982(Temp), f. & ef. 9-10-82; MHD 4-1983, f. & ef. 3-4-83, Renumbered from 309-021-0010(4); MHD 3-1987, f. & ef. 4-9-87; MHD 3-1991, f. 6-21-91, cert. ef. 8-15-91; MHD 7-1995, f. 12-27-95, cert. ef. 1-1-96; Renumbered from 309-116-0020, OMAP 60-2005, f. 11-22-05, cert. ef. 1-1-06; Renumbered from 410-

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011-0020, DHSD 4-2007, f. 6-29-07, cert. ef. 7-1-07; Suspended by DHSD 4-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 407-045-0430

### Policy Regarding Abuse

(1) All forms of abuse are prohibited. Staff, visitors, volunteers, contractors and their employees must continually be aware of the potential for abuse in interactions with individuals.

(2) Listed below are examples of the type of conduct which constitutes abuse. This list of examples is by no means exhaustive and represents general categories of prohibited conduct. Conduct of a like or similar nature is also obviously prohibited. Examples include, but are not limited to:

(a) Physical Abuse: Examples include hitting, kicking, scratching, pinching, choking, spanking, pushing, slapping, twisting of head, arms, or legs, tripping, the use of physical force which is unnecessary or excessive or other physical contact with an individual inconsistent with prescribed treatment or care;

(b) Verbal Abuse: Verbal conduct may be abusive because of either the manner of communicating with or the content of the communication with individuals. Examples include yelling, ridicule, harassment, coercion, threats, intimidation, cursing, foul language or other forms of communication which are derogatory or disrespectful of the individual, or remarks intended to provoke a negative response by the individual;

(c) Abuse by Failure to Act: This includes neglecting the care of the individual resulting in death (including suicide), physical or psychological harm, or a significant risk of harm to the individual either by failing to provide authorized and prescribed treatment or by failing to intervene when an individual needs assistance such as denying food or drink or leaving the individual unattended when staff presence is mandated;

(d) Sexual Abuse: Examples include:

(A) Contact of a sexual nature between staff and individuals;

(B) Failure to discourage sexual advances toward staff by individuals; and

(C) Permitting the sexual exploitation of individuals or use of individual sexual activity for staff entertainment or other improper purpose.

(e) Condoning Abuse: Permitting abusive conduct toward an individual by any other staff, individual, or person; and

(f) Statutory Terms of Abuse: As defined in ORS 430.735: any death caused by other than accidental or natural means; any physical injury caused by other than accidental means, or that appears to be at variance with the explanation given of the injury; willful infliction of physical pain or injury, sexual harassment or exploitation, including but not limited to any sexual contact between an employee of a facility or community program and an adult, and neglect that leads to physical harm or significant mental injury through withholding of services necessary to maintain health and well being.

(3) At times, persons may be required to utilize self-defense. This includes control procedures that are designed to minimize physical injury to the individual or other persons. Employees are expected to use the least restrictive procedures necessary under the circumstances for dealing with an individual's behaviors or defending against an individual's attack. Abuse does not include acts of self-defense or defense of an individual or other person in response to the use or imminent use of physical force provided that only the degree of force reasonably necessary for protection is used. When excessively severe methods of control are used or when any conduct designed as self-defense is carried beyond what is necessary under the circumstances to protect the individual or other persons from further violence or assault, that conduct then becomes abuse.

Stat. Authority: ORS 179.040, 409.010, 409.050

Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.765

MHD 4-1983, f. & ef. 3-4-83, Renumbered from 309-021-0010(5); MHD 3-1987, f. & ef. 4-9-87; MHD 12-1988(Temp), f. & cert. ef. 9-7-88; MHD 1-1989, f. & cert. ef. 2-23-89; MHD 3-1991, f. 6-21-91, cert. ef. 8-15-91; MHD 7-1995, f. 12-27-95, cert. ef. 1-1-96; MHD 2-1996, f. & cert. ef. 1-12-96; Renumbered from 309-116-0015, OMAP 60-2005, f. 11-22-05, cert. ef. 1-1-06; Renumbered from 410-011-0030, DHSD 4-2007, f. 6-29-07, cert. ef. 7-1-07; Suspended by DHSD 4-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 407-045-0440

### Reporting Requirements

(1) Oregon Statute requires mandatory reports and investigations of allegations of abuse of individuals with disabilities. Therefore, any person who has reasonable cause to believe that an incident of abuse has occurred to an individual residing at a state hospital or residential training center will immediately report the incident according to the procedures set forth in the applicable state hospital or residential training center policy on abuse reporting.

(2) Any person participating in good faith in reporting alleged abuse and who has reasonable grounds for reporting has immunity from any civil

liability that otherwise might be imposed or incurred based on the reporting or the content of the report under ORS 430.753(1).

(3) The identity of the person reporting alleged abuse is confidential. The Department or OIT will reveal the names of abuse reporters to law enforcement agencies, public agencies who certify or license facilities or persons practicing therein, public agencies providing services to the individuals, private agencies providing protective services for the individual, and the protection and advocacy system for individuals designated by federal law. The identity of the person reporting alleged abuse may also be disclosed in certain legal proceedings including, but not limited to, Human Resources or other administrative proceedings and criminal prosecution.

Stat. Authority: ORS 179.040, 409.010, 409.050

Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.765

Hist.: MHD 23, f. 8-5-74, ef. 8-25-74; MHD 19-1982(Temp), f. & ef. 9-10-82; MHD 4-1983, f. & ef. 3-4-83, Renumbered from 309-021-0010(5); MHD 3-1991, f. 6-21-91, cert. ef. 8-15-91; MHD 7-1995, f. 12-27-95, cert. ef. 1-1-96; Renumbered from 309-116-0020, OMAP 60-2005, f. 11-22-05, cert. ef. 1-1-06; Renumbered from 410-011-0040, DHSD 4-2007, f. 6-29-07, cert. ef. 7-1-07; Suspended by DHSD 4-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 407-045-0450

### Preliminary Procedures

(1) Once a report of alleged abuse is made, the following steps will be taken to ensure both a proper investigation and appropriate action are taken to ensure that individuals are free from any threat of abuse:

(a) No later than two hours after receipt of the allegation except for circumstances with good cause the Superintendent will notify the Office of Investigations and Training (OIT) of the report of alleged abuse. OIT will determine whether the allegation, if true, would fit within the definition of abuse. This determination will be made in consultation with the Superintendent. The determination must be made within 24 hours of receipt of the report of abuse;

(b) If the allegation is determined to not fit the definition of abuse, the Superintendent may take other appropriate action, such as a referral to Human Resources for review as a performance issue, worksite training, or take other systemic measures to resolve problems identified;

(c) The Superintendent with OIT will further ensure that if the allegation meets the definition of child abuse under ORS 419B.005, or elder abuse under ORS 124.050 it has been reported to the appropriate agency.

(2) Immediately and no later than 24 hours after determining that the allegation comes within the definition of abuse under this policy or other applicable laws, the Superintendent will:

(a) Provide appropriate protective services to the individual that may include arranging for immediate protection of the individual and the provision of appropriate services including medical, legal or other services necessary to prevent further abuse;

(b) Determine with OIT if there is reason to believe that an investigation by an appropriate law enforcement agency is necessary, and if so, request that such agency determine whether there is reason to believe a crime has been committed;

(c) Make a report to any other appropriate agencies, e.g., Children, Adults and Families Division (CAF) (formerly State Office for Services to Children and Families) or Seniors and People with Disabilities Division (SPD) or Addictions and Mental Health Division (AMH).

(d) Promptly notify the legal guardian (of an adjudicated incapacitated individual) of the alleged incident and give an explanation of the procedures that will be used to investigate and resolve the matter; as well as the facility's responsibility to provide appropriate protective services;

(e) Contact the Administrator of the Department if the individual has sustained serious injury.

Stat. Authority: ORS 179.040, 409.010, 409.050

Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.765

Hist.: MHD 7-1995, f. 12-27-95, cert. ef. 1-1-96; Renumbered from 309-116-0030, OMAP 60-2005, f. 11-22-05, cert. ef. 1-1-06; Renumbered from 410-011-0050, DHSD 4-2007, f. 6-29-07, cert. ef. 7-1-07; Suspended by DHSD 4-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 407-045-0460

### Investigation by the Office of Investigations and Training

(1) Investigation of allegations of abuse will be thorough and unbiased. An investigation of the allegation will be conducted by the Office of Investigations and Training (OIT).

(2) OIT will conduct interviews with any party alleging an incident of abuse, the individual allegedly abused, and the person accused. OIT will also include interviews with persons appearing to be involved in or having knowledge of the alleged abuse or surrounding circumstances.

(3) All records necessary for the investigation will be available to OIT for inspection and copying. OIT will collect information which has relevance to the alleged event. This may include, but is not limited to, individual or facility records, statements, diagrams, photographs and videos.

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(4) If the facts in the case are disputed and a law enforcement agency does not produce an investigation report, OIT will determine the manner and methods of conducting the investigation.

(5) When a law enforcement agency is conducting a criminal investigation of the alleged abuse, OIT may also perform its own investigation unless OIT is advised by the law enforcement agency that a concurrent OIT investigation would interfere with the criminal investigation.

Stat. Authority: ORS 179.040, 409.010, 409.050  
Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.765  
Hist.: MHD 7-1995, f. 12-27-95, cert. ef. 1-1-96; MHD 5-1998, f. 6-26-98, cert. ef. 7-1-98;  
Renumbered from 309-116-0040, OMAP 60-2005, f. 11-22-05, cert. ef. 1-1-06; Renumbered  
from 410-011-0060, DHSD 4-2007, f. 6-29-07, cert. ef. 7-1-07; Suspended by DHSD 4-  
2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 407-045-0470

### Abuse Investigation Report

(1) OIT will complete its investigation and submit a draft report to the Superintendent within 30 calendar days after initiating an investigation unless other laws or regulations require a shorter time frame. The investigation must be complete within 30 calendar days unless the Administrator grants an extension. The Administrator may grant an extension when a key party is unavailable, new evidence is discovered, 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 for some other mitigating reason. The Administrator will specify the length of the extension.

(2) The Superintendent along with OIT is responsible for reviewing the OIT and/or law enforcement investigation report. The Superintendent and OIT will also review and discuss any other relevant reports or information.

(3) OIT will determine whether the evidence does or does not substantiate the allegation of abuse. In some instances, OIT may determine that the evidence is inconclusive. The determination must be made within 15 calendar days from completion of the draft investigation report, unless a key party is unavailable, additional evidence is discovered, or the Administrator grants an extension for some other mitigating reason. Any determination not made within the 15-day period must be made as soon as reasonably possible thereafter.

(4) Once this review is complete, a final report will be prepared by OIT, which includes:

(a) A statement of the alleged incident being investigated, including the dates(s), location(s) and time(s);

(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, inconclusive or not substantiated;

(e) A plan of action necessary to prevent further abuse of the individual;

(f) Any additional corrective action required by the hospital or residential training center and deadlines for the completion of these actions;

(g) A list of any notices made to licensing agencies;

(h) The name and title of the person completing the report; and

(i) The date it is written.

(5) If the allegation of abuse is substantiated, the Superintendent will direct that appropriate action be taken against the responsible person commensurate with the seriousness of the conduct and any aggravating or mitigating circumstances, including consideration of previous conduct of record. If Human Resources is involved, as necessary to comply with laws related to employee rights, additional investigation may be conducted.

(6) If the allegations are found to be inconclusive; the Superintendent may request a review by the Human Resources Department to determine the need for any training or disciplinary action, as warranted by the facts and any follow-up investigative work.

(7) The Superintendent will ensure that appropriate documentation exists as to the action taken as a result of an abuse investigation.

(8) The Superintendent will ensure that a copy of the law enforcement investigation report is forwarded to OIT.

Stat. Authority: ORS 179.040, 409.010, 409.050  
Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.765  
Hist.: MHD 7-1995, f. 12-27-95, cert. ef. 1-1-96; Renumbered from 309-116-0050, OMAP  
60-2005, f. 11-22-05, cert. ef. 1-1-06; Renumbered from 410-011-0070, DHSD 4-2007, f. 6-  
29-07, cert. ef. 7-1-07; Suspended by DHSD 4-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-  
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## 407-045-0480

### Disclosure of Investigation Report and Related Documents

(1) Investigation Reports prepared by OIT are subject to the following:

(a) Portions of the abuse investigation report and underlying investigatory documents are confidential and not available for public inspection. Pursuant to ORS 430.763, names of persons who make reports of abuse, witnesses, and the alleged abuse victim are confidential and shall not be available for public inspection. Investigatory documents, including portions of the abuse investigation report that contains "Individually identifiable health information", as that term is defined under 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 509.

(b) Notwithstanding subsection (a) of this rule, the Department and OIT will make the confidential information, including any photographs, available, if appropriate, to any law enforcement agency, to any public agency that licenses or certifies facilities or licenses or certifies the persons practicing therein, and to any public agency providing protective services for the adult. The Department and OIT will also 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).

(c) Persons or entities receiving confidential information pursuant to this rule must maintain the confidentiality of the information and may not redisclose the confidential information to unauthorized persons or entities, as required by state or federal law.

(d) When the report is completed, a redacted version of the abuse investigation report not containing any confidential information, the disclosure of which would be prohibited by state or federal law, will be available for public inspection.

(2) The OIT report will be disclosed by OIT or the Superintendent to:

(a) The Administrator of the Department; and

(b) Any person designated by the Superintendent for purposes related to the proper administration of the institution or center such as assessing patterns of abuse or to respond to personnel actions and may be disclosed in the Superintendent's discretion;

(c) The individual involved;

(d) The guardian of an adjudicated incapacitated person; and

(e) The person or persons who allegedly abused the individual.

(3) Copies of all reports will be maintained by the Superintendent in a place separate from personnel files of employees. The chart of the individual allegedly abused must contain a reference to the report sufficient to enable authorized persons to retrieve and review the report.

Stat. Authority: ORS 179.040, 409.010, 409.050  
Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.765  
Hist.: MHD 7-1995, f. 12-27-95, cert. ef. 1-1-96; Renumbered from 309-116-0060, OMAP  
60-2005, f. 11-22-05, cert. ef. 1-1-06; Renumbered from 410-011-0080, DHSD 4-2007, f. 6-  
29-07, cert. ef. 7-1-07; Suspended by DHSD 4-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-  
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## 407-045-0490

### Consequences of Abuse

(1) All persons will be subject to appropriate action if found responsible for:

(a) Abusing an individual;

(b) Failing to report an alleged incident of abuse; or

(c) Refusing to give information or giving untruthful information during an investigation of alleged abuse.

(2) Any discipline of an employee as a result of the above-described conduct must be in conformance with any applicable standards contained in state law or in a Collective Bargaining Agreement.

(3) Any employee dismissed for violating the abuse policy will not be rehired in any capacity, nor will the person be permitted to visit or otherwise have contact with individuals in any manner.

(4) Any volunteer found violating the abuse policy may be denied visitation or any other contact with individuals.

(5) Any contractor found violating the abuse policy will be at risk of immediate termination of the contract. Any employee of the contractor found in violation of the abuse policy may be excluded from the grounds and may be subject to appropriate disciplinary action by his or her employer.

(6) Any visitor found in violation of the abuse policy may be excluded from the grounds and will be subject to other appropriate actions as determined by the Superintendent.

(7) Any employee, volunteer, contractor, contractor's employee, or visitor may be subject to criminal prosecution depending on the outcome of any allegation referred to law enforcement for investigation.



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(8) Any staff found to have violated the abuse policy will be reported to any appropriate professional licensing or certification boards or associations; and is at risk of sanctions imposed by such a body.

Stat. Authority: ORS 179.040, 409.010, 409.050  
Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.765  
Hist.: MHD 7-1995, f. 12-27-95, cert. ef. 1-1-96; Renumbered from 309-116-0090, OMAP 60-2005, f. 11-22-05, cert. ef. 1-1-06; Renumbered from 410-011-0090, DHSD 4-2007, f. 6-29-07, cert. ef. 7-1-07; Suspended by DHSD 4-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 407-045-0500

### Notice of Abuse Policy

(1) Each individual must be informed upon admission and his or her guardian, if any, or his or her family will also be informed orally and in writing of the rights, policies, abuse definitions and procedures concerning prohibition of abuse of individuals.

(2) A clear and simple statement of the title and number of this policy and how to seek advice about its content will be prominently displayed in areas frequented by individuals at each state hospital and residential training center.

(3) All staff will be provided a copy of this rule, either at the commencement of their employment, and/or duties, or, for current staff, within 90 days of the effective date of this rule and once a year thereafter. All staff must sign a form acknowledging receipt of this information on the date of receipt.

(4) A summary of this policy will be posted in all state hospitals and residential training centers in areas regularly frequented by visitors and in a manner designed to notify visitors of the policy. Copies of the complete policy will be provided to visitors upon request.

Stat. Authority: ORS 179.040, 409.010, 409.050  
Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.765  
Hist.: MHD 7-1995, f. 12-27-95, cert. ef. 1-1-96; Renumbered from 309-116-0100, OMAP 60-2005, f. 11-22-05, cert. ef. 1-1-06; Renumbered from 410-011-0100, DHSD 4-2007, f. 6-29-07, cert. ef. 7-1-07; Suspended by DHSD 4-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 407-045-0510

### Retaliation

(1) No state hospital or residential training center staff or other person will retaliate against any person who reports in good faith suspected abuse or against the individual with respect to any report.

(2) Any state hospital or residential training center staff or other person who retaliates against any person because of a report of suspected abuse or neglect will be liable according to ORS 430.755, in a private action to that person for actual damages and, in addition, will be subject to a penalty of up to \$1,000, notwithstanding any other remedy provided by law.

Stat. Authority: ORS 179.040, 409.010, 409.050  
Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.765  
Hist.: MHD 7-1995, f. 12-27-95, cert. ef. 1-1-96; Renumbered from 309-116-0090, OMAP 60-2005, f. 11-22-05, cert. ef. 1-1-06; Renumbered from 410-011-0110, DHSD 4-2007, f. 6-29-07, cert. ef. 7-1-07; Suspended by DHSD 4-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 407-045-0520

### Quality Assurance Review

(1) Each of the State Hospitals and Residential Training Centers will report on critical indicators, identified by the Department; and on quality improvement activities undertaken to improve any identified issues.

(2) These reports must be provided to the Department monthly.

(3) Representatives from each State Hospital or Training Center and OIT will meet quarterly with the Administrators of the Department, or designee. They will regularly review quality indicators and any other Department generated information regarding the abuse and neglect system in State Hospitals and Training Centers.

(4) The Department must make such information part of any quality improvement activities of the Department.

Stat. Authority: ORS 179.040, 409.010, 409.050  
Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.765  
Hist.: MHD 7-1995, f. 12-27-95, cert. ef. 1-1-96; Renumbered from 309-116-0100, OMAP 60-2005, f. 11-22-05, cert. ef. 1-1-06; Renumbered from 410-011-0120, DHSD 4-2007, f. 6-29-07, cert. ef. 7-1-07; Suspended by DHSD 4-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

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**Rule Caption:** Amendments to Electronic Data Transmission (EDT) Rules.

**Adm. Order No.:** DHSD 5-2011(Temp)

**Filed with Sec. of State:** 7-1-2011

**Certified to be Effective:** 7-1-11 thru 12-27-11

**Notice Publication Date:**

**Rules Amended:** 407-120-0100, 407-120-0112, 407-120-0114, 407-120-0150, 407-120-0200

**Subject:** The Department of Human Services (Department) needs to amend these rules to ensure the Department's EDT rules compliment the functionality of the Oregon Replacement Medicaid Management Information System (MMIS) in conjunction with the Health Insurance Portability and Accountability Act (HIPAA) transactions and codes set standards for the exchange of electronic data.

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—(503) 947-5250

## 407-120-0100

### Definitions

The following definitions apply to OAR 407-120-0100 through 407-120-0200:

(1) "Access" means the ability or means necessary to read, write, modify, or communicate data or information or otherwise use any information system resource.

(2) "Agent" means a third party or organization that contracts with a provider, allied agency, or prepaid health plan (PHP) to perform designated services in order to facilitate a transaction or conduct other business functions on its behalf. Agents include billing agents, claims clearinghouses, vendors, billing services, service bureaus, and accounts receivable management firms. Agents may also be clinics, group practices, and facilities that submit billings on behalf of providers but the payment is made to a provider, including the following: an employer of a provider, if a provider is required as a condition of employment to turn over his fees to the employer; the facility in which the service is provided, if a provider has a contract under which the facility submits the claim; or a foundation, plan, or similar organization operating an organized health care delivery system, if a provider has a contract under which the organization submits the claim. Agents may also include electronic data transmission submitters.

(3) "Allied Agency" means local and regional allied agencies and includes local mental health authority, community mental health programs, Oregon Youth Authority, Department of Corrections, local health departments, schools, education service districts, developmental disability service programs, area agencies on aging, federally recognized American Indian tribes, and other governmental agencies or regional authorities that have a contract (including an interagency, intergovernmental, or grant agreement, or an agreement with an American Indian tribe pursuant to ORS 190.110) with the Department to provide for the delivery of services to covered individuals and that request to conduct electronic data transactions in relation to the contract.

(4) "Clinic" means a group practice, facility, or organization that is an employer of a provider, if a provider is required as a condition of employment to turn over his fees to the employer; the facility in which the service is provided, if a provider has a contract under which the facility submits the claim; or a foundation, plan, or similar organization operating an organized health care delivery system, if a provider has a contract under which the organization submits the claim; and the group practice, facility, or organization is enrolled with the Department, and payments are made to the group practice, facility, or organization. If the entity solely submits billings on behalf of providers and payments are made to each provider, then the entity is an agent.

(5) "Confidential Information" means information relating to covered individuals which is exchanged by and between the Department, a provider, PHP, clinic, allied agency, or agents for various business purposes, but which is protected from disclosure to unauthorized individuals or entities by applicable state and federal statutes such as ORS 344.600, 410.150, 411.320, 418.130, or the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 and its implementing regulations. These statutes and regulations are collectively referred to as "Privacy Statutes and Regulations."

(6) "Contract" means a specific written agreement between the Department and a provider, PHP, clinic, or allied agency that provides or manages the provision of services, goods, or supplies to covered individuals and where the Department and a provider, PHP, clinic, or allied agency may exchange data. A contract specifically includes, without limitation, a Department provider enrollment agreement, fully capitated health plan managed care contract, dental care organization managed care contract, mental health organization managed care contract, chemical dependency organization managed care contract, physician care organization managed care con-

## ADMINISTRATIVE RULES

tract, a county financial assistance agreement, or any other applicable written agreement, interagency agreement, intergovernmental agreement, or grant agreement between the Department and a provider, PHP, clinic, or allied agency.

(7) "Covered Entity" means a health plan, health care clearing house, health care provider, or allied agency that transmits any health information in electronic form in connection with a transaction, including direct data entry (DDE), and who must comply with the National Provider Identifier (NPI) requirements of 45 CFR 162.402 through 162.414.

(8) "Covered Individual" means individuals who are eligible for payment of certain services or supplies provided to them or their eligible dependents by or through a provider, PHP, clinic, or allied agency under the terms of a contract applicable to a governmental program for which the Department processes or administers data transmissions.

(9) "Data" means a formalized representation of specific facts or concepts suitable for communication, interpretation, or processing by individuals or by automatic means.

(10) "Data Transmission" means the transfer or exchange of data between the Department and a web portal or electronic data interchange (EDI) submitter by means of an information system which is compatible for that purpose and includes without limitation, web portal, EDI, electronic remittance advice (ERA), or electronic media claims (EMC) transmissions.

(11) "Department" means the Department of Human Services.

(12) "Department Network and Information Systems" means the Department's computer infrastructure that provides personal communications, confidential information, regional, wide area and local networks, and the internetworking of various types of networks on behalf of the Department.

(13) "Direct Data Entry (DDE)" means the process using dumb terminals or computer browser screens where data is directly keyed into a health plan's computer by a provider or its agent, such as through the use of a web portal.

(14) "Electronic Data Interchange (EDI)" means the exchange of business documents from application to application in a federally mandated format or, if no federal standard has been promulgated, using bulk transmission processes and other formats as the Department designates for EDI transactions. For purposes of these rules (OAR 407-120-0100 through 407-120-0200), EDI does not include electronic transmission by web portal.

(15) "Electronic Data Interchange Submitter" means an individual or entity authorized to establish the electronic media connection with the Department to conduct an EDI transaction. An EDI submitter may be a trading partner or an agent of a trading partner.

(16) "Electronic Media" means electronic storage media including memory devices in computers or computer hard drives; any removable or transportable digital memory medium such as magnetic tape or disk, optical disk, or digital memory card; or transmission media used to exchange information already in electronic storage media. Transmission media includes but is not limited to the internet (wide-open), extranet (using internet technology to link a business with information accessible only to collaborating parties), leased lines, dial-up lines, private networks, and the physical movement of removable or transportable electronic storage media. Certain transmissions, including paper via facsimile and voice via telephone, are not considered transmissions by electronic media because the information being exchanged did not exist in electronic form before transmission.

(17) "Electronic Media Claims (EMC)" means an electronic media means of submitting claims or encounters for payment of services or supplies provided by a provider, PHP, clinic, or allied agency to a covered individual.

(18) "Electronic Remittance Advice (ERA)" means an electronic file in X12 format containing information pertaining to the disposition of a specific claim for payment of services or supplies rendered to covered individuals which are filed with the Department on behalf of covered individuals by providers, clinics, or allied agencies. The documents include, without limitation, the provider name and address, individual name, date of service, amount billed, amount paid, whether the claim was approved or denied, and if denied, the specific reason for the denial. For PHPs, the remittance advice file contains information on the adjudication status of encounter claims submitted.

(19) "Electronic Data Transaction (EDT)" means a transaction governed by the Health Insurance Portability and Accountability Act (HIPAA) transaction rule, conducted by either web portal or EDI.

(20) "Envelope" means a control structure in a mutually agreed upon format for the electronic interchange of one or more encoded data transmissions either sent or received by an EDI submitter or the Department.

(21) "HIPAA Transaction Rule" means the standards for electronic transactions at 45 CFR Part 160 and 162 (version in effect on January 1, 2008) adopted by the Department of Health and Human Services (DHHS) to implement the Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d et. seq.

(22) "Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of an information system or information asset including but not limited to unauthorized disclosure of information, failure to protect user IDs, and theft of computer equipment using or storing Department information assets or confidential information.

(23) "Individual User Profile (IUP)" means Department forms used to authorize a user, identify their job assignment, and the required access to the Department's network and information system. It generates a unique security access code used to access the Department's network and information system.

(24) "Information Asset" means all information, also known as data, provided through the Department, regardless of the source, which requires measures for security and privacy of the information.

(25) "Information System" means an interconnected set of information resources under the same direct management control that shares common functionality. A system normally includes hardware, software, information, data, applications, communications, and trained personnel necessary for successful data transmission.

(26) "Lost or Indecipherable Transmission" means a data transmission which is never received by or cannot be processed to completion by the receiving party in the format or composition received because it is garbled or incomplete, regardless of how or why the message was rendered garbled or incomplete.

(27) "Mailbox" means the term used by the Department to indicate trading partner-specific locations on the Department's secure file transfer protocol (SFTP) server to deposit and retrieve electronic data identified by a unique Department assigned trading partner number.

(28) "Password" means the alpha-numeric codes assigned to an EDI submitter by the Department for the purpose of allowing access to the Department's information system, including the web portal, for the purpose of successfully executing data transmissions or otherwise carrying out the express terms of a trading partner agreement or provider enrollment agreement and these rules.

(29) "Personal Identification Number (PIN)" means the alpha-numeric codes assigned to web portal submitters by the Department for the purpose of allowing access to the Department's information system, including the web portal, for the purpose of successfully executing DDE, data transmissions, or otherwise carrying out the express terms of a trading partner agreement, provider enrollment agreement, and these rules.

(30) "Prepaid Health Plan (PHP or Plan)" means a managed health care, dental care, chemical dependency, physician care organization, or mental health care organization that contracts with the Department on a case managed, prepaid, capitated basis under the Oregon Health Plan (OHP).

(31) "Provider" means an individual, facility, institution, corporate entity, or other organization which supplies or provides for the supply of services, goods or supplies to covered individuals pursuant to a contract, including but not limited to a provider enrollment agreement with the Department. A provider does not include billing providers as used in the Division of Medical Assistance (DMAP) general rules. DMAP billing providers are defined in these rules as agents, except for DMAP billing providers that are clinics.

(32) "Provider Enrollment Agreement" means an agreement between the Department and a provider for payment for the provision of covered services to covered individuals.

(33) "Registered Transaction" means each type of EDI transaction applicable to a trading partner that must be registered with the Department before it can be tested or approved for EDI transmission.

(34) "Security Access Codes" means the alpha-numeric codes assigned by the Department to the web portal submitter or EDI submitter for the purpose of allowing access to the Department's information system, including the web portal, to execute data transmissions or otherwise carry out the express terms of a trading partner agreement, provider enrollment agreement, and these rules. Security access codes may include passwords, PINs, or other codes.

(35) "Source Documents" means documents or electronic files containing underlying data which is or may be required as part of a data transmission with respect to a claim for payment of charges for medical services or supplies provided to a covered individual, or with respect to any other

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transaction. Examples of data contained within a specific source document include but are not limited to an individual's name and identification number, claim number, diagnosis code for the services provided, dates of service, service procedure description, applicable charges for the services provided, and a provider's, PHP's, clinic's, or allied agency's name, identification number, and signature.

(36) "Standard" means a rule, condition, or requirement describing the following information for products, systems, or practices:

- (a) Classification of components;
- (b) Specification of materials, performance, or operations; or
- (c) Delineation of procedures.

(37) "Standards for Electronic Transactions" mean a transaction that complies with the applicable standard adopted by DHHS to implement standards for electronic transactions.

(38) "Submitter" means a provider, PHP, clinic, or allied agency that may or may not have entered into a trading partner agreement depending upon whether the need is to exchange electronic data transactions or access the Department's web portal.

(39) "Transaction" means the exchange of data between the Department and a provider using web portal access or a trading partner using electronic media to carry out financial or administrative activities.

(40) "Trade Data Log" means the complete written summary of data and data transmissions exchanged between the Department and an EDI submitter during the period of time a trading partner agreement is in effect and includes but is not limited to sender and receiver information, date and time of transmission, and the general nature of the transmission.

(41) "Trading Partner" means a provider, PHP, clinic, or allied agency that has entered into a trading partner agreement with the Department in order to satisfy all or part of its obligations under a contract by means of EDI, ERA, or EMC, or any other mutually agreed means of electronic exchange or transfer of data.

(42) "Trading Partner Agreement (TPA)" means a specific written request by a provider, PHP, clinic, or allied agency to conduct EDI transactions that governs the terms and conditions for EDI transactions in the performance of obligations under a contract. A provider, PHP, clinic, or allied agency that has executed a TPA will be referred to as a trading partner in relation to those functions.

(43) "User" means any individual or entity authorized by the Department to access network and information systems or information assets.

(44) "User Identification Security (UIS)" means a control method required by the Department to ensure that only authorized users gain access to specified information assets. One method of control is the use of passwords and PINs with unique user identifications.

(45) "Web Portal" means a site on the World Wide Web that typically provides secure access with personalized capabilities to its visitors and a pathway to other content designed for use with the Department's specific DDE applications.

(45) "Web Portal Submitter" means an individual or entity authorized to establish an electronic media connection with the Department to conduct a DDE transaction. A web portal submitter may be a provider or a provider's agent.

Stat. Auth.: ORS 409.050 & 414.065

Stats. Implemented: ORS 414.065

Hist.: OMAP 25-2003(Temp), f. & cert. ef. 3-21-03 thru 9-8-03; OMAP 55-2003, f. & cert. ef. 8-22-03; DMAP 30-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-28-08; Renumbered from 410-001-0100, DHSD 1-2008, f. & cert. ef. 2-1-08; DHSD 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 407-120-0112

### Scope and Sequence of Electronic Data Transmission Rules

(1) The Department communicates with and receives communications from its providers, PHPs, and allied agencies using a variety of methods appropriate to the services being provided, the nature of the entity providing the services, and constantly changing technology. These rules describe some of the basic ways that the Department will exchange data electronically. Additional details may be provided in the Department's access control rules, provider-specific rules, or the applicable contract documents.

(2) Access to eligibility information about covered individuals may occur using one or more of the following methods:

- (a) Automated voice response, via a telephone;
- (b) Web portal access;
- (c) EDI submitter access; or
- (d) Point of sale (POS) for pharmacy providers.

(3) Claims for which the Department is responsible for payment or encounter submissions made to the Department may occur using one or more of the following methods:

(a) Paper, using the form specified in the provider specific rules and supplemental billing guidance. Providers may submit paper claims, except that pharmacy providers are required to use the POS process for claims submission and PHPs are required to use the 837 electronic formats;

(b) Web portal access;

(c) EDI submitter access; or

(d) POS for pharmacy providers.

(4) Department informational updates, provider record updates, depository for PHP reports, or EDT as specified by the Department for contract compliance.

(5) Other Department network and information system access is governed by specific program requirements, which may include but is not limited to IUP access. Affected providers, PHPs, and allied agencies will be separately instructed about the access and requirements. Incidents are subject to these rules.

(6) Providers and allied agencies that continue to use only paper formats for claims transactions are only subject to the confidentiality and security rule, OAR 407-120-0170.

Stat. Auth.: ORS 409.050 & 414.065

Stats. Implemented: ORS 414.065

Hist.: DHSD 13-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-28-08; DHSD 1-2008, f. & cert. ef. 2-1-08; DHSD 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 407-120-0114

### Provider Enrollment Agreement

(1) When a provider applies to enroll, the application form will include information about how to participate in the web portal for use of DDE and automated voice response (AVR) inquiries. The enrollment agreement will include a section describing the process that will permit the provider, once enrolled, to participate in DDE over the Internet using the secure Department web portal. This does not include providers enrolled through the use of the DMAP 3108 Managed Care Plan and FFS Non Paid Provider Application.

(2) When the provider number is issued by the Department, the provider will also receive two PINs: one that may be used to access the web portal and one that may be used for AVR.

(a) If the PINs are not activated within 60 days of issuance, the Department will initiate a process to inactivate the PIN. If the provider wants to use PIN-based access to the web portal or AVR after deactivation, the provider must submit an update form to obtain another PIN.

(b) Activating the PIN will require Internet access and the provider must supply security data that will be associated with the use of the PIN.

(c) Providers using the PIN are responsible for protecting the confidentiality and security of the PIN pursuant to OAR 407-120-0170.

Stat. Auth.: ORS 409.050 & 414.065

Stats. Implemented: ORS 414.065

Hist.: DHSD 13-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-28-08; DHSD 1-2008, f. & cert. ef. 2-1-08; DHSD 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 407-120-0150

### Testing — EDI Transactions

(1) When a trading partner or authorized EDI submitter registers an EDI transaction with the Department, the Department may require testing before authorizing the transaction. Testing may include third party and business-to-business testing. An EDI submitter must be able to demonstrate its capacity to send and receive each transaction type for which it has registered. The Department will reject any EDI transaction if an EDI submitter either refuses or fails to comply with the Department testing requirements.

(2) The Department may require EDI submitters to complete compliance testing at an EDI submitter's expense for each transaction type if either the Department or an EDI submitter has experienced a change to hardware or software applications by entering into business-to-business testing.

(3) When third party or business-to-business testing is completed to the Department's satisfaction, the Department will notify an EDI submitter that it will register and accept the transactions in the production environment. This notification authorizes an EDI submitter to submit the registered EDI transactions to the Department for processing and response, as applicable. If there are any changes in the trading partner or EDI submitter authorization, profile data or EDI registration information on file with the Department, updated information must be submitted to the Department as required in OAR 407-120-0190.

(4) Testing will be conducted using secure electronic media communications methods.

(5) An EDI submitter may be required to re-test with the Department if the Department format changes or if the EDI submitter format changes.

Stat. Auth.: ORS 409.050 & 414.065

Stats. Implemented: ORS 414.065



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Hist.: OMAP 25-2003(Temp), f. & cert. ef. 3-21-03 thru 9-8-03; OMAP 55-2003, f. & cert. ef. 8-22-03; DMAP 30-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-28-08; Renumbered from 410-001-0150, DHSD 1-2008, f. & cert. ef. 2-1-08; DHSD 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 407-120-0200

### Department System Administration

(1) No individual or entity shall be registered to conduct a web portal or an EDI transaction with the Department except as authorized under these rules. Eligibility and continued participation as a provider, PHP, allied agency, or web portal submitter in the conduct of DDE transactions, or as a trading partner or EDI submitter in the conduct of registered transactions, is conditioned on the execution and delivery of the documents required in these rules, the continued accuracy of that information consistent with OAR 407-120-0190, and compliance with a requirements of these rules. Data, including confidential information, governed by these rules may be used for purposes related to treatment, payment, and health care operations and for the administration of programs or services by the Department.

(2) In addition to the requirements of section (1) of this rule, in order to qualify as a trading partner:

(a) An individual or entity must be a Department provider, PHP, clinic, or allied agency pursuant to a current valid contract; and

(b) A provider, PHP, clinic, or allied agency must have submitted an executed TPA and all related documentation, including the application for authorization, that identifies and authorizes an EDI submitter.

(3) In addition to the requirements of section (1) of this rule, in order to qualify as an EDI submitter:

(a) A trading partner must have identified the individual or entity as an authorized EDI submitter in the application for authorization;

(b) If a trading partner identifies itself as an EDI submitter, the application for authorization must include the information required in the "Trading Partner Authorization of EDI Submitter" and the "EDI Submitter Information"; and

(c) If a trading partner uses an agent as an EDI submitter, the application for authorization must include the information described in section (3)(b) and the signed EDI submitter certification.

(4) The EDI registration process described in these rules provides the Department with essential profile information that the Department may use to confirm that a trading partner or EDI submitter is not otherwise excluded or disqualified from submitting EDI transactions to the Department.

(5) Nothing in these rules or a TPA prevents the Department from requesting additional information from a trading partner or an EDI submitter to determine their qualifications or eligibility for registration as a trading partner or EDI submitter.

(6) The Department shall deny a request for registration as a trading partner or for authorization of an EDI submitter or an EDI registration if it finds any of the following:

(a) A trading partner or EDI submitter has substantially failed to comply with the applicable administrative rules or laws;

(b) A trading partner or EDI submitter has been convicted of (or entered a plea of nolo contendere) a felony or misdemeanor related to a crime or violation of federal or state public assistance laws or privacy statutes or regulations;

(c) A trading partner or EDI submitter is excluded from participation in the Medicare program, as determined by the DHHS secretary; or

(d) A trading partner or EDI submitter fails to meet the qualifications as a trading partner or EDI submitter.

(7) Failure to comply with these rules, trading partner agreement, or EDI submitter certification or failure to provide accurate information on an application or certification may also result in sanctions and payment recovery pursuant to applicable Department program contracts or rules.

(8) For providers using the DDE submission system by the Department web portal, failure to comply with the terms of these rules, a web portal registration form, or failure to provide accurate information on the registration form may result in sanctions or payment recovery pursuant to the applicable Department program contracts or rules.

Stat. Auth.: ORS 409.050 & 414.065

Stats. Implemented: ORS 414.065

Hist.: OMAP 25-2003(Temp), f. & cert. ef. 3-21-03 thru 9-8-03; OMAP 55-2003, f. & cert. ef. 8-22-03; DMAP 30-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-28-08; Renumbered from 410-001-0200, DHSD 1-2008, f. & cert. ef. 2-1-08; DHSD 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 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 7-2011

**Filed with Sec. of State:** 6-28-2011

**Certified to be Effective:** 6-28-11

**Notice Publication Date:** 5-1-2011

**Rules Amended:** 413-070-0651, 413-070-0655, 413-070-0660, 413-070-0665, 413-070-0670

**Subject:** OAR 413-070-0651 regarding the purpose of the rules about guardianship as a permanency plan, OAR 413-070-0655 regarding definitions of certain terms used in these rules, OAR 413-070-0660 regarding consideration of guardianship as a permanency plan, OAR 413-070-0665 regarding consideration of a substitute caregiver as a potential guardian, and OAR 413-070-0670 regarding approval and implementation of a guardianship permanency plan are being adopted because the Department does not have a policy that adequately and fully describes the responsibilities of the Department to determine the appropriate use of guardianship as a permanency plan unless the child is eligible for guardianship assistance. The new rules describe the responsibilities of the Department in determining the appropriateness of guardianship as a permanency plan for a child regardless of the child's eligibility for guardianship assistance. The goal of a permanency plan 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. Most of these rule changes make permanent rules adopted as temporary rules on December 29, 2010.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

### 413-070-0651

#### Purpose

The purpose of these rules (OAR 413-070-0651 to 413-070-0670) is to describe the responsibilities of the Department to determine the appropriate use of guardianship, as established by the court under ORS 419B, as a permanency plan for a child in the care or custody of the Department.

Stat. Auth.: ORS 418.005 & 419B.369

Stats. Implemented: ORS 418.005, 419B.192 & 419B.369

Hist.: CWP 36-2010(Temp), f. & cert. ef. 12-29-10 thru 6-27-11; CWP 7-2011, f. & cert. ef. 6-28-11

### 413-070-0655

#### Definitions

The following definitions apply to OAR 413-070-0651 to 413-070-0670:

(1) "Child" means a person under 18 years of age.

(2) "Concurrent permanent plan" means the alternate permanency plan whenever the child has been placed in substitute care when the goal of the permanency plan is to return the child to the parents. The concurrent permanent plan is developed simultaneously with the plan to return the child to the parents or legal guardians.

(3) "Department" means the Department of Human Services, Child Welfare.

(4) "Foster care agency" means a private child-caring agency that offers to place children by taking physical custody of and then placing the children in a home certified by the agency.

(5) "Guardian" means an individual who has been granted guardianship of a child through a judgment of the court.

(6) "Guardianship assistance" means assistance provided by the Department to a guardian on behalf of an eligible child to offset the costs associated with meeting the ongoing needs of the child. Guardianship assistance may include payments, medical coverage, or reimbursement of non-recurring expenses.

(7) "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

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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.

(8) "Participating tribe" means a federally recognized Indian tribe in Oregon with a Title IV E agreement with the Department.

(9) "Permanency committee" means a group of individuals who are responsible for making a recommendation regarding a permanency plan or a potential permanency resource when the child or young adult likely is not returning to his or her parent.

(10) "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.

(11) "Potential guardian" means an individual who:

(a) Has been approved by the Department or participating tribe to be a child's guardian; and

(b) Is in the process of legalizing the relationship to the child through a judgment of the court.

(12) "Relative" means:

(a) An individual with one of the following relationships to the child or young adult through the parent of the child or young adult:

(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 tribe of the child or young adult 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 parent of the child or young adult or a former registered domestic partner of the parent of the child or young adult 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 sibling of the child or young adult.

(F) The unrelated legal or biological father or mother of a half-sibling of the child or young adult when the half-sibling of the child or young adult is living with the unrelated legal or biological father or mother.

(c) An individual identified by the child or young adult or the family of the child or young adult; or an individual who self-identifies, related to the child or young adult through the parent of the child or young adult 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 family of the child or young adult; and

(B) An individual who had an emotionally significant relationship with the child or young adult or the family of the child or young adult prior to time the Department placed the child in substitute care.

(e) For eligibility for the Guardianship Assistance program:

(A) A stepparent is considered a parent and is not a relative for the purpose of eligibility for guardianship assistance 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 only be considered a relative for the purpose of eligibility for guardianship assistance and only when the requirements of all of the following subparagraphs are met:

(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) The Department has approved the foster parent for consideration as a guardian.

(13) "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 legal or biological parents of the children or young adults; or

(c) Through a legal or biological parent who is the registered domestic partner of the legal or biological parent of the children or young adults.

(14) "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.

(15) "Young adult" means a person aged 18 through 20 years.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 36-2010(Temp), f. & cert. ef. 12-29-10 thru 6-27-11; CWP 7-2011, f. & cert. ef. 6-28-11

### 413-070-0660

#### Consideration of Guardianship as a Permanency Plan

(1) The Department may consider guardianship as a permanency plan for a child in the care or legal custody of the Department based on the individual safety, permanency, and well-being needs of the child, when the Department has determined:

(a) The child is unable to safely return to the home of a parent; and

(b) Adoption is not an appropriate plan based on the best interest of the child.

(2) When considering guardianship as the permanency plan, the caseworker must:

(a) Consult with the child 14 years of age or older;

(b) Seek input from the child as developmentally appropriate, regardless of the age of the child;

(c) Assess the parents' acceptance of guardianship as a permanency plan, their desire for continued contact with the child, and how this will impact the plan; and

(d) Document in the Department's information system how the requirements of subsections (a), (b), and (c) of this section were met.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 36-2010(Temp), f. & cert. ef. 12-29-10 thru 6-27-11; CWP 7-2011, f. & cert. ef. 6-28-11

### 413-070-0665

#### Consideration of a Substitute Caregiver as a Potential Guardian

(1) Prior to considering a substitute caregiver as a potential guardian, the caseworker and the caseworker's supervisor must comply with the requirements of both of the following subsections:

(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 Policy I-E.1.1, "Search for and Engagement of a Child's Relatives", OAR 413-070-0060 to 413-070-0087; and

(b) Confirm there are no current Department actions to:

(A) Identify a child's relative as defined in OAR 413-070-0655(12)(a)-(d);

(B) Assess an identified relative as defined in OAR 413-070-0655(12)(a)-(d) who has either expressed an interest in and needs to be or currently is being assessed as a permanency resource.

(2) In order to be considered as a potential guardian, the substitute caregiver must:

(a) Have a current Certificate of approval from one of the following entities:

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(A) The Department under 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) Seniors and People with Disabilities Division, OAR 411-346-0100 to 411-346-0230, "Foster Homes for Children with Developmental Disabilities".

(C) A foster care agency under Child Welfare Policy II-C.1.2, "Licensing Foster Care Agencies", OAR 413-215-0301 to 413-215-0396.

(D) A participating tribe when the potential guardian is currently certified as a foster home by the participating tribe as meeting the tribe's certification and licensing standards.

(E) Another state when the potential guardian is currently certified or otherwise approved by the state in which the potential guardian resides and approved as a placement for the child under the Interstate Compact on Placement of Children (ICPC).

(b) Agree with the Department that the child and any sibling under consideration, and the substitute caregiver can maintain a stable relationship and function effectively without Department supervision.

(c) Have an updated home study describing how the substitute caregiver's skills and abilities meet the best interests and needs for safety and permanency for the child and any sibling under consideration.

(d) Have adequate means of financial support and connections to community resources.

(e) Have a strong commitment to caring permanently for the child and any sibling under consideration for whom the substitute caregiver has provided care.

(3) The caseworker must complete all of the following requirements and present the results to a permanency committee, when scheduled:

(a) Assess the ability of the substitute caregiver to provide safety, permanency, and well-being for the child and any sibling under consideration.

(b) Assess with the certifier of the substitute caregiver the extent to which the ongoing needs for safety, permanency, and well-being of the child and any sibling under consideration are being met pursuant to Child Welfare Policy I-E.3.1, "Placement Matching", OAR 413-070-0640.

(c) Assess the commitment of the substitute caregiver to raise the child and any sibling under consideration.

(d) Provide the substitute caregiver with information regarding the duties and responsibilities of a guardian.

(e) Agree that the child, any sibling under consideration, and the substitute caregiver can maintain a stable relationship and function effectively without Department supervision.

(f) Consult with the substitute caregiver regarding guardianship assistance under Child Welfare Policy I-E.3.6.2, "Guardianship Assistance", OAR 413-070-0900 to 413-070-0974.

(A) When guardianship assistance will be requested, inform the substitute caregiver of the eligibility, application, and ongoing requirements of guardianship assistance as described in Child Welfare Policy I-E.3.6.2, "Guardianship Assistance", OAR 413-070-0900 to 413-070-0974.

(B) When guardianship assistance will not be requested or may not be approved due to eligibility restrictions, ensure that the substitute caregiver has sufficient financial support and connections to community resources to meet the needs of the child and any sibling under consideration without this assistance.

Stat. Auth.: ORS 418.005 & 419B.369

Stats. Implemented: ORS 418.005, 419B.192 & 419B.369

Hist.: CWP 36-2010(Temp), f. & cert. ef. 12-29-10 thru 6-27-11; CWP 7-2011, f. & cert. ef. 6-28-11

## 413-070-0670

### Approval and Implementation of a Guardianship Permanency Plan

(1) When the Department is considering a change in a child's permanency plan, the Department makes the determination pursuant to Child Welfare Policy I-E.3.6, "Legal Permanency, Concurrent Planning, and Use of Permanency Committee", OAR 413-070-0500 to 413-070-0519, and the child's caseworker schedules a permanency committee.

(2) The permanency committee must review all of the information presented to the committee and make recommendations to the Child Welfare Program Manager or designee regarding:

(a) Whether guardianship is an appropriate permanency plan for the child; and

(b) Whether the substitute caregiver can meet the child's needs as described in subsection (3)(c) of this rule and should be considered as a potential guardian.

(3) The Child Welfare Program Manager or designee must decide whether guardianship is the appropriate permanency plan for the child based upon:

(a) How a permanency plan of guardianship meets the child's needs, and the requirements of OAR 413-070-0660(1) and (2) and 413-070-0665(2) and (3);

(b) Whether the Department has provided the child and the child's parents an opportunity to identify available permanency;

(c) Whether the substitute caregiver being considered as the potential guardian is able to meet the child's needs pursuant to Child Welfare Policy I-E.3.1, "Placement Matching", OAR 413-070-0640.

(4) Following the Child Welfare Program Manager or designee decision to approve guardianship as a permanency plan, the caseworker must:

(a) Request a permanency hearing before the court within 30 days of the decision.

(b) Prior to the court hearing, provide the court with supporting written documentation regarding the Department's position that:

(A) Guardianship is in the child's best interest; and

(B) Neither placement with parents nor adoption is an appropriate plan.

(5) At the court hearing, the caseworker must:

(a) Recommend that the court approve changing the child's permanency plan to guardianship;

(b) Inform the court whether or not the potential guardian is applying for guardianship assistance; and

(c) When guardianship assistance is being requested, inform the court that after the Department has negotiated the amount or type of guardianship assistance with the potential guardian, a subsequent court hearing will be requested to allow the order of guardianship to be entered.

Stat. Auth.: ORS 418.005

Stats Implemented: ORS 418.005

Hist.: CWP 36-2010(Temp), f. & cert. ef. 12-29-10 thru 6-27-11; CWP 7-2011, f. & cert. ef. 6-28-11

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**Rule Caption:** Changing OARs affecting Child Welfare programs.

**Adm. Order No.:** CWP 8-2011(Temp)

**Filed with Sec. of State:** 6-30-2011

**Certified to be Effective:** 6-30-11 thru 12-27-11

**Notice Publication Date:**

**Rules Adopted:** 413-010-0501, 413-010-0502

**Rules Amended:** 413-010-0500, 413-010-0505, 413-010-0510, 413-010-0515, 413-010-0520, 413-010-0525, 413-010-0530, 413-010-0535

**Subject:** OAR 413-010-0500 is being amended to restate the purposes of the contested case hearing rules and the policies about hearing rights, applicable rules, and computation of time. This rule is also being amended to remove definitions, which will be located in OAR 413-010-0501 and to remove its description of policies about representation which will be located in OAR 413-010-0502.

OAR 413-010-0501 about the definitions is being adopted to set out definitions of certain terms used in the contested case rules. The definitions of some of the terms previously defined in OAR 413-010-0500 are being revised.

OAR 413-010-0502 about representation in contested cases and who may attend a hearing is being adopted to set out set out and revise policies on this topic. These topics were previously covered in OAR 413-010-0500.

OAR 413-010-0505 about hearing requests is being amended to clarify and correct references in the rule.

OAR 413-010-0510 about the notice for a contested case hearing is being amended to more clearly specify that the required contents of a notice on the topic of the Department's right to recover payments made pending a hearing decision.

OAR 413-010-0515 about continuation of benefits is being amended to revise the circumstances and timelines under which payments and benefits may continue pending the hearing of a contested case.

OAR 413-020-0520 about informal conferences and OAR 413-020-0525 about the burden of proof are being amended to indicate when defined terms are used.

OAR 413-010-0530 about withdrawals and dismissals is being amended to clarify terms used in the rule.

OAR 413-010-0535 about proposed and final orders is being amended to revise the date on which a proposed and final order



# ADMINISTRATIVE RULES

becomes a final order when a party does not submit timely exceptions or argument.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 413-010-0500

### Purpose, Right to Request Hearing, Applicable Rules, and Computation of Time

(1) The purpose of these rules (OAR 413-010-0500 to 413-010-0535) is to:

(a) State the rights of individuals and entities to request a contested case hearing when the Department takes certain actions; and

(b) Set forth rules governing some aspects of the contested case hearings process.

(2) The individuals and entities described below have the right to request a contested case hearing under ORS Chapter 183. In order to exercise the right to a hearing, the individual or entity must submit and the Department must receive a hearing request which complies with OAR 413-010-0505 within the timeframes described in that rule.

(a) A child or young adult placed in substitute care by the Department may request a hearing in the manner set forth in OAR 413-010-0505 when the Department issues a notice and decision that includes a statement of hearing rights that:

(A) Reduces or terminates the base rate payment;

(B) Determines, denies, reduces or terminates a level of care payment;

(C) Determines, denies, reduces or terminates a level of personal care payment;

(D) Denies eligibility under Title IV-E of the Social Security Act when such denial impacts a benefit;

(E) Denies, reduces or terminates the base rate payment made on behalf of the child's or young adult's minor child when the minor child:

(i) Lives with the child or young adult in substitute care; and

(ii) Is not in the legal custody of the Department; or

(F) Denies eligibility for medical assistance under Child Welfare Policy I-E.6.2, "Title XIX and General Assistance Medical Eligibility," (OAR 413-100-0400 through 413-100-0610) when such denial impacts assistance.

(b) A pre-adoptive family or an adoptive family applying for or receiving adoption assistance under Child Welfare Policy I-G.3.1, "Adoption Assistance," (OAR 413-130-0000 to 413-130-0130) may request a hearing in the manner set forth in OAR 413-010-0505 when the Department issues a notice and decision that includes a statement of hearing rights and:

(A) Denies Title IV-E adoption assistance benefits;

(B) Denies adoption assistance from state funds;

(C) Reduces adoption assistance payments or terminates adoption assistance without the concurrence of the adoptive family;

(D) Reduces adoption assistance payments or terminates adoption assistance for a reason other than a child turning age 18 or a young adult turning age 21 when an extension has been granted; or

(E) Offers the family a specific amount or type of adoption assistance when the Department and the adoptive family or pre-adoptive family are unable to reach agreement through a negotiation or renegotiation under OAR 413-130-0070 or 413-130-0075.

(c) A potential guardian or a guardian applying for or receiving guardianship assistance payments under Child Welfare Policy I-E.3.6.2, "Guardianship Assistance," (OAR 413-070-0900 to 413-070-0982) in the manner set forth in OAR 413-010-0505 when the Department issues a notice and decision that includes a statement of hearing rights and:

(A) Denies Title IV-E guardianship assistance benefits;

(B) Terminates, reduces, or otherwise changes guardianship assistance payments without the concurrence of the guardian;

(C) Terminates guardianship assistance for a reason other than a child turning age 18 or a young adult turning age 21 when an extension has been granted; or

(D) Offers the family a specific amount or type of guardianship assistance when the Department and the guardian or potential guardian are unable to reach agreement through a negotiation or renegotiation under OAR 413-070-0917, 413-070-0939, or 413-070-0969.

(d) An applicant for a Certificate of Approval or a certified family may request a hearing in the manner set forth in OAR 413-010-0505 when the Department denies the application or revokes a certificate under 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);

(e) An applicant for a license to operate a private child-caring agency or a licensee may request a hearing in the manner set forth in OAR 413-010-0505 when the Department denies, suspends, or revokes a license or imposes a civil penalty under Child Welfare Policy II-C.1, "Licensing Umbrella Rules," (OAR 413-215-0000 to 413-215-0131);

(f) An organization or school that operates a residential care program for children and is not also a private child-caring agency may request a hearing in the manner set forth in OAR 413-010-0505 when the Department orders the organization or school to alter the conditions under which a child lives or receives schooling or denies, suspends or revokes a license under Child Welfare Policy II-C.1, "Licensing Umbrella Rules," (OAR 413-215-0000 to 413-215-0131);

(g) An applicant to adopt or an applicant for a Certificate of Approval may request a hearing in the manner set forth in OAR 413-010-0505 when the Department determines that the applicant is unfit based on the criminal offender information or a false statement regarding criminal offender information of the applicant or of another individual in the household of the applicant under Child Welfare Policy I-G.1.4, "Oregon Computerized Criminal History Checks and Nationwide Criminal History Checks through the FBI for Relative Caregivers, Foster Parents, Other Persons in the Household and Adoptive Parents for Children in the Care or Custody of DHS," (OAR 413-120-0400 to 413-120-0470).

(3) A person may request a hearing in the manner set forth in OAR 413-010-0505 when that person has the right to a contested case hearing under a statute concerning Child Welfare Programs or a rule in Chapter 413.

(4) These rules (OAR 413-010-0500 to 413-010-0535), apply to contested cases arising from the properly made hearings requests described in sections (2) and (3) of this rule. The following other rules do or do not apply as noted:

(a) OAR 137-003-0501 to 137-003-0700 apply to these contested cases, except to the extent that rules in Chapter 413 are permitted to and provide otherwise.

(b) Rules in Chapter 461 do not apply to these contested cases unless a rule in Chapter 413 expressly refers to them.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 183.411 - 183.685, 411.095, 418.005

Hist.: SOSCF 32-2001, f. 6-29-01 cert. ef. 7-1-01; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 10-2009(Temp), f. & cert. ef. 9-1-09 thru 12-28-09; CWP 20-2009, f. & cert. ef. 12-29-09; CWP 8-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

## 413-010-0501

### Definitions

The following definitions apply to these rules (OAR 413-010-0500 to 413-010-0535):

(1) "Adoption assistance" means assistance provided by the Department on behalf of an eligible adoptive child or young adult, to offset the costs associated with adopting and meeting the ongoing needs of the child or young adult. Adoption assistance may be in the form of payments, medical coverage, nonrecurring adoption expenses, or a special payment.

(2) "Adoptive family" means an individual or individuals who have legalized a parental relationship to the child through a judgment of the court.

(3) "Base rate payment" means a payment to the foster parent or relative caregiver at a rate established by the Department for the costs of providing the child or young adult with the following:

(a) Food — including the cost to cover a child's or young adult's special or unique nutritional needs;

(b) Clothing — including purchase and replacement;

(c) Housing — including maintenance of household utilities, furnishings, and equipment;

(d) Daily supervision — including teaching and directing to ensure safety and well-being at a level which is appropriate based on the child's or young adult's chronological age;

(e) Personal incidentals — including personal care items, entertainment, reading materials, and miscellaneous items; and

(f) The cost of providing transportation — including local travel associated with expenditure for gas and oil, and vehicle maintenance and repair associated with transportation to and from extracurricular, child care, recreational, and cultural activities.

(4) "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.

(5) "Certified family" means an individual or individuals who hold a current Certificate of Approval from the Department to operate a home to provide care, in the home in which they reside, to a child or young adult in the care or custody of the Department.

(6) "Child" means a person under 18 years of age.

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(7) "Foster parent" means a person who operates a home that has been approved by the Department to provide care for an unrelated child or young adult placed in the home by the Department.

(8) "Guardian" means an individual who has been granted guardianship of a child through a judgment of the court.

(9) "Guardianship assistance" means assistance provided by the Department to a guardian on behalf of an eligible child or young adult to offset the costs associated with establishing the guardianship and meeting the ongoing needs of the child or young adult. Guardianship assistance may be in the form of payments, medical coverage or reimbursement of non-recurring guardianship expenses.

(10) "Level of care payment" means the payment provided to an approved or certified family, a guardian, a pre-adoptive family or an adoptive family based on the child's or young adult's need for enhanced supervision as determined by applying the CANS algorithm to the results of the CANS screening.

(11) "Level of personal care payment" means the payment to a qualified provider for performing the personal care services for an eligible child or young adult based on the child's or young adult's need for personal care services as determined by applying the personal care services algorithm to the results of the personal care services rating scale.

(12) "Licensee" means a private child-caring agency or an organization or school that offers a residential program for children (regulated pursuant to ORS 418.327) and holds a license issued by the Department.

(13) "Participating tribe" means a federally recognized Indian tribe in Oregon with a Title IV E agreement with the Department.

(14) "Party" means a person entitled to a contested case hearing under these rules.

(15) "Pre-adoptive family" means an individual or individuals who:

(a) Has been selected to be a child's adoptive family; and

(b) Is in the process of legalizing the relationship to the child through the judgment of the court.

(16) "Potential guardian" means an individual who:

(a) Has been approved by the Department or participating tribe to be a child's guardian; and

(b) Is in the process of legalizing the relationship to the child through the judgment of the court.

(17) "Private child-caring agency" is defined by the definitions in ORS 418.205, and means a "child-caring agency" that is not owned, operated, or administered by any governmental agency or unit.

(a) A "child-caring agency" means an agency or organization providing:

(A) Day treatment for disturbed children;

(B) Adoption placement services;

(C) Residential care, including but not limited to foster care or residential treatment for children;

(D) Outdoor youth programs (defined at OAR 413-215-0911); or

(E) Other similar services for children.

(b) A child-caring agency does not include residential facilities or foster care homes certified or licensed by the Department under ORS 443.400 to 443.455, 443.830, and 443.835 for children receiving developmental disability services.

(18) "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.

(19) "Young adult" means a person aged 18 through 20 years.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 183.411 - 183.685, 411.095, 418.005

Hist.: CWP 8-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

## 413-010-0502

### Representation

(1) When a child or young adult has the right to a hearing because the Department takes an action under OAR 413-010-0500(2)(a), the foster parent or relative caregiver may:

(a) Request a hearing on behalf of the child or young adult; and

(b) Participate in the hearing as a representative on behalf of the child or young adult.

(2) When the Department takes an action to deny, reduce, or terminate a benefit or service that is provided under Title IV-E or Title XIX of the Social Security Act, a party may be represented by an attorney, a relative, a friend, or other spokesperson as authorized by federal law.

(3) In all other cases, a party may represent themselves or be represented by an attorney.

(4) The Department, with the consent of the Attorney General, has authorized its employees to represent the Department in cases involving the actions described in OAR 413-010-0500(2)(a).

(5) A Department employee acting as the Department's representative may not make legal argument on behalf of the Department.

(a) "Legal argument" includes argument on:

(A) The jurisdiction of the Department to hear the contested case;

(B) The constitutionality of a statute or administrative rule or the application of a constitutional requirement to the Department; and

(C) The application of court precedent to the facts of the particular contested case proceeding.

(b) "Legal argument" does not include presentation of a motion, evidence, examination and cross-examination of a witness, or presentation of a factual argument or arguments on:

(A) The application of a statute or administrative rule to the facts in the contested case;

(B) Comparison of a prior Department action when handling a similar situation;

(C) The literal meaning of a statute or administrative rule directly applicable to an issue in the contested case;

(D) The admissibility of evidence; and

(E) The correctness of a procedure being followed in the contested case hearing.

(6) The Department may be represented in any contested case proceeding by the Department of Justice.

(7) Contested cases under these rules are not open to the public and are closed to nonparticipants, except nonparticipants may attend subject to the consent of each party and the Department.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 183.411 - 183.685, 411.095, 418.005

Hist.: CWP 8-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

## 413-010-0505

### Hearing Requests

(1) To request a hearing under OAR 413-010-0500(2)(a):

(a) The party or the party's representative must complete and sign a hearing request form approved by the Department; and

(b) The form must be received by the Department not later than 30 days following the mailing date or date of personal delivery of the notice.

(2) Requests for a hearing under OAR 413-010-0500(2)(b)-(g) must be in writing and must be received by the Department by the date specified in the Department's notice.

(3) In the event a request for a hearing is not timely, OAR 137-003-0528 applies, except to the extent provided otherwise in section (5) of this rule.

(4) If a contested case notice was sent by regular mail, and the party or party's representative indicates that neither the party nor the party's representative received or had actual knowledge of the contested case notice, the Department must advise the party or party's representative of the right to request a hearing under section (5) of this rule.

(5) When the Department receives a hearing request that is not filed within the timeframe required by section (1) or section (2) of this rule but is filed no later than 60 days after a notice becomes a final order under OAR 413-010-0510(3):

(a) If the Department finds that the party and party's representative did not receive the written notice and did not have actual knowledge of the notice, the Department refers the request for a hearing to the Office of Administrative Hearings (OAH) for a contested case hearing on the merits of the Department's action described in the notice.

(b) The Department may refer the request for a hearing to the OAH for a contested case proceeding to determine whether the party or party's representative received the written notice or had actual knowledge of the notice. At the hearing, the Department must show that the party or party's representative had actual knowledge of the notice or that the Department mailed the notice to the correct address of the party or party's representative.

(6) Upon receipt of a hearing request that is not described in OAR 413-010-0500(2), the Department may enter an order that the hearing request is not eligible for referral to OAH. Alternately, the Department may refer a hearing request to OAH for a decision on the question of whether there is a right to a contested case hearing.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 183.411 - 183.685, 411.095, 418.005, 2009 OL ch. 126

Hist.: CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 9-2009(Temp), f. & cert. ef. 8-12-09 thru 12-28-09; CWP 20-2009, f. & cert. ef. 12-29-09; CWP 8-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

# ADMINISTRATIVE RULES

## 413-010-0510

### Notice

(1) When the Department takes any of the actions described in OAR 413-010-0500(2), the Department issues a written notice as described in OAR 137-003-0505 to the person that has the right to a contested case hearing.

(2) In addition to the information required by OAR 137-003-0505, when the Department takes any of the actions described in OAR 413-010-0500(2)(a)-(c), the written notice also must:

(a) Specify the date the notice is mailed or personally delivered;

(b) Specify the action the Department intends to take and the effective date of the action. If benefits are reduced or closed to reflect cost-of-living adjustments in benefits or other mass change under a program operated by a federal agency or to reflect a mass change to payments in another program operated by the Department, it is sufficient to meet this requirement that the notice state all of the following:

(A) The general nature of the change.

(B) Examples of how the change affects the benefits of the group of affected clients.

(C) The month in which the change will take place.

(c) Specify the circumstances under which payments or benefits are continued if a hearing is requested and whether continued payments or benefits may be subject to recovery by the Department if the Department's action is upheld; and

(d) If the Department intends to terminate benefits or payments because the individual is ineligible for the benefits or payments or the program is terminated, state that the individual may reapply for assistance if circumstances affecting the eligibility of the individual change.

(3) Department notices indicate that the Department designates the record of the proceeding, including information in the Department's file or files and materials added by a party, as the record upon default. The Department's notice becomes a final order:

(a) The day after the date prescribed in the notice as the deadline for requesting the hearing if the party fails to request a hearing; or

(b) The day the Department or OAH mails an order dismissing the hearing request because the party withdraws the request or fails to appear on the date and at the time set for the hearing.

(4) When the Department terminates or reduces benefits or services under subsections (2)(a) through (2)(c) of OAR 413-010-0500, the Department must send the notice:

(a) At least 10 calendar days before the effective date of the action, except as provided in subsection (b) of this section.

(b) When the Department changes a benefit standard that results in the reduction, suspension or closure of a grant of public assistance:

(A) At least 30 days before the effective date of the action; or

(B) At least 10 working days before the effective date of the action when the Department has fewer than 60 days before the effective date to implement the proposed change.

(c) For purposes of this rule, the term "changes a benefit standard" means a change to the applicable inflation-adjusted contribution, income, or payment standard. It does not include the annual adjustment to a standard based on a federal or state inflation rate.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 183.411 - 183.685, 411.095, 418.005

Hist.: CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 20-2009, f. & cert. ef. 12-29-09; CWP 8-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

## 413-010-0515

### Continuation of Benefits

(1) Except as otherwise provided in this rule, a recipient of benefits is entitled to receive continuing benefits when the Department takes any action to suspend, reduce, or terminate benefits or services as described in subsections (2)(a)(A)-(F), (2)(b) or (2)(c) of OAR 413-010-0500, and the Department has:

(a) Provided at least 10 days notice of such action as required by OAR 413-010-0510;

(b) Received a request for a hearing from the recipient not later than 30 days following the mailing date or date of personal delivery of the notice, whichever is earlier; and

(c) Received such request prior to the effective date of the action.

(2) Any continuing benefits authorized by this rule are subject to recovery by the Department to the extent that the Department's action is sustained or otherwise upheld.

(3) Continuing benefits may not be provided:

(a) When the recipient specifically requests that he or she not receive continued assistance pending a hearing decision;

(b) After a final order is issued by the Department;

(c) After a change affecting the recipient's grant, as described in subsections (2)(a)(A), (B), (D), and (E), (2)(b) or (2)(c) of OAR 413-010-0500, occurs while the hearing decision is pending and the recipient fails to request a hearing after notice of the change; or

(d) After a determination is made at a hearing that the sole issue is one of state or federal law or policy or change in state or federal law and not one of incorrect grant computation.

(4) Except as otherwise provided in this rule, if the Department provides less than 10 days notice of an action to suspend, reduce, or terminate benefits or services as described in subsections (2)(a)(A), (B), (D), and (E), (2)(b) or (2)(c) of OAR 413-010-0500, a recipient of benefits is entitled to receive continuing benefits if the Department:

(a) Receives a request for a hearing from the recipient within 10 days of the mailing of the notice of the action; and

(b) Determines that the action resulted from other than the application of federal or state law or policy or a change in state or federal law.

(5) Except as otherwise provided in this rule, if the Department provides less than 10 days notice of an action to suspend, reduce, or terminate benefits or services as described in subsection (2)(a)(C) or (F) of OAR 413-010-0500, or 5 days notice in cases of probable fraud as described in 42 CFR 431.214, a recipient of benefits is entitled to receive continuing benefits if the Department:

(a) Receives a request for a hearing from the recipient within 10 days of the mailing of the notice of the action; and

(b) Determines that the action resulted from other than the application of federal or state law or policy.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 183.411 - 183.685, 411.095, 418.005

Hist.: CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 9-2009(Temp), f. & cert. ef. 8-12-09 thru 12-28-09; CWP 20-2009, f. & cert. ef. 12-29-09; CWP 8-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

## 413-010-0520

### Informal Conference

(1) The Department representative and the party or party's representative may have an informal conference to discuss any of the matters listed in OAR 137-003-0575(4). The informal conference also may be used to:

(a) Provide an opportunity for the Department and the party to settle the matter;

(b) Ensure the party understands the reason for the action that is the subject of the hearing request;

(c) Give the party an opportunity to review the documents that are the basis for that action;

(d) Give the party an opportunity to review the rules that support the Department's action;

(e) Give the party and the Department the chance to correct any misunderstanding of the facts; and

(f) Give the Department an opportunity to review its action.

(2) The party may, at any time prior to the hearing date, request an additional informal conference with the Department representative.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 183.411 - 183.685, 411.095, 418.005

Hist.: CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 20-2009, f. & cert. ef. 12-29-09; CWP 8-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

## 413-010-0525

### Burden of Proof

In any contested case covered by these rules (OAR 413-010-0500 to 413-010-0535), the party has the burden of proof.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 183.411 - 183.685, 411.095, 418.005

Hist.: CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 20-2009, f. & cert. ef. 12-29-09; CWP 8-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

## 413-010-0530

### Withdrawals and Dismissals

(1) Withdrawals.

(a) A party or party's representative may withdraw a request for a hearing orally or in writing at any time before a final order has been issued on the contested case.

(b) Following a withdrawal under subsection (a) of this section, the Department or the Office of Administrative Hearings sends an order dismissing the hearing request to the party's last known address. The party may cancel the withdrawal if a request to cancel the withdrawal is received by the Department representative up to the tenth work day following the date such an order is sent. If the party withdrew the hearing request in writing, the Department must receive a timely written request to cancel the withdrawal.



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(c) The Department may withdraw any pending referral from OAH at any time before a final order is served when:

(A) The Department provides to the party the relief sought; or

(B) The Department and the party reach an agreement under ORS 183.417(3).

(2) Dismissals. An order dismissing a hearing request is issued when the party or the party's representative does not appear at the time and place specified for the hearing.

(a) The dismissal by order is effective on the date the order is issued.

(b) The Department may reconsider and cancel the dismissal under OAR 137-003-0675 on request of the party on a timely showing that the party was unable to attend the hearing and unable to request a postponement for reasons beyond party's reasonable control. The Department may refer the reconsideration decision to OAH.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 183.411 - 183.685, 411.095, 418.005

Hist.: CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 20-2009, f. & cert. ef. 12-29-09; CWP 8-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

## 413-010-0535

### Proposed and Final Orders

(1) When the Department refers a contested case under these rules (OAR 413-010-0500 to 413-010-0535) to OAH, the Department indicates on the referral whether the Department is authorizing:

(a) A proposed order;

(b) A proposed and final order (OAR 137-003-0645(4)); or

(c) A final order.

(2) During or after a contested case hearing, when it is determined that the correct application of OAR 413-020-0230, 413-090-0133, or 413-090-0150 requires the consideration of facts that differ from the facts on which the Department made a decision to deny, reduce, or terminate either a level of care payment or a level of personal care payment, the Department will reapply OAR 413-020-0230, 413-090-0133, or 413-090-0150 based on new or different facts.

(3) When the Department authorizes either a proposed order or a proposed and final order:

(a) The party may file written exceptions and written argument to be considered by the Assistant Director for Children, Adults, and Families Division or the Assistant Director's designee. The exceptions and argument must be received at the location indicated in the order not later than the tenth day after service of the proposed order or proposed and final order.

(b) If the party does not submit timely exceptions or argument following a proposed and final order, the proposed and final order becomes a final order on the eleventh day after service of the proposed and final order unless the Department has issued a revised order or has notified the parties and the administrative law judge that the Department will issue the final order.

(c) When the Department receives timely exceptions or argument, the Department issues the final order, unless the Department requests that OAH issue the final order under OAR 137-003-0655.

(4) A request by a party for reconsideration or rehearing must be filed with the person who signed the final order within the time limits of OAR 137-003-0675.

(5) A final order should be issued or the case otherwise resolved no later than 90 days following the receipt of the request for a hearing.

(6) A final order is effective immediately upon being signed or as otherwise provided in the order.

(7) The Department reserves the right to withdraw or amend any final order issued by OAH or the Department at any time permitted by law.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 183.411 - 183.685, 411.095, 418.005

Hist.: CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 20-2009, f. & cert. ef. 12-29-09; CWP 8-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

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**Rule Caption:** Changing OARs affecting Child Welfare programs.

**Adm. Order No.:** CWP 9-2011(Temp)

**Filed with Sec. of State:** 6-30-2011

**Certified to be Effective:** 6-30-11 thru 12-27-11

**Notice Publication Date:**

**Rules Amended:** 413-020-0200, 413-020-0210, 413-020-0230, 413-020-0233, 413-020-0236, 413-020-0240, 413-020-0245, 413-020-0255

**Subject:** These rules about enhanced supervision and supervision planning are being changed because the Department is clarifying the structure in which decisions regarding level of care payments are made for guardianship assistance and adoption assistance. These

rules are also being amended to fully implement the Fostering connection to Success and Increasing Adoptions Act of 2008 (122 Stat. 3949-3981) that provide for Guardianship Assistance payments and Adoption Assistance payments for eligible children up to age 21. These rules are also being amended to explain the Department's responsibility for decision-making in level of care payments.

OAR 413-020-0200 about the purpose of the Department's rules (OAR 413-020-0200 to 413-020-0255) regarding the Department's responsibilities regarding enhanced supervision is being amended to clarify the purpose of the rules.

OAR 413-020-0210 about the definitions of key terms used in these rules is being amended to add current and remove and revise outdated definitions of certain terms used throughout these rules.

OAR 413-020-0230 about the referral for and review of the CANS screening is being amended to restate the referral and review of CANS screenings for children and young adults in substitute care and children and young adults receiving or about to receive guardianship assistance or adoption assistance.

OAR 413-020-0233 about when a supervision plan is required is being amended to restate when a supervision plan is or is not required subsequent to determination that a child needs enhanced supervision.

OAR 413-020-0236 is being amended to restate the Department responsibilities for supervision plans and use of physical restraint.

OAR 413-020-0240 is being amended to restate the limitations and reporting requirements when a physical restraint is used.

OAR 413-020-0245 is being amended to restate the monitoring responsibilities of the Department when a child or young adult has a supervision plan.

OAR 413-020-0255 is being amended to restate training required for planned use of physical restraint.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 413-020-0200

### Purpose

The purpose of these rules (OAR 413-020-0200 to 413-020-0255), is to describe the responsibilities of the Department to:

(1) Identify the supervision needs of a child or young adult in substitute care with a certified family;

(2) Develop a supervision plan describing the actions and activities provided by a certified family, the Department, and other individuals to meet the child or young adult's need for enhanced supervision;

(3) Describe the responsibilities of the certified family and the Department when physical restraint is used;

(4) Monitor the completion of behavior and crisis management training when physical restraint is included in a child or young adult's supervision plan; and

(5) Conduct a CANS screening during the negotiation of guardianship assistance pursuant to OAR 413-070-0900 through 413-070-0974 or negotiation of adoption assistance pursuant to OAR 413-130-0000 through 413-130-0130.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 4-1996, f. & cert. ef. 9-11-96; CWP 3-2003, f. & cert. ef. 1-7-03; CWP 6-2007, f. & cert. ef. 5-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 9-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

## 413-020-0210

### Definitions

The following definitions apply to OAR 413-020-0200 to 413-020-0255:

(1) "Adoption assistance agreement" means a written agreement, binding on the parties to the agreement, between the Department and the pre-adoptive family or adoptive family of an eligible child or young adult, setting forth the assistance the Department is to provide on behalf of the child or young adult, the responsibilities of the pre-adoptive family or adoptive family and the Department, and the manner in which the agreement and amount of assistance may be modified or terminated.

(2) "Adoptive family" means an individual or individuals who have legalized a parental relationship to the child through a judgment of the court.

(3) "BRS" means Behavior Rehabilitation Services, a Medicaid funded program that provides behavioral intervention, counseling, or skill build-

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ing services in a professional, shelter, or residential (including therapeutic foster care formerly referred to as proctor care) placement setting.

(4) "CANS screener" means an individual, who performs CANS screenings under the supervision of the Level of Care Manager, under a contract with the Department, and who annually completes the training in the use of the Oregon CANS Comprehensive Screening Tool with a documented reliability score of 0.70 or greater.

(5) "CANS screening" means Child and Adolescent Needs and Strengths screening, a process of gathering information on a child or young adult's needs and strengths used for one or more of the following purposes:

(a) Identifying case planning, service planning, and supervision needs of the child or young adult in substitute care with a certified family;

(b) Determining the level of care payment while in substitute care with a certified family; and

(c) Determining the level of care payment included in an adoption assistance agreement or guardianship assistance agreement.

(6) "Certified family" means an individual or individuals who hold a current Certificate of Approval from the Department to operate a home to provide care, in the home in which he or she resides, to a child or young adult in the care or custody of the Department.

(7) "Certifier" means a Child Welfare 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 or not 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 rules.

(8) "Child" means a person under 18 years of age.

(9) "Department" means Department of Human Services, Child Welfare.

(10) "Enhanced supervision" means the additional support, direction, observation, and guidance necessary to promote and ensure the safety and well-being of a child or young adult when the child or young adult qualifies for a level of care payment.

(11) "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.

(12) "Guardian" means an individual who has been granted guardianship of the child through a judgment of the court.

(13) "Guardianship assistance" means assistance provided on behalf of an eligible child or young adult to offset the costs associated with establishing the guardianship and meeting the ongoing needs of the child or young adult. Guardianship assistance may be in the form of payments, medical coverage or reimbursement of nonrecurring guardianship expenses.

(14) "Guardianship assistance agreement" means a written agreement, binding on the parties to the agreement, between the Department and the guardian of an eligible child or young adult setting forth the assistance the Department is to provide on behalf of the child or young adult, the responsibilities of the guardian and the Department, and the manner in which the agreement and amount of assistance may be modified or terminated.

(15) "Level of care payment" means the payment provided to an approved or certified family, a guardian, a pre-adoptive family or an adoptive family based on the child or young adult's need for enhanced supervision as determined by applying the CANS algorithm to the results of the CANS screening.

(16) "Mechanical restraint" means the use of any physical device to involuntarily restrain the movement of all or a portion of a child's body as a means of controlling his or her physical activities in order to protect the child or other persons from injury. Mechanical restraint does not apply to movement restrictions stemming from medicinal, dental, diagnostic, or surgical procedures which are based on widely accepted, clinically appropriate methods of treatment by qualified professionals operating within the scope of their licensure.

(17) "Participating tribe" means a federally recognized Indian tribe in Oregon with a Title IV-E agreement with the Department.

(18) "Physical restraint" means the act of restricting a child or young adult's voluntary movement as an emergency measure to manage and protect the child or young adult or others from injury when no alternate actions are sufficient to manage the child or young adult's behavior. Physical restraint does not include temporarily holding a child or young adult to assist him or her or assure his or her safety, such as preventing a child from running onto a busy street.

(19) "Potential guardian" means an individual who:

(a) Has been approved by the Department or participating tribe to be a child's guardian; and

(b) Is in the process of legalizing the relationship to the child through the judgment of the court.

(20) "Pre-adoptive family" means an individual or individuals who:

(a) Has been selected to be a child's adoptive family; and

(b) Is in the process of legalizing the relationship to the child through the judgment of the court.

(21) "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 placed in the home by the Department.

(22) "Seclusion" means the involuntary confinement of a child alone in a specifically designed room from which the child is physically prevented from leaving.

(23) "Supervision plan" means a documented set of strategies that is developed to assist a relative caregiver or foster parent in providing the additional support, observation, direction, and guidance necessary to promote and ensure a child or young adult's safety and well-being.

(24) "Young adult" means a person aged 18 through 20 years.

Stat. Auth.: ORS 418.005 & 418.340

Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 4-1996, f. & cert. ef. 9-11-96; SCF 8-1997, f. 8-12-97, cert. ef. 8-25-97; CWP 3-2002, f. & cert. ef. 1-7-03; CWP 6-2007, f. & cert. ef. 5-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 9-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

## 413-020-0230

### Referral for and Review of the CANS Screening

(1) The caseworker of the child or young adult must complete a CANS screening referral:

(a) Within the first 20 days of a child's initial placement in substitute care with a certified family;

(b) Unless subsection (d) applies, ten months from the date of the most recent CANS screening and annually thereafter when the child or young adult has continuously lived with a certified family and the certified family has received a level of care payment; and

(c) Unless subsection (d) applies, five business days after a child or young adult, whose initial placement in substitute care was a BRS placement, moves to the home of a certified family.

(d) When a child's permanency plan is adoption or guardianship and the caseworker has submitted an adoption assistance application or a guardianship assistance application, the caseworker must consult with the adoption assistance and guardianship assistance unit prior to submitting a referral.

(2) After consultation with and approval of a supervisor, a child or young adult's caseworker may complete and submit to the Level of Care Manager a CANS screening referral under any of the following circumstances unless subsection (1)(d) of this rule applies:

(a) When a child or young adult currently living with a certified family has never had a CANS screening and is currently exhibiting ongoing behavior or functioning that may indicate the need for enhanced supervision and a level of care payment;

(b) When a child or young adult returns to a placement with a certified family after a BRS placement of six months or longer;

(c) When a child or young adult is living with a certified family and the certified family has observed ongoing, documented changes in behavior or functioning which:

(A) Have not improved after a revision of the supervision actions and activities provided by the certified family and other individuals; or

(B) Endanger the child or young adult's safety or the safety of others.

(3) An adoption assistance coordinator or guardianship assistance coordinator may complete and submit a CANS screening referral to the Level of Care Manager under the following circumstances:

(a) Written documentation of the child or young adult's current behavior and functioning has been submitted to the adoption assistance and guardianship assistance coordinator by one of the following individuals:

(A) A child or young adult's adoptive family, regardless of whether there has been a previous CANS screening;

(B) A child's pre-adoptive family when the child is not in the legal custody of the Department;

(C) A child or young adult's guardian, regardless of whether there has been a previous CANS screening; or

(D) A child or young adult's potential guardian who has been approved by a participating tribe.

(b) The written documentation submitted under subsection (a) of this section demonstrates ongoing behavior or functioning indicating the need

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for enhanced supervision and a level of care payment, and one of the following apply:

- (A) A CANS screening has never been completed;
- (B) A CANS screening has not been completed within the past twelve months; or
- (C) The child or young adult exhibits a significant, ongoing change in behavior since the CANS screening that was completed within the 12 month period following the previous CANS screening.
- (4) The Level of Care Manager, within five business days of receipt of a CANS screening referral submitted under section (2) or (3) of this rule:
  - (a) May approve a CANS screening after reviewing the referral, if the child or young adult's behavior and functioning, as described in the referral, indicates a CANS screening is needed to assess the need for enhanced supervision and a level of care payment;
  - (b) Must notify the individual who submitted the CANS screening referral whether a CANS screening has been approved and the basis for the decision; and
  - (c) Must send an approved CANS screening referral to a CANS screener.
- (5) A CANS screener, upon receipt of the CANS screening referral submitted under section (1) or section (4) of this rule must:
  - (a) Review the referral information;
  - (b) Contact the caseworker, when the child is in substitute care, to gather information about the child or young adult's strengths and needs;
  - (c) Contact the certified family, pre-adoptive family, adoptive family, potential guardian identified by a participating tribe, or guardian of the child or young adult and gather information about the child or young adult's strengths and needs;
  - (d) Contact the child or young adult and other individuals who provide services to the child or young adult as appropriate and gather sufficient information to understand the child or young adult's strengths and needs to complete the CANS screening; and
  - (e) When a child or young adult has current suicidal ideation or intent:
    - (A) Notify the child or young adult's caseworker or adoption or guardianship assistance coordinator and, if applicable, notify the pre-adoptive family, adoptive family, potential guardian, or guardian; and
    - (B) Immediately develop a supervision plan with the certified family when the child or young adult is in substitute care with a certified family.
  - (6) After the CANS screener has gathered information regarding the child or young adult's strengths and needs, as described in subsections (5)(a)-(d), the CANS screener rates each element of a child or young adult's behavior and functioning on a scale of zero to three, in a manner consistent with the principles of the Child and Adolescent Needs and Strengths Comprehensive Screening Tool appropriate for the child or young adult's age. The CANS screener documents the appropriate rating for each element and provides written explanation for any rating of either 2 or 3 on an element that is a need and any rating of 0 or 1 on an element that is a strength.
    - (a) When the child is five years old or younger, the CANS screener rates the child using the DHS 9601 — Child and Adolescent Needs and Strengths Comprehensive Screening Tool Ages Birth through Five, dated August 2009, and revised in June 2011, which by reference is incorporated in OAR 413-090-0010(2)(f)(A).
    - (b) When the child or young adult is six years old or older, the CANS screener rates the child or young adult using the DHS 9602 — Child and Adolescent Needs and Strengths Comprehensive Screening Tool ages Six through Twenty dated July, 2009, and revised in June 2011, which by reference is incorporated in OAR 413-090-0010(2)(f)(B).
    - (c) The Department maintains these documents on the Department's website. Printed copies of these documents may be obtained by contacting the Department of Human Services, Children, Adults and Families, ATTN: Level of Care Manager, 500 Summer Street NE, E-93, Salem, OR 97301.
    - (7) The CANS screener must complete the activities in sections (5) and (6) and submit the CANS screening results to the Level of Care Manager within fifteen business days following the receipt of the referral.
    - (8) Within ten business days of the receipt of the CANS screening results, the Level of Care Manager or designee:
      - (a) Reviews the CANS screening results;
      - (b) Contacts the CANS screener when results appear inconsistent with the referral information or documentation of a child or young adult's strengths and needs and may instruct the CANS screener to:
        - (A) Gather additional information;
        - (B) Reapply the CANS ratings; and
        - (C) Resubmit the CANS screening results.
      - (c) Approves the CANS screening results unless subsection (b) applies; and

(d) Applies the CANS algorithm which by reference is incorporated in OAR 413-090-0010(2)(f)(C) to the approved CANS screening results to determine whether:

- (A) The child or young adult living with a certified family is eligible for a level of care payment and requires enhanced supervision; or
- (B) The child or young adult eligible for adoption assistance or guardianship assistance is eligible for a level of care payment.
- (9) The Level of Care Manager may approve a revision of the ratings of an approved CANS screening when new or different information relevant to the correct application of the CANS screening has been presented:
  - (a) In preparation for a contested case hearing requested under OAR 413-010-0500(2)(a)-(c):
    - (b) During an informal conference under OAR 413-010-0520; or
    - (c) During the renegotiation of an adoption assistance agreement under OAR 413-130-0075 or a guardianship assistance agreement under OAR 413-070-0969.
  - (10) The Level of Care Manager or designee sends the CANS screening results to the following individuals:
    - (a) The child or young adult's caseworker and the certified family, with whom the child or young adult is living, on behalf of the child or young adult; or
    - (b) The adoption assistance and guardianship assistance coordinator and child or young adult's pre-adoptive family, adoptive family, guardian or the potential guardian identified by a participating tribe.

(11) When the caseworker receives a child or young adult's CANS screening results, the caseworker must:

- (a) Contact the certified family to review the CANS screening results;
- (b) When the CANS screening results indicated the child or young adult currently has suicidal ideation or intent, review the supervision plan developed during the CANS screening no later than one business day after the receipt of the CANS screening results to determine whether the plan continues to be appropriate;
- (c) Incorporate the needs and strengths identified in the CANS screening into the case plan; and
- (d) Determine whether a supervision plan must be developed, modified, or terminated under OAR 413-020-0233 and 413-020-0236.

Stat. Auth.: ORS 418.005 & 418.340  
Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340  
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 4-1996, f. & cert. ef. 9-11-96; CWP 3-2002, f. & cert. ef. 1-7-03; CWP 6-2007, f. & cert. ef. 5-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 9-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

(11) When the caseworker receives a child or young adult's CANS screening results, the caseworker must:

- (a) Contact the certified family to review the CANS screening results;
- (b) When the CANS screening results indicated the child or young adult currently has suicidal ideation or intent, review the supervision plan developed during the CANS screening no later than one business day after the receipt of the CANS screening results to determine whether the plan continues to be appropriate;
- (c) Incorporate the needs and strengths identified in the CANS screening into the case plan; and
- (d) Determine whether a supervision plan must be developed, modified, or terminated under OAR 413-020-0233 and 413-020-0236.

Stat. Auth.: ORS 418.005 & 418.340  
Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340  
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 4-1996, f. & cert. ef. 9-11-96; CWP 3-2002, f. & cert. ef. 1-7-03; CWP 6-2007, f. & cert. ef. 5-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 9-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

## 413-020-0233

### When a Supervision Plan is Required

(1) The caseworker must develop a supervision plan with the certified family with whom the child or young adult lives within 30 days of:

- (a) The receipt of the CANS screening results that indicates enhanced supervision is necessary to maintain the safety and support the well-being of the child or young adult and the child or young adult qualifies for a level of care payment; or
- (b) When a child or young adult who has enhanced supervision needs and is receiving a level of care moves from one certified family to another certified family.

(2) A supervision plan is not required for a level of care payment included in an adoption assistance agreement or guardianship assistance agreement.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005  
Hist.: CWP 6-2007, f. & cert. ef. 5-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 9-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

## 413-020-0236

### Development, Documentation, and Termination of a Supervision Plan

(1) After the caseworker has reviewed the CANS screening results for a child or young adult living with a certified family that indicates the child or young adult has enhanced supervision needs and qualifies for a level of care payment, the caseworker must:

- (a) Contact the certified family to explain the supervision needs identified in the CANS screening results; and
- (b) During a meeting with the certified family, the child or young adult, as appropriate, and others who may participate in a supervision plan, explain the supervision requirements necessary to maintain the safety and support the well-being of the child or young adult and develop a supervision plan that meets the supervision needs of the child or young adult.



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(A) If the child or young adult qualifies for Level 1 (moderate needs), the supervision plan must require the certified family to provide an environment with the additional support, direction, observation, and guidance from the certified family necessary to ensure a child or young adult's safety and well-being, beyond the level of supervision that typically is required for a child or young adult of the same age.

(B) If the child or young adult qualifies for Level 2 (intermediate needs), the supervision plan must require the certified family to provide a structured environment, additional support, direction, observation, and guidance necessary to ensure a child or young adult's safety and well-being, beyond the level of supervision that typically is required for a child or young adult of the same age.

(C) If the child or young adult qualifies for Level 3 (advanced needs), the supervision plan must require the certified family to provide a highly structured environment, additional support, direction, observation, and guidance necessary to ensure a child or young adult's safety and well-being, beyond the level of supervision that typically is required for a child or young adult of the same age.

(2) The supervision plan must include:

(a) The supervision actions or activities that are to be provided by the certified family and other individuals to meet the child or young adult's identified needs. Examples of appropriate supervision actions or activities may include, but are not limited to: proactive use of space, use of routine, structure of the environment, positive reinforcement, and de-escalation techniques;

(b) The actions and assistance the Department will provide to support the certified family in addressing the supervision needs of the child or young adult and to maintain the child or young adult in the home;

(c) The actions the child or young adult will take to support the supervision plan;

(d) The persons responsible for monitoring the child or young adult's supervision needs and the supervision actions and activities;

(e) How the persons responsible for monitoring the child or young adult's supervision needs and the supervision actions and activities are to communicate with each other; and

(f) A requirement that the supervision plan be reviewed during the first face-to-face contact described in OAR 413-080-0059(1)(c) after the date the supervision plan is signed by the individuals identified in section (3) of this rule.

(3) The supervision plan must be signed by:

(a) The caseworker ;

(b) The certified family;

(c) The child or young adult, if able; and

(d) Any other individuals who are to provide specific actions or activities in the supervision plan.

(4) The supervision plan must be approved by the caseworker's supervisor.

(5) A supervision plan may include physical restraint as a supervision action or activity only if the certified family has completed the physical restraint training requirements described in OAR 413-020-0255.

(6) A supervision plan that authorizes a certified family to use physical restraint must:

(a) Focus on intervention strategies that are designed to modify a child or young adult's behavior without the need for physical restraint;

(b) Explain that a physical restraint is to be used only when the child or young adult's behavior poses an imminent danger to self or others, and when no alternate actions are sufficient to stop a child or young adult's behavior;

(c) Be approved by the Child Welfare program manager; and

(d) Require the certified family:

(A) To document and report the circumstances of each use of physical restraint in writing as soon as reasonably possible after the use of physical restraint on a form approved by the Department, which explains:

(i) The behavior that required the use of physical restraint;

(ii) The specific attempts to stop the child or young adult's behavior without the use of physical restraint;

(iii) The time the physical restraint started; and

(iv) The time the physical restraint ended.

(B) To orally report to the child or young adult's caseworker or the caseworker's supervisor within one business day of the physical restraint; and

(C) To submit the documentation required in paragraph (A) to the child or young adult's caseworker within two business days after the use of physical restraint.

(7) The caseworker must provide a copy of the signed supervision plan to the certified family and the certified family's certifier, and file a copy in the Department's information system.

(8) When a child or young adult has a supervision plan and the CANS screening results indicate that the child or young adult no longer has enhanced supervision needs and no longer qualifies for a level of care payment, the caseworker must:

(a) Terminate the supervision plan;

(b) Document in the Department's information system the date the supervision plan terminated and the reason the plan terminated; and

(c) Notify the certified family and the certified family's certifier that the supervision plan terminated and the reason the plan terminated.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 6-2007, f. & cert. ef. 5-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 9-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

### 413-020-0240

#### Use of Physical Restraint

(1) A physical restraint may only be used by a certified family if the behavior of a child or young adult places the child or young adult or others in imminent risk of harm, and only if good judgment indicates that a physical restraint may safely be implemented.

(2) Physical restraint must be implemented with the least force necessary to prevent the risk of harm to self or others and should end as soon as the risk of harm no longer exists.

(3) If the behavior of a child or young adult places the child or young adult or others in imminent risk of harm, and good judgment indicates that a physical restraint cannot be implemented safely, the certified family must call the local law enforcement agency to request intervention. The certified family must:

(a) Orally report the incident to the caseworker and the caseworker's supervisor as soon as reasonably possible;

(b) Document the incident in writing on a form approved by the Department; and

(c) Submit the completed form to the caseworker within two business days.

(4) If the child or young adult is injured during the incident, whether or not a physical restraint is used, the certified family immediately must notify the Department's emergency 24-hour contact.

(5) A certified family may not use mechanical restraint or seclusion of a child or young adult in an emergency or at any other time as a supervision action or activity.

(6) Notwithstanding the training required in OAR 413-020-0255, when a situation arises and the behavior of a child or young adult places the child or young adult or another individual in imminent risk of harm and if good judgment indicates that a physical restraint may safely be implemented, the certified family may use a physical restraint even when:

(a) The certified family has not attended Behavior and Crisis Management Training; or

(b) The child or young adult does not have a supervision plan.

(c) If physical restraint is used under this section, the certified family must document and report the incident in accordance with the requirements of OAR 413-020-0236(6)(c).

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 4-1996, f. & cert. ef. 9-11-96; SOSCF 8-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 3-2002, f. & cert. ef. 1-7-03; CWP 6-2007, f. & cert. ef. 5-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 9-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

### 413-020-0245

#### Responsibilities in Monitoring a Child or Young Adult's Supervision in a Certified Family

(1) During each face-to-face contact described in OAR 413-080-0059, in addition to assessing the safety of the child or young adult, the caseworker must determine:

(a) Whether the certified family is meeting the supervision needs of the child or young adult;

(b) Whether the supervision needs of the child or young adult have changed.

(c) If there is a current supervision plan, whether the supervision actions and activities described in the supervision plan are effective in meeting the child or young adult's supervision needs.

(2) If, after assessing the safety of the child or young adult as described in OAR 413-080-0059(2)(a), the caseworker determines that the

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child or young adult currently is safe in the home but his or her supervision needs are not being met, the caseworker must:

(a) Consult with the certified family's certifier or the certifier's supervisor to determine if available resources or training are able to provide the additional support the certified family may need to meet the child or young adult's supervision needs;

(b) If there is a current supervision plan for the child or young adult, determine whether the supervision plan should be revised, and if so, meet with the certified family to revise the plan; and

(c) Determine whether there has been an observed, ongoing change in a child or young adult's behavior or functioning such that the observed changes must be documented and submitted with a CANS screening under referral OAR 413-020-0230(2).

(3) The caseworker documents the monitoring activities described in this rule in the Department's information system.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005  
Hist.: CWP 6-2007, f. & cert. ef. 5-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 9-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

## 413-020-0255

### Training and the Planned Use of Physical Restraint

(1) The Department has approved and schedules Behavior and Crisis Management Training as the standard training curriculum for any certified family who requires training on crisis management and the use of physical restraint. The training curriculum focuses on strengthening a certified family's supervision skills and instructs the certified family in the use of a physical restraint as a supervision action.

(2) Before implementing a supervision plan that authorizes a certified family to use physical restraint, the caseworker must consult with the certifier to confirm that the certified family has completed Behavior and Crisis Management Training.

(3) A foster care coordinator or designee may approve comparable behavior and crisis management training obtained by a certified family for a specific child or young adult in place of Behavior and Crisis Management Training if:

(a) The training was selected by a school district and used in the school; or

(b) The training was approved by the Department of Human Services, Addictions and Mental Health Division and used in a Children's Intensive Mental Health Treatment Services program.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005  
Hist.: CWP 6-2007, f. & cert. ef. 5-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 9-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

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**Rule Caption:** Changing OARs affecting Child Welfare programs.

**Adm. Order No.:** CWP 10-2011(Temp)

**Filed with Sec. of State:** 6-30-2011

**Certified to be Effective:** 6-30-11 thru 12-27-11

**Notice Publication Date:**

**Rules Amended:** 413-070-0063

**Subject:** OAR 413-070-0063 is being amended to clarify the definition of the term relative as used in rules that set out the Department's responsibility to search for and engage a child or young adult's relatives. This amendment also aligns the definition with the definition of the term "relative" used in other child welfare rules.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 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 parent of the child or young adult:

(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 tribe of the child or young adult 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 parent of the child or young adult or a former registered domestic partner of the parent of the child or young adult 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 sibling of the child or young adult.

(F) The unrelated legal or biological father or mother of a half-sibling of the child or young adult when the half-sibling of the child or young adult is living with the unrelated legal or biological father or mother.

(c) An individual identified by the child or young adult or the family of the child or young adult, or an individual who self-identifies, related to the child or young adult through the parent of the child or young adult by

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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 by the family of the child or young adult; and

(B) An individual who had an emotionally significant relationship with the child or young adult or the family of the child or young adult prior to the time the Department placed the child in substitute care.

(e) For eligibility for the Guardianship Assistance program:

(A) A stepparent is considered a parent and is not a relative for the purpose of eligibility for Guardianship Assistance 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 only be considered a relative for the purpose of eligibility for Guardianship Assistance and only when the requirements of all of the following subparagraphs are met:

(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) The Department has approved 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.

(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; CWP 10-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

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**Rule Caption:** Changing OARs affecting Child Welfare programs.

**Adm. Order No.:** CWP 11-2011(Temp)

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**Notice Publication Date:**

**Rules Amended:** 413-070-0900, 413-070-0905, 413-070-0909, 413-070-0917, 413-070-0919, 413-070-0925, 413-070-0934, 413-070-0939, 413-070-0944, 413-070-0949, 413-070-0959, 413-070-0964, 413-070-0969, 413-070-0970, 413-070-0974

**Rules Suspended:** 413-070-0929, 413-070-0979

**Subject:** OAR 413-070-0900 about the purpose the rules about guardianship assistance is being amended to clarify the rule and to indicate that the rule now cover guardianship assistance that may be extended for certain young adults.

OAR 413-070-0905 about definitions of certain terms used in the guardianship assistance rules is being amended to add current and

remove or revise outdated definitions of certain terms used throughout these rules.

OAR 413-070-0909 about funding of guardianship assistance is being amended to explain and update the funding sources for guardianship assistance, and indicate that new guardianship assistance will not be available for non-relative guardians.

OAR 413-070-0917 about eligibility is being amended to describe federal changes regarding establishment of guardianship assistance for a child placed outside of the United States, correct references, clarify caseworker duties regarding guardianship, set out sibling eligibility for guardianship assistance purposes, and describe the conditions for an extension of guardianship assistance on behalf of certain young adults.

OAR 413-070-0919 about eligibility and requirements for a child or young adult in the care or legal custody of a participating tribe is being amended to correct references, update terminology, and clarify requirements for child placement.

OAR 413-070-0925 about eligibility of a potential guardian is being amended to implement new federal education requirements for guardianship assistance and to remove what is now stated in Child Welfare Policy I-E.3.6.1, Guardianship as a Permanency Plan, OAR 413-070-0665(2).

OAR 413-070-0929 about determination of permanency plan for guardianship is being suspended because this topic is now covered in Child Welfare Policy I-E.3.6.1 Guardianship as a Permanency Plan, OAR 413-070-0651 to 413-070-0670.

OAR 413-070-0934 about application requirements and responsibilities is being amended to clarify Department responsibilities and situations that might delay the negotiation of guardianship assistance base rate.

OAR 413-070-0939 about guardianship assistance payments, medical assistance, and nonrecurring guardianship expenses is being amended to clarify and describe the guardianship assistance negotiation and review process. This rule is also being amended to describe requirements for medical assistance and social services, nonrecurring guardianship expenses, and overpayment responsibilities.

OAR 413-070-0944 about legal expenses of a guardian is being amended to clarify the legal expenses that are not authorized for reimbursement by the Department. This rule is also being amended to remove language about funding establishment of a guardianship because the topic is now covered in OAR 413-070-0949.

OAR 413-070-0949 about guardianship assistance agreement requirements is being amended to more clearly explain what must be included in a guardianship assistance agreement and to indicate the policies how this rule applies to young adults.

OAR 413-070-0959 about court order of guardianship and OAR 413-070-0964 about changes guardians must report and annual reports guardian must provide are being amended to update and clarify these rules.

OAR 413-070-0969 about renegotiation of a guardianship assistance agreement is being amended to update terminology and clarify the renegotiation process.

OAR 413-070-0970 about guardianship social support services is being amended to cover only topics that need to be in a rule.

OAR 413-070-0974 about review, adjustment, suspension, and termination of guardianship assistance is being amended to clarify the conditions under which guardianship assistance may be reviewed by the Department and how changes or termination of that agreement are made. This rule is also being amended to set out how this rule applies to a young adult who has an extension of guardianship assistance.

OAR 413-070-0979 about the guardianship assistance review committee and appeals procedure is being suspended because this topic is now covered in OAR 413-070-0939.

**Rules Coordinator:** Annette Tesch—(503) 945-6067



# ADMINISTRATIVE RULES

## 413-070-0900

### Purpose

(1) The purpose of these rules, OAR 413-070-0900 to 413-070-0974, is to describe Department criteria for program eligibility and receipt of guardianship assistance for:

(a) A child in the care or custody of the Department or a participating tribe; or

(b) A young adult on whose behalf an initial guardianship assistance agreement was entered into when the young adult was a child of age 16 or 17.

(2) The State of Oregon is not responsible for guardianship assistance for a child or young adult placed for guardianship in Oregon by a public child welfare agency other than the Department.

Stat. Auth.: ORS 418.005 & 418.340

Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04; CWP 5-2009(Temp), f. & cert. ef. 3-31-09 thru 9-27-09; CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09; CWP 12-2009, f. & cert. ef. 9-28-09; CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 11-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

## 413-070-0905

### Definitions

The following definitions apply to OAR 413-070-0900 to 413-070-0974:

(1) “Base rate payment” means a payment to the foster parent or relative caregiver for the costs of providing the child or young adult with the following:

(a) Food — including the cost to cover a child or young adult’s special or unique nutritional needs;

(b) Clothing — including purchase and replacement;

(c) Housing — including maintenance of household utilities, furnishings, and equipment;

(d) Daily supervision — including teaching and directing to ensure safety and well-being at a level which is appropriate based on the child or young adult’s chronological age;

(e) Personal incidentals — including personal care items, entertainment, reading materials, and miscellaneous items; and

(f) The cost of providing transportation — including local travel associated with expenditure for gas and oil, and vehicle maintenance and repair associated with transportation to and from extracurricular, child care, recreational, and cultural activities.

(2) “CANS screening” means Child and Adolescent Needs and Strengths screening, a process of gathering information on a child or young adult’s needs and strengths used for one or more of the following purposes:

(a) Identifying case planning, service planning, and supervision needs of the child or young adult in substitute care with a certified family.

(b) Determining the level of care payment while in substitute care with a certified family; and

(c) Determining the level of care payment included in an adoption assistance agreement or guardianship assistance agreement.

(3) “Child” means a person under 18 years of age.

(4) “Department” means the Department of Human Services, Child Welfare.

(5) “Enhanced supervision” means the additional support, direction, observation, and guidance necessary to promote and ensure the safety and well-being of the child or young adult when the child or young adult qualifies for a level of care payment.

(6) “Guardian” means an individual who has been granted guardianship of a child through a judgment of the court.

(7) “Guardianship assistance” means assistance on behalf of an eligible child or young adult to offset the costs associated with establishing the guardianship and meeting the ongoing needs of the child or young adult. Guardianship assistance may be in the form of a payment, medical coverage, or reimbursement of guardianship expenses.

(8) “Guardianship assistance agreement” means a written agreement, binding on the parties to the agreement, between the Department and the potential guardian or guardian setting forth the assistance the Department is to provide on behalf of the child or young adult, the responsibilities of the guardian and the Department, and the manner in which the agreement and amount of assistance may be modified or terminated.

(9) “Guardianship assistance agreement only” means a written agreement, binding on the parties to the agreement, between the Department and the potential guardian or guardian of an eligible child or young adult, when the potential guardian or guardian is not receiving a guardianship assistance

payment or medical coverage at the time of the agreement but may request it at a later date.

(10) “Guardianship assistance base rate” means the portion of the guardianship assistance payment that is negotiated with the potential guardian or guardian and cannot exceed the amount of the Oregon foster care base rate payment for the child or young adult’s age.

(11) “Guardianship assistance payment” means a monthly payment made by the Department to the guardian on behalf of the eligible child or young adult.

(12) “Guardianship Assistance Review Committee” means a committee composed of local and central office staff who have expertise in the area of guardianship.

(13) “Level of care payment” means the payment provided to an approved or certified family, a guardian, a pre-adoptive family or an adoptive family based on the child or young adult’s need for enhanced supervision as determined by applying the CANS algorithm to the results of the CANS screening.

(14) “Nonrecurring expenses” means a one-time payment of up to \$2,000 per child which the Department will make to a guardian to assist with the reasonable and necessary expenses associated with obtaining legal guardianship of an eligible child.

(15) “Nonrecurring guardianship assistance agreement” means a written agreement, binding on the parties to the agreement, between the Department and the potential guardian of an eligible child for a one-time payment to reimburse the guardian for the reasonable and necessary expenses incurred in legally finalizing the guardianship.

(16) “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.

(17) “Participating tribe” means a federally recognized Indian tribe in Oregon with a Title IV-E agreement with the Department.

(18) “Permanency Committee” means a group of individuals who are responsible for making a recommendation regarding a permanency plan or potential permanency resource when the child or young adult likely is not returning to his or her parent.

(19) “Potential guardian” means an individual who:

(a) Has been approved by the Department or participating tribe to be a child’s guardian; and

(b) Is in the process of legalizing the relationship to the child through the judgment of the court.

(20) “Registered Domestic Partner” means an individual joined in a domestic partnership that is registered with a county clerk in accordance with ORS 106.300 to 106.340.

(21) “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 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 death or divorce. 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 customs 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.

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(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 a 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 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.

(F) The unrelated legal or biological father or mother of a child's half-sibling when the child'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 child or young adult's 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) Who had an emotionally significant relationship with the child or young adult or the child or young adult's family prior to the time the Department placed the child in substitute care.

(e) For the purposes of these rules, OAR 413-070-0900 to 413-070-0974:

(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 a relative under these rules 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.

(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 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.

(23) "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.

(24) "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.

(25) "Young adult" means a person aged 18 through 20 years.

Stat. Auth.: ORS 418.005 & 418.340

Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 14-2003, f. & cert. ef. 1-9-03; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04; CWP 5-2009(Temp), f. & cert. ef. 3-31-09 thru 9-27-09; CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09; CWP 12-2009, f. & cert. ef. 9-28-09; CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10; CWP 1-2010(Temp), f. & cert. ef. 2-1-10 thru 6-14-10; CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 11-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

## 413-070-0909

### Funding of Guardianship Assistance

(1) Non-relative guardianship assistance established under the Title IV-E Waiver Project implemented July 1, 1997 under the Adoption and Safe Families Act of 1997 was funded by Title IV-E waiver funds until January 1, 2011. As of that time, Oregon general funds provided monies for non-relative guardianship assistance established under the waiver. Funding is no

longer available for the establishment of new non-relative guardianship assistance, except as described in section (2) of this rule.

(2) When grandparents or other approved relatives make a permanent commitment to and assume legal guardianship of a child for whom they have cared as a substitute caregiver, the Department provides guardianship assistance as described in these rules (OAR 413-070-0900 to 413-070-0974).

(3) Effective January 1, 2009, guardianship assistance for Title IV-E children or young adults is funded in part with Title IV-E funds as authorized by the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Public Law 110-351).

Stat. Auth.: ORS 418.005 & 418.340

Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: CWP 12-2009, f. & cert. ef. 9-28-09; CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 11-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

## 413-070-0917

### Eligibility

(1) Eligibility: Child.

(a) Guardianship assistance will not be established for a child placed outside of the United States or a territory or possession thereof or the District of Columbia.

(b) A guardianship assistance agreement must be signed by the potential guardian and a Department representative before guardianship has been legally established by a state or participating tribal court.

(c) To be eligible for guardianship assistance, a child must meet all of the following:

(A) Be a United States citizen or qualified alien as described in OAR 413-100-0210(2) and in 8 USC 1641 (b) or (c).

(B) Be removed from his or her home pursuant to a voluntary placement or as a result of a judicial determination that continuation in the home would be contrary to the welfare of the child.

(C) The Department or participating tribe has determined that neither return home nor adoption is an appropriate permanency option for the child.

(D) Be eligible for Title IV-E foster care maintenance payments during a six consecutive month period during which the child resided in the home of the prospective guardian who was fully licensed, certified, or approved by the state or a participating tribe as meeting the licensure or certification requirements for a foster family home in the state where the home is located. The Department determines a child's eligibility for a Title IV-E maintenance payment under Child Welfare Policy I-E.6.1, "Title IV-E Foster Care, Adoption Assistance and Guardianship Assistance Eligibility", OAR 413-100-0000 to 413-100-0345.

(E) Be in the Department's or participating tribe's legal custody for a minimum of:

(i) Six months, if the potential guardian is the child's relative as defined by OAR 413-070-0905(21)(a) through (d); or

(ii) Twelve months, if the potential guardian is a substitute caregiver who meets the definition of a relative under OAR 413-070-0905(21)(e)(B).

(F) Demonstrate a strong attachment to the prospective guardian.

(G) Be consulted regarding the guardianship arrangement when the child has attained 14 years of age.

(2) When guardianship as a permanency plan has been approved, the caseworker must document each of the following in the child's case plan.

(a) How the child meets the eligibility requirements;

(b) The steps the Department has taken to determine that return to the home or adoption is not appropriate;

(c) The efforts the Department has made to discuss adoption with the child's relative caregiver and the reasons why adoption is not an option;

(d) The efforts the Department has made to discuss kinship guardianship with the child's parent or parents or the reasons why efforts were not made;

(e) The reason why a permanent placement with a potential relative guardian and receipt of a kinship guardian assistance payment is in the child's best interests; and

(f) The reasons for any separation of siblings during placement. If the child's placement with the prospective relative guardian does not include siblings, the case plan must also include a description of the reasons why the child is separated from siblings during placement.

(3) Extension of Guardianship Assistance for a Young Adult.

(a) When an initial guardianship assistance agreement is entered into on behalf of an individual who is age 16 or 17, the Department may approve an extension of the guardianship assistance agreement until the individual reaches the age of 21 only under the following conditions.

# ADMINISTRATIVE RULES

(A) The child, upon reaching the age of 18 on or after June 30, 2011, continues to be a ward of the court with guardianship by the current guardian.

(B) The young adult is:

(i) Completing secondary school (or equivalent);

(ii) Enrolled in post-secondary or vocational school;

(iii) Participating in a program or activity that promotes or removes barriers to employment;

(iv) Employed 80 hours a month; or

(v) Determined incapable of any of the above due to a documented medical condition, mental disability or physical disability.

(b) The Department will review the young adult's eligibility for continued guardianship assistance when an extension of guardianship assistance has been granted:

(A) At least annually; or

(B) When information is received that indicates the young adult may no longer be eligible for guardianship assistance or may be eligible for guardianship assistance in a different amount.

(c) In order for the extension of guardianship assistance to continue on behalf of a young adult, the guardian must submit to the Department, upon request:

(A) Proof that the young adult continues to be enrolled in a secondary, post-secondary, vocational school, or a program or activity that promotes or removes barriers to employment;

(B) Proof that the young adult is employed 80 hours a month; or

(C) Verification from a medical or mental health professional that the young adult is incapable of attending school or obtaining employment due to a medical condition.

(d) The guardian must notify the Department, orally or in writing, of any changes in circumstances that may make the young adult:

(A) Ineligible for guardianship assistance; or

(B) Eligible for guardianship assistance in a different amount.

(4) Siblings. Each sibling of a child or young adult eligible for guardianship assistance, is also eligible for guardianship assistance, without meeting the eligibility requirements set forth in subsections (1)(c)(B) through (F) of this rule, when:

(a) The sibling is placed in a guardianship with the same potential guardian or guardian, whether the siblings are placed at the same time or not; and

(b) The potential guardian or guardian and the Department agree that both of the following are appropriate:

(A) Placing the child's sibling in the home of the potential guardian or guardian; and

(B) Guardianship as a permanency plan for the sibling.

Stat. Auth.: ORS 418.005 & 418.340

Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04; CWP 5-2009(Temp), f. & cert. ef. 3-31-09 thru 9-27-09; CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09; CWP 12-2009, f. & cert. ef. 9-28-09; CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 11-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

## 413-070-0919

### Eligibility and Requirements for a Child or Young Adult in the Care or Custody of a Participating Tribe

(1) In addition to guardianship assistance program criteria under these rules, OAR 413-070-0900 to 413-070-0974, the following requirements apply to a child in the care or custody of a participating tribe:

(a) The child must be placed in a foster home approved by the participating tribe that meets the certification and licensing standards of the participating tribe; and

(b) The participating tribe must document how continued placement with the potential guardian is in the best interests of the child and meets the child's needs for safety and permanency.

(2) The participating tribe must:

(a) Conduct and prepare a written home study of the guardian;

(b) Have a current Title IV-E agreement with the Department which includes participation in the guardianship assistance program;

(c) Notify the Adoption Assistance and Guardianship Assistance Unit within 30 days after reestablishing custody of a child or young adult in a guardianship placement established under these rules, OAR 413-070-0900 to 413-070-0974; and

(d) Provide the Adoption Assistance and Guardianship Assistance Unit with a copy of the court order terminating the guardianship within 30 days of the termination, when applicable.

Stat. Auth.: ORS 418.005 & 418.340

Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10; CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 11-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

## 413-070-0925

### Eligibility: Prospective Guardian

The Department may approve a potential guardian for guardianship assistance when the potential guardian:

(1) Meets the requirements of Child Welfare Policy I-E.3.6.1, Guardianship as a Permanency Plan, OAR 413-070-0665(2), and:

(2) Agrees to remain in compliance with federal requirements that the child:

(a) Be enrolled in an elementary or secondary school as determined by the law of the state of residence;

(b) Be home schooled in accordance with the law of the state of residence;

(c) Be enrolled in an independent study program in accordance with the law of the state of residence;

(d) Be incapable of attending school due to a documented medical condition; or

(e) Has completed secondary school.

Stat. Auth.: ORS 418.005 & 418.340

Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04; CWP 5-2009(Temp), f. & cert. ef. 3-31-09 thru 9-27-09; CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09; CWP 12-2009, f. & cert. ef. 9-28-09; CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10; CWP 1-2010(Temp), f. & cert. ef. 2-1-10 thru 6-14-10; CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 11-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

## 413-070-0929

### Determination of Permanency Plan: Guardianship

(1) The Department or a *participating tribe* may consider guardianship as the permanency plan for a *child* when all of the following conditions are met:

(a) The Department determines that adoption is not an appropriate permanency plan under 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 and I-F.3.2.1, "Termination of Parental Rights" OAR 413-110-0200 to 413-110-0252;

(b) The eligibility requirements in OAR 413-070-0915, 413-070-0917, 413-070-0919, and 413-070-0925 have been met for the purpose of *guardianship assistance*.

(c) The Department or *participating tribe* has consulted with the *child*, if 14 years of age or older, regarding guardianship as the permanency plan.

(d) The Department and the prospective guardian agree, and the Department documents in the child's case record, that the *child* and the prospective guardian can maintain a stable relationship and function effectively without Department supervision.

(e) A Permanency Committee has recommended:

(A) Guardianship as an appropriate permanency plan for the *child*; and

(B) Guardianship is in the child's best interests because the prospective guardian meets the safety, permanency, and well-being needs of the *child*.

(f) The court approves a guardianship permanency plan for the child under Child Welfare Policy I-E.3.6, "Achieving Permanency" OAR 413-070-0500 to 413-070-0517.

(2) Each *parent* with legal rights or standing consents to the permanency plan of guardianship or has been given adequate notice of the permanency plan under state or tribal law when the Department or *participating tribe* requests a court order establishing guardianship.

(3) When guardianship has been approved as a child's permanency plan, and *guardianship assistance* is being considered, the child's case plan must include:

(a) How the *child* meets the eligibility requirements described in OAR 413-070-0917.

(b) The steps taken by the Department or *participating tribe* to determine that it is not appropriate for the *child* to return home or be adopted.

(c) The efforts made by the Department or *participating tribe* to discuss with the substitute caregiver adoption rather than guardianship as the preferred permanency plan and why adoption was not chosen.

(d) The efforts made by the Department or *participating tribe* to discuss the guardianship plan with each parent of the *child* or the reasons why efforts were not made.



# ADMINISTRATIVE RULES

(e) The reasons why permanent placement with a fit and willing guardian through a *guardianship assistance* arrangement is in the child's best interests.

(f) The efforts made by the Department or *participating tribe* to discuss with each parent of the *child* the *guardianship assistance* arrangement or the reasons why no such efforts were made.

(g) The reasons, if any, that siblings were separated during placement.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 14-2003, f. & cert. ef. 1-9-03; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04; CWP 5-2009(Temp), f. & cert. ef. 3-31-09 thru 9-27-09; CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09; CWP 12-2009, f. & cert. ef. 9-28-09; Renumbered from 413-070-0920, CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10; CWP 6-2010, f. & cert. ef. 6-15-10; Suspended by CWP 11-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

## 413-070-0934

### Application Requirements

(1) Except as described in subsections (a) and (b) of this section, the Adoption Assistance and Guardianship Assistance Unit must begin negotiation of the guardianship assistance agreement no later than 60 days after receipt of the completed guardianship assistance application.

(a) The Department may delay negotiation of the guardianship assistance base rate when the child is due for an updated CANS screening, a new CANS screening is warranted, or a CANS screening is in process or completed but a decision is pending regarding the level of care payment under OAR 413-020-0230.

(b) When a guardianship assistance application is delayed, the Adoption Assistance and Guardianship Assistance Unit must begin negotiation of the guardianship assistance base rate no later than 30 days from receipt of the final decision regarding the level of care payment.

(2) A guardianship assistance application is considered complete when the Adoption Assistance and Guardianship Assistance Unit has received a signed application and all supporting documentation.

Stat. Auth.: ORS 418.005, & 418.340

Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04; CWP 5-2009(Temp), f. & cert. ef. 3-31-09 thru 9-27-09; Suspended by CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09; CWP 12-2009, f. & cert. ef. 9-28-09; Renumbered from 413-070-0965, CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 11-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

## 413-070-0939

### Guardianship Assistance Payments, Medical Assistance, and Nonrecurring Guardianship Expenses

(1) When a guardianship assistance payment or medical assistance is not being provided, a potential guardian or guardian may enter into a guardianship assistance agreement only.

(2) The monthly guardianship assistance payment may not exceed the total of:

(a) The guardianship assistance base rate; and

(b) When applicable, the level of care payment determined by the CANS screening conducted under OAR 413-020-0230.

(3) The monthly guardianship assistance base rate:

(a) Is determined through discussion and negotiation between the Department and the potential guardian or guardian.

(b) May not exceed the current foster care base rate payment the child or young adult would be eligible to receive in foster care as determined by OAR 413-090-0010(1)(b).

(c) Is negotiated between the potential guardian of a child or guardian of a child or young adult and the Department, taking into consideration relevant factors which include, but are not limited to:

(A) The ordinary and special needs of the child or young adult.

(B) The services and goods required to meet the needs of the child or young adult.

(C) The cost of the services and goods required to meet the needs of the child or young adult.

(D) The circumstances of the potential guardian or guardian and their ability to provide the required services and goods for the child or young adult.

(E) The resources available to the potential guardian or guardian such as medical coverage, private health insurance, public education, other income sources and community resources.

(F) A guardianship assistance payment may be reduced when other sources of income are received by the potential guardian or guardian or the child or young adult.

(d) Is intended to combine with the resources of the potential guardian or guardian to provide for the needs of the child or young adult.

(4) When, during negotiation of the guardianship assistance base rate payment, the Adoption Assistance and Guardianship Assistance Coordinator and the potential guardian or the guardian are unable to reach agreement, the Adoption Assistance and Guardianship Assistance Coordinator, the potential guardian or the guardian may request a review by the Guardianship Assistance Review Committee. When a review is requested:

(a) An Adoption Assistance and Guardianship Assistance Coordinator must:

(A) Prepare documentation for the scheduled Guardianship Assistance Review Committee;

(B) Notify the potential guardian or guardian and the assigned caseworkers of the date of the committee; and

(C) Attend and participate in the Guardianship Assistance Review Committee.

(b) The potential guardian or guardian may provide written documentation to the Adoption Assistance and Guardianship Assistance Coordinator for review and consideration by the Guardianship Assistance Review Committee.

(c) The caseworker for the potential guardian and the caseworker for the child may participate in a Guardianship Assistance Review Committee meeting and may present information and respond to questions. The caseworkers must not participate in the deliberations of the Guardianship Assistance Review Committee.

(d) The Guardianship Assistance Review Committee members must:

(A) Consider written documentation provided by the potential guardian or guardian, caseworkers and the Adoption Assistance and Guardianship Assistance Coordinator.

(B) Review materials submitted to the Guardianship Assistance Review Committee, deliberate and make a recommendation regarding the guardianship assistance base rate.

(e) At the conclusion of the Guardianship Assistance Review Committee, the Adoption Assistance and Guardianship Assistance Coordinator must:

(A) Document the recommendation of the Guardianship Assistance Review Committee; and

(B) Submit the recommendation to the Assistant Adoption Program Manager or designee within one business day of the Guardianship Assistance Review Committee meeting.

(f) The Assistant Adoption Program Manager or designee must:

(A) Attend the Guardianship Assistance Review Committee and may ask clarifying questions, but does not participate in the deliberation or recommendation of the Guardianship Assistance Review Committee; and

(B) Make a decision and provide written notification of the decision regarding the guardianship assistance base rate to the Adoption Assistance and Guardianship Assistance Coordinator within one business day of receipt of the documentation from the Guardianship Assistance Review Committee.

(g) The Adoption Assistance and Guardianship Assistance Coordinator must notify the potential guardian or guardian of the Assistant Adoption Program Manager or designee's decision, including a written notice, within ten business days of the decision.

(5) A potential guardian or guardian unsatisfied with the guardianship assistance base rate decision of the Assistant Adoption Program Manager or designee under paragraph (4)(f)(B) of this rule, may submit a written request for review of the decision by the Adoption Program Manager or designee within fourteen days of the written notice in subsection (4)(g) of this rule.

(6) The Adoption Program Manager or designee must complete each of the following actions.

(a) Review and consider:

(A) The materials submitted to the Guardianship Assistance Review Committee;

(B) The recommendation of the committee;

(C) The decision made by the Assistant Adoption Program Manager or designee following the review committee recommendation; and

(D) The information presented by the potential guardian or guardian in the request submitted under section (5) of this rule.

(b) Make a decision within 60 days of the date of the request for review.

(c) Provide written notification to the potential guardian or guardian and the Adoption Assistance and Guardianship Assistance Coordinator within ten business days of the decision in subsection (b) of this rule.

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(7) The monthly level of care payment:

(a) Is determined based on the results of a CANS screening conducted under OAR 413-020-0230.

(b) Cannot exceed the amount of the level of care payment set forth in OAR 413-090-0010(2)(g).

(c) Is included in the guardianship assistance payment when the child or young adult qualifies for a level of care payment and when requested by the potential guardian or guardian.

(8) When a potential guardian or guardian is unsatisfied with the final guardianship assistance offer from the Department, consisting of the guardianship assistance base rate and, when applicable, a level of care payment, the potential guardian or guardian has the right to a contested case hearing under Child Welfare Policy I-A.5.2, "Contested Case Hearings", OAR 413-010-0500 to 413-010-0535.

(9) An initial guardianship assistance payment begins on the date the state or tribal court legally establishes the guardianship provided there is a written guardianship assistance agreement signed by all parties.

(10) A guardianship assistance payment to a guardian for the child or young adult is inalienable, not assignable or transferable, and exempt from execution, levy, attachment, garnishment, and other legal process under the laws of Oregon, as long as the payment can be identified as a guardianship assistance payment and is kept separate from other money in the guardian's possession.

(11) The guardian may apply to be the designated payee for any benefit the child or young adult receives if the benefit program allows such application.

(12) Medical assistance and social services.

(a) A child or young adult who is the subject of a guardianship assistance agreement funded by Title IV-E funds as authorized by the Fostering Connection to Success and Increasing Adoptions Act of 2008 (Public Law 110-351), is categorically eligible for medical assistance through Title XIX and social services under Title XX when:

(A) The guardianship is in effect; and

(B) A guardianship assistance payment is being made to the guardian.

(b) A child or young adult who is the subject of a guardianship assistance agreement established under the Title IV-E Waiver Project and funded with state general funds, is eligible for medical assistance under Child Welfare Policy I-E.6.2, "Title XIX and General Assistance Medical Eligibility" OAR 413-100-0400 to 413-100-0610 when:

(A) The child or young adult resides in Oregon; or

(B) The child or young adult resides outside of Oregon but in the United States or a territory or possession thereof or the District of Columbia and is not able to obtain medical assistance in his or her place of residence.

(c) Medical assistance is not provided for a child or young adult who resides outside of the United States, a territory or possession thereof or the District of Columbia.

(13) Nonrecurring guardianship expenses.

(a) The Department will reimburse a guardian up to \$2,000 per eligible child for approved nonrecurring guardianship expenses, including but not limited to:

(A) The cost of a home study;

(B) Court costs;

(C) Attorney fees;

(D) Physical and psychological examinations required for the guardianship; and

(E) Travel to visit with the child prior to placement.

(b) Payment for nonrecurring guardianship expenses may not duplicate expenses covered by the Interstate Compact for Placement of Children or another resource available to the potential guardian.

(c) Documentation of nonrecurring guardianship expenses is required and must be submitted prior to execution of the nonrecurring guardianship assistance agreement. The nonrecurring guardianship assistance agreement, indicating the nature and amount of the nonrecurring guardianship expenses must be signed by the potential guardian and a Department representative prior to the establishment of the guardianship.

(d) Payment for nonrecurring guardianship expenses is made when the Department receives the court order establishing the guardianship.

(14) Overpayment.

(a) If the Department issues a guardianship assistance payment on behalf of a child or young adult after the date the guardianship assistance agreement automatically expires, the Department may seek reimbursement of the overpayment and the guardian must repay the Department.

(b) If the guardian fails to comply with any provisions of the guardianship assistance agreement, including failing to notify the Department of any of the events or circumstances described in OAR 413-

070-0964 and 413-070-0974(2), the Department may collect any guardianship assistance payment or medical assistance which the Department would not have provided had the guardian complied with the provisions of the guardianship assistance agreement.

Stat. Auth.: ORS 418.005 & 418.340

Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 14-2003, f. & cert. ef. 1-9-03; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04; CWP 5-2009(Temp), f. & cert. ef. 3-31-09 thru 9-27-09; CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09; CWP 12-2009, f. & cert. ef. 9-28-09; Renumbered from 413-070-0930, CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10; CWP 1-2010(Temp), f. & cert. ef. 2-1-10 thru 6-14-10; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 11-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

## 413-070-0944

### Legal Expenses of a Guardian

The Department may not authorize payment for legal services provided:

(1) For the potential guardian or guardian in connection with a contested case hearing; or

(2) To defend or retain a guardianship upon challenge by another party once a guardianship is established.

Stat. Auth.: ORS 418.005 & 418.340

Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04; CWP 5-2009(Temp), f. & cert. ef. 3-31-09 thru 9-27-09; CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09; CWP 12-2009, f. & cert. ef. 9-28-09; Renumbered from 413-070-0960, CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 11-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

## 413-070-0949

### Guardianship Assistance Agreement Requirements

(1) Before a guardian may receive guardianship assistance, there must be a negotiated written guardianship assistance agreement between the Department and the potential guardian or guardian signed by all parties prior to the court order establishing the legal guardianship.

(2) The guardianship assistance agreement must include each of the following:

(a) A statement indicating that a guardianship assistance agreement remains in effect without regard to the state of residency of the guardian.

(b) The effective date of the initial guardianship assistance agreement is the date of the court order of guardianship.

(c) That the Department will pay the nonrecurring guardianship expenses associated with obtaining legal guardianship of the child, to the extent the nonrecurring guardianship expenses do not exceed \$2,000 per child.

(d) That the child or young adult for whom the Department is providing a guardianship assistance payment remains eligible for medical assistance provided:

(A) The guardianship remains in effect;

(B) A payment is being made; and

(C) The child or young adult is placed in the United States, a territory or possession thereof, or the District of Columbia.

(e) Information regarding garnishment of guardianship assistance payments as set forth in OAR 413-070-0939(10).

(f) That the guardian agrees to comply with the reporting requirements under OAR 413-070-0964.

(g) That the guardian understands that a guardianship assistance agreement may be reviewed and the guardianship assistance may be adjusted, suspended or terminated under OAR 413-070-0974.

(h) A statement indicating that the guardian understands that the provisions of ORS 192.520 allow the Oregon Health Plan (OHP) and the OHP managed care plans to exchange the following protected health information without the guardian's, child's or young adult's authorization for the purpose of treatment activities related to the behavioral or physical health of the child or young adult when the child or young adult is the recipient of OHP services:

(A) The name and Medicaid recipient number of the child or young adult;

(B) The name of the child or young adult's hospital or medical provider;

(C) The hospital or medical provider's Medicaid number;

(D) Each diagnosis for the child or young adult;

(E) Each treatment activity's date of service;

(F) Each treatment activity's procedure or revenue code;

(G) The quantity of units or services provided; and

(H) Information about medication prescription and monitoring.

# ADMINISTRATIVE RULES

(i) The amount of the guardianship assistance and the manner in which it is to be provided.

(j) The basis and requirements for periodic changes in the guardianship assistance payment, in consultation with the guardian, based on the circumstances of the guardian and the needs of the child or young adult.

(k) The additional services and assistance for which the child or young adult and guardian are eligible under the agreement and the procedure by which the guardian may apply for such services.

(3) The Department must provide the guardian with a copy of the guardianship assistance agreement.

Stat. Auth.: ORS 418.005 & 418.340

Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 49-2003(Temp), f. 12-31-03, cert. ef. 1-1-04 thru 4-28-04; CWP 8-2004, f. & cert. ef. 4-1-04; CWP 5-2009(Temp), f. & cert. ef. 3-31-09 thru 9-27-09; CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09; CWP 12-2009, f. & cert. ef. 9-28-09; Renumbered from 413-070-0935, CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10; CWP 1-2010(Temp), f. & cert. ef. 2-1-10 thru 6-14-10; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 11-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

## 413-070-0959

### Court Order of Guardianship

(1) Guardianship assistance may only be provided for a legal guardianship established under ORS 419B.365 or 419B.366, as provided under ORS 419B.367 to 419B.369, or as provided by the statutory code or laws of a participating tribe.

(2) The Department or participating tribe may not pursue a court order establishing an assisted guardianship until a guardianship assistance agreement between the Department and the potential guardian has been signed by all parties.

(3) The Department or participating tribe, through counsel if the child is in the legal custody of the Department, must move the court for an order establishing the guardianship and, when the child is in the legal custody of the Department or participating tribe, directing one of the following:

(a) Termination of Department or participating tribe's legal custody and dismissal of the Department or participating tribe as a party to the case; or

(b) If the child has been committed permanently to the Department, an order setting aside the order of permanent commitment and relieving the Department of responsibility for the care, placement, and supervision of the child.

(4) The Department may not provide guardianship assistance if the court establishes guardianship but orders the Department or participating tribe to continue supervision of the child or guardian.

(5) The guardian is not eligible for payments provided under Child Welfare Policies I-E.5.1, "Foster Care Payments for a Child or Young Adult Living with a Certified Family or Living Independently" OAR 413-090-0000 to 413-090-0050 and I-E.5.1.2, "Personal Care Services" OAR 413-090-0100 to 413-090-0210 once the guardianship is effective and the Department's or participating tribe's custody of the child is dismissed by court order.

Stat. Auth.: ORS 418.005 & 418.340

Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 49-2003(Temp), f. 12-31-03, cert. ef. 1-1-04 thru 4-28-04; CWP 8-2004, f. & cert. ef. 4-1-04; CWP 5-2009(Temp), f. & cert. ef. 3-31-09 thru 9-27-09; CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09; CWP 12-2009, f. & cert. ef. 9-28-09; Renumbered from 413-070-0937, CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 11-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

## 413-070-0964

### Changes That Must Be Reported and Annual Report

(1) A guardian receiving guardianship assistance must report immediately, orally or in writing, to the Adoption Assistance and Guardianship Assistance Unit any of the following:

(a) A change of address;

(b) A planned move by the guardian, child or young adult from his or her state of residency; or

(c) Any circumstance described in OAR 413-070-0974(2).

(2) The guardian, within 30 days after each annual anniversary of the court appointment of guardianship, must file a written report with the court and submit a copy of the report to the Adoption Assistance and Guardianship Assistance Unit.

(3) When the court does not require an annual report under section (2) of this rule as part of the appointment of guardianship, the Department requires the guardian to submit an annual report to the Adoption Assistance and Guardianship Assistance Unit within 30 days after each anniversary of the appointment of guardianship.

Stat. Auth.: ORS 418.005 & 418.340

Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 14-2003, f. & cert. ef. 1-9-03; CWP 19-2003(Temp), f. & cert. ef. 1-23-03 thru 6-20-03; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04; CWP 5-2009(Temp), f. & cert. ef. 3-31-09 thru 9-27-09; CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09; CWP 12-2009, f. & cert. ef. 9-28-09; Renumbered from 413-070-0945 & 413-070-0955, CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10; CWP 1-2010(Temp), f. & cert. ef. 2-1-10 thru 6-14-10; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 11-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

## 413-070-0969

### Renegotiation of a Guardianship Assistance Agreement

(1) A potential guardian or guardian may request that the Department consider renegotiation of the guardianship assistance agreement. The request for renegotiation must:

(a) Be in writing in a format provided by the Department to the potential guardian or guardian;

(b) Document changes in the circumstances of the potential guardian or guardian, when applicable;

(c) Document the needs of the child or young adult;

(d) Provide information about the financial expenses of the potential guardian or guardian in meeting the needs of the child or young adult;

(e) Provide information about the expenses required to meet the needs of the child or young adult; and

(f) Provide additional documentation of the child or young adult's current behaviors when the child or young adult meets the eligibility requirements for consideration of a level of care payment under OAR 413-020-0230 and the potential guardian or guardian is requesting a level of care payment.

(2) Renegotiation of the guardianship assistance base rate will be conducted as described in OAR 413-070-0939(2) and (3).

(3) Referrals for CANS screenings are described in OAR 413-020-0230.

(4) The Department may require a renegotiation of the guardianship assistance agreement when the Department determines that the child or young adult is eligible for guardianship assistance in a different amount, as described in OAR 413-070-0974.

(5) A new guardianship assistance agreement must be signed by all parties each time a new guardianship assistance payment is agreed upon by the potential guardian or guardian and the Department.

(6) Unless section (7) of this rule applies, the Department may authorize a renegotiated guardianship assistance payment increase or decrease beginning on a date no earlier than the first day of the month in which the Department receives the written request for renegotiation.

(7) The Department may approve up to twelve months of retroactive payments unless a contested case hearing was requested and a subsequent decision necessitates a payment of more than twelve months. The decision includes any decision by the Department including:

(a) A final order;

(b) A stipulated final order;

(c) A settlement agreement; or

(d) Any other agreement resulting in withdrawal of the contested case.

Stat. Auth.: ORS 418.005 & 418.340

Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 11-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

## 413-070-0970

### Guardianship Social Support Services

The guardian or child in an assisted guardianship may request family support services as described in Child Welfare Policy I-B.2.3.1, "Family Support Services" OAR 413-030-0000 to 413-030-0030 from the Department.

Stat. Auth.: ORS 418.005 & 418.340

Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04; CWP 5-2009(Temp), f. & cert. ef. 3-31-09 thru 9-27-09; Suspended by CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09; CWP 12-2009, f. & cert. ef. 9-28-09; CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 11-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

## 413-070-0974

### Review, Adjustment, Suspension, and Termination of Guardianship Assistance

(1) The Department may review a guardianship assistance agreement when the Department:

(a) Receives information indicating that the child or young adult may no longer be eligible for guardianship assistance or may be eligible for guardianship assistance in a different amount;



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(b) Determines, when the child or young adult is not residing in the home of the guardian, that periodic reviews of the guardianship assistance agreement are required;

(c) Has not received the required annual report from the guardian; or

(d) Receives information that indicates a review is necessary based on a change in the needs of the child or family circumstance.

(2) The Department may review a guardianship assistance agreement, upon being informed of any one of the following circumstances:

(a) The child or young adult:

(A) Is out of the home of the potential guardian or guardian for more than a thirty day period.

(B) Has a change in needs including but not limited to eligibility for a change in the level of care payment based on a new CANS screening.

(C) Is placed in substitute care.

(D) Is no longer receiving financial support from the guardian.

(E) Is incarcerated for more than three consecutive months.

(F) Is adopted.

(G) Is emancipated.

(H) Has a change in any benefit received other than tribal dividend payments.

(I) Marries.

(J) Dies.

(b) The young adult no longer meets the requirements of OAR 413-070-0917(2).

(c) The guardian:

(A) Is no longer legally responsible for the financial support of the child or young adult.

(B) Has not complied with the requirements of the guardianship assistance agreement.

(C) Terminates the guardianship.

(D) Dies.

(d) The court:

(A) Vacates the guardianship.

(B) Modifies the guardianship.

(C) Terminates wardship over the child or young adult.

(D) Awards child custody or guardianship to another individual.

(3) Department review of a guardianship assistance agreement may result in a renegotiation, suspension, adjustment or termination of the guardianship assistance agreement or guardianship assistance payment or both.

(4) After a review and on a case-by-case basis, the Department may terminate a guardianship assistance agreement upon ten days written notice to the potential guardian or guardian when the Department determines that:

(a) The potential guardian or guardian is no longer responsible for the child or young adult;

(b) The potential guardian or guardian is no longer providing support to the child or young adult;

(c) The child or young adult is no longer eligible for guardianship assistance or is eligible for guardianship assistance in a different amount; or

(d) Continued guardianship assistance is no longer appropriate.

(5) The Department must terminate guardianship assistance for a child or young adult effective on the date of any one of the following:

(a) The child is emancipated.

(b) Child custody or guardianship is awarded to another individual.

(c) The child or young adult dies.

(d) The child or young adult marries.

(e) The child or young adult is adopted.

(f) The guardian dies or, in the case of more than one guardian, both die.

(g) The guardian terminates the guardianship.

(h) A young adult receiving guardianship no longer meets the requirements of OAR 413-070-0917(2).

(6) When there is an across-the-board reduction or increase in the base rate payment or level of care payment, the Department, following a case-by-case review, based on the specific needs of the child or young adult and without concurrence of the guardian, may adjust the guardianship assistance payment to an amount that does not exceed the new foster care payment the child or young adult would receive if currently in foster care. In the case of a reduction, only those payments that exceed the amount the child or young adult would be eligible for if currently in foster care would be reduced and the reduction would only be to the amount that the child or young adult would be eligible to receive if currently in foster care.

(7) The guardianship assistance agreement automatically expires when the child reaches the age of 18 or, when an extension has been grant-

ed under OAR 413-070-0917(2), up to the age of 21 as documented in the guardianship assistance agreement.

Stat. Auth.: ORS 418.005 & 418.340

Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 14-2003, f. & cert. ef. 1-9-03; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04; CWP 5-2009(Temp), f. & cert. ef. 3-31-09 thru 9-27-09; CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09; CWP 12-2009, f. & cert. ef. 9-28-09; Renumbered from 413-070-0940, CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10; CWP 1-2010(Temp), f. & cert. ef. 2-1-10 thru 6-14-10; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 11-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

## 413-070-0979

### Guardianship Assistance Review Committee and Appeals Procedure

(1) The *Guardianship Assistance Review Committee* serves as a consultation and review body for the Guardianship Assistance program.

(a) Guardianship Assistance program staff may refer unusual or exceptionally costly benefit requests to the *Guardianship Assistance Review Committee* for consultation; or

(b) If, during negotiations of guardianship assistance benefits, Guardianship Assistance program staff and the guardian family or prospective guardian family is unable to reach agreement, the matter may be referred to the *Guardianship Assistance Review Committee* for review at the request of Guardianship Assistance program staff or the guardian family or prospective guardian family.

(2) The guardian family or prospective guardian family and the family's assigned caseworker must provide written documentation for the Committee's consideration.

(3) The caseworker for the prospective guardian family may participate in a *Guardianship Assistance Review Committee* meeting by telephone.

(4) The *Guardianship Assistance Review Committee* reviews relevant materials and provides a recommendation regarding the level of benefits to the Department's guardianship assistance coordinator. The *Guardianship Assistance Review Committee* must consider the special needs of the child and the financial circumstances of the guardian family or prospective guardian family.

(5) If the guardian family or prospective guardian family is unsatisfied with the *guardianship assistance* offer made by the *Guardianship Assistance Review Committee*, the family may request further review by the Department's Adoption and Guardianship Program Manager.

(6) A request for further review must be made in writing and received by the Department's Adoption and Guardianship Program Manager within 14 days from the date the *Guardianship Assistance Review Committee* recommendation is provided to the guardian family or prospective guardian family.

(7) The Adoption and Guardianship Program Manager reviews the material and makes a decision within 60 days from the date of the *Guardianship Assistance Review Committee* recommendation.

(8) After receipt of the Adoption and Guardianship Program Manager's decision, the guardian family or prospective guardian family may request a contested case hearing as provided in Child Welfare Policy I-A.5.2, "Contested Case Hearings" OAR 413-010-0500 to 413-010-0535.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 6-2010, f. & cert. ef. 6-15-10; Suspended by CWP 11-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

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**Rule Caption:** Changing OARs affecting Child Welfare programs.

**Adm. Order No.:** CWP 12-2011(Temp)

**Filed with Sec. of State:** 6-30-2011

**Certified to be Effective:** 6-30-11 thru 12-27-11

**Notice Publication Date:**

**Rules Amended:** 413-090-0000, 413-090-0005, 413-090-0010, 413-090-0021, 413-090-0030, 413-090-0040, 413-090-0050

**Subject:** These rules about the responsibilities of the Department on behalf of a child or young adult to provide foster care maintenance payments to a certified family; an independent living housing subsidy to an eligible child or young adult who is in the legal custody of the Department, living independently; and payment to an individual eligible for a Chafee housing payment of the Department are

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being amended to implement provisions of the Fostering Connections to Success and Increasing Adoptions Act of 2008.

OAR 413-090-0000 is also being amended to clarify the purposes of OAR 413-090-0000 to 413-090-0050.

OAR 413-090-0005 about the definitions of key terms used in these rules is also being amended to add current and remove outdated definitions of certain terms used throughout these rules.

OAR 413-090-0010 about payments authorized by the Department is also being amended to revise the eligibility criteria for payments the Department will authorize for family foster care, level of care payments, and payment for a child of a dependent parent, and the payments to youth eligible for a Chafee housing payment or independent living housing payment.

OAR 413-090-0021 about periodic review of eligibility for level of care payments is also being amended to set out the effective date of changes in payments and when a CANS screening is conducted.

OAR 413-090-0030 about payment for temporary absences from family foster care is also being amended to revise and clarify the criteria for receiving these payments.

OAR 413-090-0040 about payments during adoptive supervision is also being amended to clarify the type of payments and criteria for receiving them.

OAR 413-090-0050 about payment to a certified family moving to another state is also being amended to clarify the payments provided.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 413-090-0000

### Purpose

These rules, OAR 413-090-0000 to 413-090-0050, describe the responsibilities of the Department for payment of the following costs on behalf of a child or young adult.

(1) Foster care maintenance payments to a certified family;

(2) An independent living housing subsidy to an eligible child or young adult who is in the legal custody of the Department, living independently; and

(3) Payment to an individual eligible for a Chafee housing payment.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 9-2003, f. & cert. ef. 1-7-03; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07; CWP 5-2007, f. 3-30-07, cert. ef. 4-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 9-2009(Temp), f. & cert. ef. 8-12-09 thru 12-28-09; CWP 10-2009(Temp), f. & cert. ef. 9-1-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 12-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

## 413-090-0005

### Definitions

The following definitions apply to OAR 413-090-0000 to 413-090-0050:

(1) "Adoption assistance payment" means a monthly payment made by the Department to the pre-adoptive family or adoptive family on behalf of an eligible child or young adult.

(2) "Base rate payment" means a payment to the foster parent or relative caregiver for the costs of providing the child or young adult with the following:

(a) Food — including the cost to cover a child or young adult's special or unique nutritional needs;

(b) Clothing — including purchase and replacement;

(c) Housing — including maintenance of household utilities, furnishings, and equipment;

(d) Daily supervision — including teaching and directing to ensure safety and well-being at a level which is appropriate based on the chronological age of the child or young adult;

(e) Personal incidentals — including personal care items, entertainment, reading materials, and miscellaneous items; and

(f) The cost of providing transportation — including local travel associated with expenditure for gas and oil, and vehicle maintenance and repair associated with transportation to and from extracurricular, child care, recreational, and cultural activities.

(3) "CANS screening" means Child and Adolescent Needs and Strengths screening, a process of gathering information on a child or young adult's needs and strengths used for one or more of the following purposes:

(a) Identifying case planning, service planning, and supervision needs of the child or young adult in substitute care with a certified family; and

(b) Determining the level of care payment while in substitute care with a certified family; and

(c) Determining the level of care payment included in an adoption assistance agreement or guardianship assistance agreement.

(4) "Certified family" means an individual or individuals who hold a current Certificate of Approval from the Department to operate a home to provide care, in the home in which they reside, to a child or young adult in the care or custody of the Department.

(5) "Chafee housing payment" means a payment to assist in covering the costs of room and board made to an eligible individual between 18 and 20 years of age who was discharged from the care and custody of the Department or one of the federally recognized tribes on or after reaching 18 years of age.

(6) "Child" means a person under 18 years of age.

(7) "Department" means the Department of Human Services, Child Welfare.

(8) "Dependent parent" means a child or young adult in the legal custody of the Department who is the parent of a child.

(9) "Enhanced shelter care payment" means a limited term payment provided to a certified family when a child or young adult in the care or custody of the Department moves to a certified family's home from a placement with a Behavior Rehabilitation Service provider and there is no current level of care determination applicable to the child or young adult.

(10) "Enhanced supervision" means the additional support, direction, observation, and guidance necessary to promote and ensure the safety and well-being of a child or young adult when the child or young adult qualifies for a level of care payment.

(11) "Foster care payments" means one or more of the following payments to a certified family, authorized at rates established by the Department, for the board and care of a child or young adult for whom the Department has placement and care responsibility:

(a) The base rate payment;

(b) The level of care payment, if any;

(c) Shelter care payment or enhanced shelter care payment;

(d) Mileage reimbursement, paid at the current Department mileage reimbursement rate paid to child welfare staff, for transportation of a child or young adult remaining in the same school he or she was attending prior to placement in substitute care; and

(e) The board and care of the child of a dependent parent, unless the dependent parent receives cash benefits under a program administered by the Department of Human Services under chapter 461 of the Oregon Administrative Rules.

(12) "Guardian" means an individual who has been granted guardianship of the child through a judgment of the court.

(13) "Guardianship assistance agreement" means a written agreement, binding on the parties to the agreement, between the Department and the guardian of an eligible child or young adult setting forth the assistance the Department is to provide on behalf of the child or young adult, the responsibilities of the guardian and the Department, and the manner in which the agreement and amount of assistance may be modified or terminated.

(14) "Independent living housing subsidy" means a payment to assist in covering the costs 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.

(15) "Level of care payment" means the payment provided to an approved or certified family, a guardian, a pre-adoptive family or an adoptive family based on the need for enhanced supervision of the child or young adult as determined by applying the CANS algorithm to the results of the CANS screening.

(16) "Potential guardian" means an individual who:

(a) Has been approved by the Department or participating tribe to be a child's guardian; and

(b) Is in the process of legalizing the relationship to the child through the judgment of the court.

(17) "Pre-adoptive family" means an individual or individuals who:

(a) Has been selected to be a child's adoptive family; and

(b) Is in the process of legalizing the relationship to the child through the judgment of the court.

(18) "Shelter care payment" means a payment provided to a certified family during the first 20 days of substitute care for a child or young adult in the care or custody of the Department.

(19) "Young adult" means a person aged 18 through 20 years.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

# ADMINISTRATIVE RULES

Hist.: SOSCF 20-1999, f. 9-15-99, cert. ef. 9-20-99; CWP 9-2003, f. & cert. er. 1-7-03; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07; CWP 5-2007, f. 3-30-07, cert. ef. 4-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 10-2009(Temp), f. & cert. ef. 9-1-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 12-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

## 413-090-0010

### Authorized Payments

#### (1) Family Foster Care.

(a) Shelter care payment. The Department reimburses a certified family a shelter care payment on behalf of a child or young adult during the first twenty days of substitute care after the Department has obtained physical or legal custody of the child or young adult. The daily shelter care payment is:

- (A) \$24.60 for a child five years or younger;
- (B) \$28.00 for a child 6 through 12 years of age; and
- (C) \$31.60 for a child or young adult 13 through 20 years of age.

(b) Base rate payment. The Department reimburses a certified family a base rate payment on behalf of a child or young adult in the Department's physical or legal custody when a child or young adult is placed in the certified family's home.

(A) Payment is made on a monthly basis, or prorated for a portion of a month, when the base rate payment is for less than all days in the month, and made after the month in which the care has been provided.

(B) The base rate payment starts the twenty-first day of a child's placement in substitute care and includes the day the child or young adult enters the home, but excludes the day the child or young adult leaves the home.

(C) The base rate payment is:

- (i) \$639 per month for a child five years or younger;
- (ii) \$728 per month for a child 6 through 12 years of age; and
- (iii) \$823 per month for a child or young adult 13 through 20 years of age.

(D) The Department does not reimburse the base rate payment to a certified family when reimbursement for shelter care payment or enhanced shelter care payment applies.

(c) Enhanced shelter care payment. The Department reimburses a certified family an enhanced shelter care payment rate on behalf of a child or young adult during the first 20 days of substitute care with a certified family after a child or young adult has been in placement with a Behavior Rehabilitation Service provider and there is no current level of care payment determination applicable to the child or young adult. The daily enhanced shelter care payment is:

- (A) \$29.40 for a child five years or younger;
- (B) \$33.50 for a child 6 through 12 years of age; and
- (C) \$37.90 for a child or young adult 13 through 20 years of age.

(d) Mileage reimbursement. The Department reimburses a certified family for mileage, paid at the current Department mileage reimbursement rate paid to child welfare staff, when the certified family must provide transportation for a child or young adult in order to remain in the same school he or she was attending prior to placement in substitute care.

(2) Level of care payment.

(a) The Department reimburses a level of care payment to a certified family on behalf of a child or young adult when the CANS screening results indicate the child or young adult has enhanced supervision needs.

(b) The initial level of care payment to a certified family begins:

- (A) No earlier than the twenty first day of substitute care; or
- (B) Ninety days prior to the date an initial CANS screening was approved for a child or young adult in substitute care over 111 days.

(c) A level of care payment to a certified family may commence the first day following the end of enhanced shelter care payment.

(d) The Foster Care Program Manager may approve commencing the level of care payment beyond the timeframes in subsections (b) and (c) of this section when a delay in scheduling, completing, scoring or approving the CANS screening results in a potential loss or interruption of a level of care payment.

(e) When the CANS screening results indicate the child or the young adult eligible for adoption assistance or guardianship assistance needs enhanced supervision, the Department includes the level of care payment in:

(A) An adoption assistance agreement with a pre-adoptive family or an adoptive family pursuant to Child Welfare Policy I-G.3.1, "Adoption Assistance" OAR 413-130-0000 to 413-130-0130; or

(B) A guardianship assistance agreement with a potential guardian or a guardian pursuant to Child Welfare Policy I-E.3.6.2, "Guardianship Assistance", OAR 413-070-0900 to 413-070-0979.

(f) A CANS screener rates each element of a child or young adult's behavior and functioning through the CANS screening on a scale of zero to three and the ratings determine whether a child or young adult meets the criteria for one of three levels of care. These ratings are determined using the following exhibits, which by this reference are incorporated into this rule:

(A) DHS 9601 — Child and Adolescent Needs and Strengths Comprehensive Screening Tool Ages Birth through Five, adopted January 5, 2009 and revised in June, 2011.

(B) DHS 9602 — Child and Adolescent Needs and Strengths Comprehensive Screening Tool Ages Six through Twenty, adopted January 5, 2009 and revised in June 2011.

(C) Child and Adolescent Needs and Strengths Algorithm, adopted February 9, 2009.

(D) The Department maintains these documents on the Department's website. Printed copies of all three exhibits may be obtained by contacting the Department of Human Services, Children, Adults and Families, ATTN: Level of Care Manager, 500 Summer Street NE, E93, Salem, OR 97301.

(g) The level of care payment is:

- (A) \$212 per month for Level 1 (moderate needs).
- (B) \$414 per month for Level 2 (intermediate needs).
- (C) \$850 per month for Level 3 (advanced needs).

(3) The Department reimburses a certified family an applicable base rate payment for a child of a dependent parent when both are living with the certified family unless the dependent parent receives a TANF grant under programs administered by the Department of Human Services under chapter 461 of the Oregon Administrative Rules or has other means of financial support.

(4) The Department reimburses a Chafee housing payment or an independent living housing subsidy to an eligible individual up to a maximum of \$600 per month of eligibility pursuant to Child Welfare Policy I-B.2.3.5, "Youth Transitions", OAR 413-030-0400 to 413-030-0460.

(5) Payments prohibited. The Department may not authorize payment for the care of a child or young adult to more than one certified family per day.

(6) A payment by the Department under this rule is inalienable by any assignment or transfer and exempt from execution, levy, attachment, and garnishment under the laws of the state of Oregon.

[Publications: Publications referenced are available from the agency.]

[ED. NOTE: Exhibits referenced are available from the agency.]

Stat. Auth.: ORS 418.005 & 418.340

Stats. Implemented: ORS 418.005, 418.330, 418.335, 418.340, 418.470 & 418.625

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 2-1999, f. & cert. ef. 3-5-99; SOSCF 20-1999, f. 9-15-99, cert. ef. 9-20-99; CWP 9-2003, f. & cert. er. 1-7-03; CWP 20-2003(Temp), f. 1-31-03 thru 7-30-03; CWP 27-2003, f. & cert. ef. 7-31-03; CWP 34-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 4-28-04; CWP 7-2004, f. & cert. ef. 4-1-04; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07; CWP 5-2007, f. 3-30-07, cert. ef. 4-1-07; CWP 28-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 10-2008, f. 6-27-08, cert. ef. 6-28-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 9-2009(Temp), f. & cert. ef. 8-12-09 thru 12-28-09; CWP 10-2009(Temp), f. & cert. ef. 9-1-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 12-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

## 413-090-0021

### Periodic Review of Eligibility for Level of Care Payments

(1) When the Department conducts a CANS screening for a child or young adult in substitute care under subsection (1)(b) of OAR 413-020-0230 and the results indicate the child or young adult's level of care has changed, the Department adjusts the child or young adult's level of care payment as follows:

(a) When a level of care payment increases, change in payment begins the first day of the month in which the increased level of care payment was approved.

(b) When a level of care payment decreases, change in payment begins the first day of the month following the month in which the decreased level of care payment was approved unless continuing benefits have been requested through a request for a contested case hearing.

(2) When the Department determines, denies, adjusts or terminates a level of care payment to a child or young adult living with a certified family, the Department follows Child Welfare Policy I-A.5.2, "Contested Case Hearings" OAR 413-010-0500 to 413-010-0535.

(3) A CANS screening may be conducted for a child or young adult living with a potential guardian, a guardian, a pre-adoptive family, or an adoptive family when a referral is received pursuant to OAR 413-020-0230(3).

Stat. Auth.: ORS 418.005 & 418.340

Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 12-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11



# ADMINISTRATIVE RULES

## 413-090-0030

### Payment for Temporary Absences from Family Foster Care

(1) The Department may continue the base rate payment and any level of care payment to the certified family during a child or young adult's temporary absence from the home for 14 days or less, when:

(a) The plan is for the child or young adult to return to the care of the same certified family; and

(b) No other certified family is receiving a base rate payment or level of care payment for the child or young adult during the period of the absence.

(2) Hospitalization. The Department may continue the base rate payment and level of care payment to the certified family when the child or young adult requires hospitalization for medical treatment and the certified family continues to exercise caregiving responsibilities in anticipation of the return of the child or young adult. Hospitalization for medical treatment is not considered a substitute care placement with a duplicate payment.

Stat. Auth.: ORS 418.005 & 418.340

Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 20-1999, f. 9-15-99, cert. ef. 9-20-99; CWP 9-2003, f. & cert. ef. 1-7-03; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07; CWP 5-2007, f. 3-30-07, cert. ef. 4-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 9-2009(Temp), f. & cert. ef. 8-12-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 12-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

## 413-090-0040

### Payments During Adoptive Supervision

When a child is free for adoption and placed in an approved or certified family's home designated by the Department's Adoption Program Manager as the child's pre-adoptive family, the Department pays base rate payment and any level of care payment to the pre-adoptive family until the adoption assistance payment commences. See Child Welfare Policy I-G.3.1, "Adoption Assistance", OAR 413-130-0000 to 413-130-0130 for the adoption assistance eligibility requirements of the Adoption Assistance Program.

[ED. NOTE: Exhibits referenced are available from the agency.]

Stat. Auth.: ORS 418.005 & 418.340

Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 20-1999, f. 9-15-99, cert. ef. 9-20-99; CWP 9-2003, f. & cert. ef. 1-7-03; CWP 5-2007, f. 3-30-07, cert. ef. 4-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 12-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

## 413-090-0050

### Out-of-State Payment to a Certified Family Moving to Another State

(1) A certified family who receives Department approval to move out-of-state with a child that the Department has placed in the home may continue to receive base rate and level of care for that child or young adult for up to 180 days or until licensed or certified in the receiving state, whichever is earlier.

(2) The Administrator of the Office of Permanency and Safety for Children or the Foster Care Program Manager may extend the 180 day limit for continuing to receive current base rate payment and level of care payment when the licensure or certification process in the receiving state has not been completed due to circumstances beyond the control of the Department.

(3) Once the home is licensed or certified in the receiving state, the Department authorizes payment at Oregon's established base rate payment and level of care payment rates.

Stat. Auth.: ORS 418.005 & 418.340

Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 20-1999, f. 9-15-99, cert. ef. 9-20-99; CWP 9-2003, f. & cert. ef. 1-7-03; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07; CWP 5-2007, f. 3-30-07, cert. ef. 4-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 12-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

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**Rule Caption:** Changing OARs affecting Child Welfare programs.

**Adm. Order No.:** CWP 13-2011

**Filed with Sec. of State:** 6-30-2011

**Certified to be Effective:** 6-30-11

**Notice Publication Date:** 9-1-2010

**Rules Amended:** 413-100-0000, 413-100-0010, 413-100-0020, 413-100-0030, 413-100-0060, 413-100-0070, 413-100-0080, 413-100-0110, 413-100-0120, 413-100-0130, 413-100-0160, 413-100-0180, 413-100-0190, 413-100-0200, 413-100-0210, 413-100-0220, 413-100-0230, 413-100-0240, 413-100-0250, 413-100-0260, 413-100-0270, 413-100-0280, 413-100-0300, 413-100-0310, 413-100-0320, 413-100-0335, 413-100-0345

**Subject:** OAR 413-100-0000 about the purpose of the Department's Title IV-E Foster Care, Adoption Assistance, and Guardianship Assistance eligibility rules (OAR 413-100-0000 to 413-100-0345), OAR 413-100-0010 about the Title IV-E funding eligibility requirements, OAR 413-100-0020 about the definitions used in the Department's Title IV-E Foster Care and General Assistance funding eligibility rules, OAR 413-100-0130 about the requirements for documenting the certification or licensure of foster homes, OAR 413-100-0060 about which placements of and payments for children are Title IV-E reimbursable, OAR 413-100-0070 about which children's cases are referred for Title IV-E eligibility determinations, OAR 413-100-0080 about the effective date of Title IV-E eligibility, OAR 413-100-0110 about how the Department determines the effective date for closure of Title IV-E eligibility, OAR 413-100-0120 about how the Department verifies Title IV-E eligibility, OAR 413-100-0130 about how Title IV-E eligibility determinations are made under the Aid to Families with Dependent Children (AFDC) administrative rules in effect on July 16, 1996 had an application for AFDC program benefits been made, OAR 413-100-0160 about the financial need eligibility requirement of the AFDC program, OAR 413-100-0180 about how the Department treats the earned income of a student when determining AFDC program eligibility, OAR 413-100-0190 about how the Department treats unearned income when determining AFDC program eligibility, OAR 413-100-0200 about how the Department treats lump-sum benefit payments when determining AFDC program eligibility, OAR 413-100-0210 about citizenship and immigration status requirements for Title IV-E eligibility, OAR 413-100-0220 about the residency requirements for a child for Title IV-E eligibility, OAR 413-100-0230 about the age limitations on a child's Title IV-E eligibility, OAR 413-100-0240 about which judicial findings must be made for a child to be Title IV-E eligible, OAR 413-100-0250 about how the Department treats voluntary custody and voluntary placement agreements when determining Title IV-E eligibility, OAR 413-100-0260 about when a child in placement based on a voluntary relinquishment is Title IV-E eligible, OAR 413-100-0270 about when and how the Department redetermines a child's Title IV-E eligibility, OAR 413-100-0280 about when the Department must redetermine deprivation for a child at the relinquishment or termination of parental rights; OAR 413-100-0300 about when the Department refers a Title IV-E case to the Division of Child Support of the Oregon Department of Justice; OAR 413-100-0310 about when a Title IV-E eligible child also is eligible for Title XIX Medicaid benefits; OAR 413-100-0320 about the requirements for a child's Title XIX Medicaid eligibility; OAR 413-100-0335 about Title IV-E eligibility determinations for children eligible for adoption assistance benefits, and OAR 413-100-0345 about Title IV-E eligibility determinations for children eligible for guardianship assistance benefits are being amended to clarify the Department's policies for this program, include definitions used throughout the Title IV-E Foster Care, Guardianship Assistance, and Adoption Assistance funding eligibility rules (OAR 413-100-0000 to 413-100-0345), reflect current Department terminology, and bring the Title IV-E Foster Care, Guardianship Assistance, and Adoption Assistance funding eligibility rules into compliance with federal requirements.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 413-100-0000

### Purpose

The purpose of these rules, OAR 413-100-0000 to 413-100-0345, is to describe the Department's responsibilities and criteria for making Title IV-E eligibility determinations for children in substitute care for whom the Department has placement and care responsibility and Adoption Assistance and Guardianship Assistance Title IV-E eligibility determinations. These determinations are used to ensure proper federal reimbursement.

Stat. Auth.: ORS 409.010, 409.050 & 418.005

Stats. Implemented: ORS 409.010, 409.050 & 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 20-2000(Temp), f. & cert. ef. 8-11-00 thru 2-6-01; SOSCF 4-2001, f. & cert. ef. 2-7-01; SOSCF 44-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 14-2007, f. & cert. ef. 8-1-07; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 13-2011, f. & cert. ef. 6-30-11

# ADMINISTRATIVE RULES

## 413-100-0010

### Eligibility Requirements

(1) The Adoption Assistance and Child Welfare Act of 1980, Public Law 96-272, took effect on June 17, 1980. It amended Title IV-E of the Social Security Act, which provides federal payments to the states for foster care maintenance and adoption assistance payments made on behalf of certain eligible children. The Adoption and Safe Families Act (ASFA) took effect on November 18, 1997, and enacted further federal requirements for claiming these funds and enhancing permanency for children. The Deficit Reduction Act of 2005 took effect on February 8, 2006, and further clarified the federal requirements for Title IV-E foster care maintenance, adoption assistance, medical coverage, and administrative funds.

(2) The Administration for Children and Families is the federal agency that adopts regulations and monitors the States' Title IV-E foster care and adoption assistance programs. Oregon's Title IV-E program is administered by the Department of Human Services. The Department of Human Services acts as the applicant for the child and provides Title IV-E foster care payments to foster parents on behalf of eligible children, consistent with:

(a) The standards established by state and federal legislation and regulations, federal policy, and the State plan for the Title IV-E program; and

(b) The established financial and parental deprivation standards for the Aid to Families with Dependent Children (AFDC) program, which was in effect on July 16, 1996, excluding changes implemented by the Oregon Options Waiver.

(3) The Fostering Connections to Success and Increasing Adoptions Act of 2008 (122 Stat. 3949-3981) was signed into law on October 7, 2008 enacting further federal requirements to help youth in foster care by promoting permanent families for children and young adults through relative guardianship and adoption and improving education and health care. Additionally --

(a) Effective April 1, 2010, the Act delinks Title IV-E eligibility redeterminations from AFDC eligibility; and

(b) Effective October 1, 2010, the Act extends federal support for young adults in foster care, guardianship, and adoption through 20 years of age.

[ED. NOTE: Exhibits referenced are available from the agency.]

Stat. Auth.: ORS 409.010, 409.050 & 418.005

Stats. Implemented: ORS 409.010, 409.050 & 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 1-1997, f. 2-18-97, cert. ef. 3-1-97; SOSCF 4-1998, f. 2-5-98, cert. ef. 2-6-98; SOSCF 20-2000(Temp), f. & cert. ef. 8-11-00 thru 2-6-01; SOSCF 4-2001, f. & cert. ef. 2-7-01; SOSCF 44-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 14-2007, f. & cert. ef. 8-1-07; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 13-2011, f. & cert. ef. 6-30-11

## 413-100-0020

### Definitions

The following definitions apply to OAR 413-100-0000 to 413-100-0345:

(1) "AFDC" means the Aid to Families with Dependent Children Program as it existed on July 16, 1996, excluding changes implemented by the Oregon Options Waiver.

(2) "Assistance unit" means a group of individuals whose needs, income, and resources are considered together to determine their public assistance eligibility and the grant amount.

(3) "Child" means a person under 18 years of age.

(4) "Child care institution" means a private child care institution, or a public child care institution which accommodates no more than 25 children, licensed by the state or tribe in which it is situated or approved by the agency of the state or tribal licensing authority (with respect to child care institutions on or near Indian reservations) responsible for licensing or approval of institutions of this type as meeting the standards established for such licensing or approval. "Child care institution" does not include detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children who are determined to be delinquent.

(5) "Child support" means any voluntary or court-ordered contribution by an absent parent. Support includes, but is not limited to, money payments, education, and necessary and proper shelter, food, clothing, and medical attention.

(6) "Constructive removal" means the non-physical, paper, or legal removal of a child who is not living with a specified relative when the voluntary custody or voluntary placement agreement is signed or the judicial order is entered. Constructive removal is described further in OAR 413-100-0135(3)(b).

(7) "Countable income" means the amount of available income, including earned and unearned income not specifically excluded by OAR 461-140-0040, used to determine eligibility for public assistance.

(8) "Date the child is considered to have entered foster care" means the earlier of the following:

(a) The date that the court found the child to be within the jurisdiction of the court under ORS 419B.100; or

(b) 60 days from the date of removal.

(9) "Department" means the Department of Human Services, Child Welfare.

(10) "Earned income" means all legal reportable income resulting from an individual's employment or self-employment.

(11) "Eligibility month" means --

(a) The month in which the court was petitioned or court action was initiated that resulted in the child's "constructive" or "physical" removal from the home of his or her specified relative; or

(b) The month a voluntary custody or voluntary placement agreement is signed.

(12) "Family" means for purposes of determining Title IV-E foster care eligibility under these rules, the parent or parents, stepparent, or relative or relatives from whom the child is removed.

(13) "First cousin once-removed" means a child of a first cousin.

(14) "Foster care" means 24 hour substitute care for children placed away from their parents or guardians and for whom the Department has placement and care responsibility. This includes but is not limited to placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and pre-adoptive homes. A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the Department or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of the adoption, or whether there is Federal matching of any payments that are made.

(15) "Foster home", as defined in ORS 418.625(3), means any home maintained by a person who has under the care of the person in such home any child under the age of 21 years unattended by the child's parent or guardian, for the purpose of providing such child with care, food, and lodging. This definition does not include any foster home under the direct supervision of a private child caring agency or institution certified by the Department, any home under the direct supervision of a custodial parent for the purpose of providing respite care, or any developmental disability child foster home as defined in ORS 443.830.

(16) "Incapacity" means a physical or mental defect, illness, or impairment that reduces substantially or eliminates the individual's ability to support or care for the child and may be expected to last a period of at least 30 days.

(17) "Indian child" means any unmarried person who is under age 18 and is either:

(a) A member of an Indian tribe; or

(b) Eligible for membership in an Indian tribe and the biological child of a member of an Indian tribe.

(18) "Need" means, using the Department AFDC standards, the monetary amount by which an individual or family's requirements exceeds all of the income and resources available to the individual or family.

(19) "Nunc pro tunc order" means, under Oregon law, a court order that restores to the record an action that actually occurred, but was inadvertently or mistakenly omitted from the record.

(20) "Parent" means, under the AFDC rules in effect on July 16, 1996, the biological or legal (step or adoptive) mother or father of a person.

(a) If the mother lives with a male, who either she or he claims is the father of the child, and no one else claims to be the father, he is treated as the father even if paternity has not been legally established.

(b) The Voluntary Acknowledgment Form (HS 45-21, available from Vital Statistics) jointly signed by the mother and putative father, is a legal document that establishes paternity and allows the father's name to be added to the birth certificate.

(c) A stepparent relationship exists if:

(A) The person is legally married to the child's biological or adoptive parent; and

(B) The marriage has not been terminated by legal separation, divorce or death.

(d) A legal adoption erases all prior legal and blood relationships and establishes the adoptive parent as the legal parent. However, the biological parent is also considered a parent if both of the following are true:

(A) The child lives with the biological parent; and

# ADMINISTRATIVE RULES

(B) The legal parent, who is the adoptive parent, has given up care, control, and supervision of the child.

(21) "Payment or need standard" means the amount set by the Department as the AFDC net income limit. It is used to determine the actual grant amount. This amount refers to the payment or need standard in effect on July 16, 1996.

(22) "Physical removal" means the removal of a child that occurs when a child is placed in substitute care, who was living with the specified relative when the voluntary custody or voluntary placement agreement was signed or court proceedings were initiated.

(23) "Removal home" means the home from which the child was removed as a result of a judicial finding, voluntary custody agreement, or voluntary placement agreement. This term is further described at OAR 413-100-0135(3).

(24) "Resource" means any personal or real property that is or can be made available to meet the need of the assistance unit that the Department does not specifically exclude from consideration.

(25) "Specified relative" means:

(a) A parent as defined in this rule;

(b) Any blood relative or half-blood relative, including persons of preceding generations denoted by the prefixes of grand, great, or great-great (persons with one common biological parent are half-blood relatives);

(c) A sibling, aunt, uncle, nephew, niece, first cousin, and first cousin once-removed;

(d) A person who legally adopts a child or the child's parent, other legally adopted children of such persons, and any persons related to the child through the adoption who meet the degree of relationship specified in subsection (b) or (c) of this section;

(e) A stepmother, stepfather, stepbrother, or stepsister; or

(f) A spouse of anyone listed in subsections (b) to (e) of this section, even if the marriage is terminated by death or divorce.

(26) "Unearned income" means all income that does not directly result from an individual's employment or self-employment.

(27) "Young adult" means a person aged 18 through 20 years.

Stat. Auth.: ORS 409.010, 409.050, 418.005 & 418.625

Stats. Implemented: ORS 409.010, 409.050, 418.005 & 418.625

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 4-1998, f. 2-5-98, cert. ef. 2-6-98; SOSCF 20-2000(Temp), f. & cert. ef. 8-11-00 thru 2-6-01; SOSCF 4-2001, f. & cert. ef. 2-7-01; SOSCF 44-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 2-2004, f. & cert. ef. 2-10-04; CWP 1-2007(Temp), f. & cert. ef. 2-7-07 thru 8-6-07; CWP 14-2007, f. & cert. ef. 8-1-07; CWP 11-2008(Temp), f. 6-27-08, cert. ef. 6-28-08 thru 12-24-08; CWP 21-2008, f. & cert. ef. 9-2-08; CWP 19-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 13-2011, f. & cert. ef. 6-30-11

## 413-100-0030

### Certification Documentation Requirements for Title IV-E Foster Care

(1) Documentation of a certificate or license is required in the case file, certification file, or licensing file.

(2) The following documentation is required for an out-of-state foster home placement:

(a) Verification that the out-of-state foster home or child caring agency is certified, licensed, or approved by the agency in that state which is responsible for licensing or approval of such facilities; or

(b) In states where relative homes are not certified, a statement in writing that the home would meet the state's standards for certification or licensure, including a statement of the period of time for which a formal license or certificate would be issued for that home and a copy of the verification that a criminal history check was completed and approved.

Stat. Auth.: ORS 409.010, 409.050 & 418.005

Stats. Implemented: ORS 409.010, 409.050 & 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 20-2000(Temp), f. & cert. ef. 8-11-00 thru 2-6-01; SOSCF 4-2001, f. & cert. ef. 2-7-01; CWP 30-2003(Temp), f. & cert. ef. 9-2-03 thru 2-28-04; CWP 2-2004, f. & cert. ef. 2-10-04; CWP 14-2007, f. & cert. ef. 8-1-07; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 13-2011, f. & cert. ef. 6-30-11

## 413-100-0060

### Title IV-E Reimbursable Placements and Payments

(1) To be Title IV-E eligible and reimbursable, a child or young adult must be placed in a Title IV-E reimbursable placement.

(2) Reimbursable Placements. There are four types of out-of-home placements that meet the Title IV-E foster care definition of a reimbursable placement. They are:

(a) The home of a certified non-relative foster parent;

(b) The home of a certified relative caregiver;

(c) A private, non-medical group home or crisis residential center licensed by the state; or

(d) A public non-medical group home or child caring agency with a licensed capacity of less than 26 beds.

(3) Foster care maintenance payments are made only on behalf of an eligible child or young adult who is:

(a) In the foster family home of an individual, whether the payments are made to such individual, a public or private child placement, or a child caring agency; or

(b) In a child care institution, whether the payments are made to such institution, a public or private child placement, or a child caring agency.

(4) Reimbursable Payments. Title IV-E foster care maintenance payments for a child or young adult in foster care may cover expenses listed in the following subsections:

(a) The cost for and the cost of providing food, clothing, shelter, daily supervision, school supplies, a child or young adult's personal incidentals, liability insurance with respect to the child or young adult, and reasonable travel to the child or young adult's home for visitation with family or other caretakers, and reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement. Local travel associated with providing the items listed in this subsection also is an allowable expense.

(b) For a child care institution, the Title IV-E foster care maintenance payment must include reimbursement for the institution's reasonable administrative and operating expenses required to provide the items described in subsection (a) of this section.

Stat. Auth.: ORS 409.010, 409.050 & 418.005

Stats. Implemented: ORS 409.010, 409.050 & 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 4-1998, f. 2-5-98, cert. ef. 2-6-98; SOSCF 20-2000(Temp), f. & cert. ef. 8-11-00 thru 2-6-01; SOSCF 4-2001, f. & cert. ef. 2-7-01; CWP 14-2007, f. & cert. ef. 8-1-07; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 13-2011, f. & cert. ef. 6-30-11

## 413-100-0070

### Application for Title IV-E Foster Care

(1) A child or young adult in substitute care for whom the Department has responsibility for placement and care must be referred for a Title IV-E eligibility determination.

(2) Under no circumstances may Title IV-E foster care eligibility or reimbursement be authorized on behalf of any child or young adult prior to the establishment of eligibility by the Department's Title IV-E Eligibility Specialist. A child or young adult may not be Title IV-E eligible based on presumed eligibility.

Stat. Auth.: ORS 409.010, 409.050 & 418.005

Stats. Implemented: ORS 409.010, 409.050 & 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 20-2000(Temp), f. & cert. ef. 8-11-00 thru 2-6-01; SOSCF 4-2001, f. & cert. ef. 2-7-01; SOSCF 44-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 30-2003(Temp), f. & cert. ef. 9-2-03 thru 2-28-04; CWP 2-2004, f. & cert. ef. 2-10-04; CWP 14-2007, f. & cert. ef. 8-1-07; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 13-2011, f. & cert. ef. 6-30-11

## 413-100-0080

### Effective Eligibility Date

The effective date of a child or young adult's Title IV-E eligibility is the date when all of the other eligibility criteria prescribed in OAR 413-100-0020 to 413-100-0320 are met and one of the following applies:

(1) The date of the child or young adult's placement in substitute care, if the Department is responsible for the child or young adult's placement and care.

(2) The first of the month in which the Department obtains responsibility for the child or young adult's placement and care if the child or young adult enters substitute care prior to the Department obtaining placement and care responsibility.

(3) The first of the month in which the "reasonable efforts" finding is made when the court delays making the finding, as long as the Reasonable Efforts to Prevent the Removal finding is obtained within 60 days of placement.

(4) When the Department has retained responsibility for placement and care and the child or young adult is returning to foster care from a trial home visit, the placement date or the date that the child or young adult meets all Title IV-E eligibility criteria after a Title IV-E redetermination of eligibility under OAR 413-100-0270 is completed.

(5) When the Department has retained responsibility for placement and care and the court has retained wardship, and the child or young adult returning to foster care is not considered to have been on a trial home visit, the date the Department completes a new Title IV-E eligibility determination under these rules, OAR 413-100-0000 to 413-100-0345.

(6) The first of the month in which the voluntary placement agreement or voluntary custody agreement is signed by each party, if placement occurs prior to the signing of the agreement.

(7) The date of placement in a certified relative caregiver home when the relative has received a TANF non-needy (NNR) grant and repayment is authorized to the TANF agency.



# ADMINISTRATIVE RULES

(8) The effective certification date of the relative caregiver's home when a TANF non-needy (NNR) grant has not been received.

(9) The effective certification date when the Department of Human Services Financial Services unit has reimbursed the Department of Human Services Office of Self Sufficiency Programs for the relative caregiver's TANF non-needy (NNR) grant retroactive to the certification date.

(10) The first of the month in which a non-certified home becomes certified, if the child or young adult was placed in the home at that time.

(11) When applicable, the date the child or young adult is no longer receiving SSI benefits.

Stat. Auth.: ORS 409.010, 409.050 & 418.005

Stats. Implemented: ORS 409.010, 409.050 & 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 1-1997, f. 2-18-97, cert. ef. 3-1-97; SOSCF 4-1998, f. 2-5-98, cert. ef. 2-6-98; SOSCF 20-2000(Temp), f. & cert. ef. 8-11-00 thru 2-6-01; SOSCF 4-2001, f. & cert. ef. 2-7-01; SOSCF 44-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 30-2003(Temp), f. & cert. ef. 9-2-03 thru 2-28-04; CWP 2-2004, f. & cert. ef. 2-10-04; CWP 14-2007, f. & cert. ef. 8-1-07; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 13-2011, f. & cert. ef. 6-30-11

## 413-100-0110

### Effective Closure Date

The effective closure date for cases no longer meeting Title IV-E eligibility criteria is the earliest of the following:

(1) The end of the month in which eligibility ceased to exist.

(2) Retroactive to the end of the month in which eligibility ceased to exist, even if the information that ended the child or young adult's eligibility became known to the Department after the fact.

(3) The date that the custodial or non-custodial parent or the parents establish residency in the home in which the child or young adult resides if one or both parents are providing caretaking responsibility for the child or young adult.

(4) The date the foster parent or relative caregiver's certificate of approval or a child caring agency's license expires or is revoked.

(5) The 181st day of placement for a voluntary placement if a court has not approved the continuation of the placement within 180 days of the date that the child or young adult was placed. The placement date, not the date that the agreement was signed, begins the 180-day count.

(6) The date of the child or young adult's placement in a facility that is considered to be outside the scope of foster care.

(7) The date that the Department ceases to have responsibility for the placement and care of the child or young adult.

(8) The date the child is emancipated.

(9) The date the young adult no longer meets the age requirements for Title IV-E eligibility under OAR 413-100-0230.

Stat. Auth.: ORS 409.010, 409.050 & 418.005

Stats. Implemented: ORS 409.010, 409.050 & 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 1-1997, f. 2-18-97, cert. ef. 3-1-97; SOSCF 20-2000(Temp), f. & cert. ef. 8-11-00 thru 2-6-01; SOSCF 4-2001, f. & cert. ef. 2-7-01; SOSCF 44-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 30-2003(Temp), f. & cert. ef. 9-2-03 thru 2-28-04; CWP 2-2004, f. & cert. ef. 2-10-04; CWP 14-2007, f. & cert. ef. 8-1-07; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 13-2011, f. & cert. ef. 6-30-11

## 413-100-0120

### Verification of Eligibility

(1) When the Department determines a child or young adult is ineligible for Title IV-E foster care, based on the information available at the time of the initial determination, the child or young adult is not eligible for Title IV-E foster care maintenance payments for the entire duration of that substitute care episode.

(2) To verify Title IV-E foster care eligibility, the Department must obtain acceptable documentary evidence to support certain eligibility factors. The Department determines which eligibility factors require verification and the types of acceptable documentary evidence. The Department may:

(a) Decide to require verification of additional eligibility factors; and

(b) Deny an application or end ongoing benefits when acceptable verification is not provided or available.

(3) Verification is required for the following eligibility factors:

(a) Residency;

(b) U.S. Citizenship status;

(c) Age;

(d) Removal from the home of the specified relative;

(e) Judicial language in Court Orders;

(f) Countable family, child, or young adult income and benefits;

(g) Parental deprivation;

(h) Family, child, or young adult resources; and

(i) The child or young adult is placed in a certified foster or relative caregiver's home or a licensed child caring agency.

Stat. Auth.: ORS 409.010, 409.050 & 418.005

Stats. Implemented: ORS 409.010, 409.050 & 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 20-2000(Temp), f. & cert. ef. 8-11-00 thru 2-6-01; SOSCF 4-2001, f. & cert. ef. 2-7-01; CWP 14-2007, f. & cert. ef. 8-1-07; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 13-2011, f. & cert. ef. 6-30-11

## 413-100-0130

### Eligibility Determinations — AFDC Linkage

(1) For an initial Title IV-E eligibility determination, the Department reconstructs the facts of the removal home to determine if the child or young adult, in the eligibility month, received AFDC or would have been eligible to receive AFDC under rules in effect on July 16, 1996, had an application been made.

(2) AFDC Relatedness. The child or young adult meets the "AFDC relatedness" test if the requirements of one of the following subsections are met:

(a) The child:

(A) Lived with the specified relative within six months of removal;

(B) Received or would have been eligible to receive AFDC in the removal home under the rules in effect on July 16, 1996, in the eligibility month had an application been made; and

(C) Remains within the resource limits that were in effect prior to the implementation of the Oregon Options Waiver under Section 1115 of the Social Security Act, effective July 1, 1996.

(b) The young adult:

(A) Lived with the specified relative within six months of removal prior to age 18;

(B) Received or would have been eligible to receive AFDC in the removal home under the rules in effect on July 16, 1996, in the eligibility month, had an application been made; and

(C) Remains within the resource limits that were in effect prior to the implementation of the Oregon Options Waiver under Section 1115 of the Social Security Act, effective July 1, 1996.

Stat. Auth.: ORS 409.010, 409.050, 412.144 & 418.005

Stats. Implemented: ORS 409.010, 409.050, 412.144 & 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 1-1997, f. 2-18-97, cert. ef. 3-1-97; SOSCF 4-1998, f. 2-5-98, cert. ef. 2-6-98; SOSCF 20-2000(Temp), f. & cert. ef. 8-11-00 thru 2-6-01; SOSCF 4-2001, f. & cert. ef. 2-7-01; CWP 30-2003(Temp), f. & cert. ef. 9-2-03 thru 2-28-04; CWP 2-2004, f. & cert. ef. 2-10-04; CWP 1-2007(Temp), f. & cert. ef. 2-7-07 thru 8-6-07; CWP 14-2007, f. & cert. ef. 8-1-07; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 13-2011, f. & cert. ef. 6-30-11

## 413-100-0160

### AFDC Eligibility — Financial Need

(1) A child removed from the home of a specified relative who was not receiving AFDC requires the Department to reconstruct the child's situation to determine whether under rules in effect on July 16, 1996 the child was AFDC eligible.

(2) If the child is physically removed from a parent's home:

(a) The Department:

(A) Considers the income and resources of the parent, parents, or stepparent from whom the child was removed in the eligibility month;

(B) Determines the countable gross earned income of all the family members in the assistance unit including the \$90 standard earned income deduction, when applicable;

(C) Determines the countable unearned income of all the family members in the assistance unit including the \$50 child support deduction, when applicable; and

(D) Excludes SSI or a combination of SSI and SSA benefits as countable income. The Department excludes the parent or child receiving SSI or a combination of SSI and other Social Security benefits and excludes them from the number in the household for AFDC calculations.

(b) An assistance unit is not eligible when all available countable earned and unearned income (in the eligibility month) exceeds the Adjusted Income payment or need standard under rules in effect on July 16, 1996.

(3) If a child is removed from a minor parent who resides in his or her parents' home, the minor parent's parents live together, and the minor parent is under age 18, has never married, and is not legally emancipated, the assets of the parents of the minor parent are deemed as follows:

(a) The resources of the parents of the minor parent are excluded.

(b) The income of the parents of the minor parent is deemed available to the minor parent if the minor parent and his or her child live with the parents of the minor parent.

(c) The amount of the deemed income of the parents of the minor parent is determined as follows:

(A) When applicable, a \$90 earned income deduction is allowed.

(B) The needs of the parents of the minor parent and their dependents, living in the same household and not included in the benefit group, are deducted at the AFDC Payment Standard.

# ADMINISTRATIVE RULES

(C) Amounts paid to the legal dependents of the parents of the minor parent not living in the household are deducted.

(D) Payments of alimony and child support are deducted.

(E) Any remaining income is countable deemed income to the minor parent.

(4) If a child is removed, physically or constructively, from the home of a specified relative who is not a parent of the child, the Department:

(a) Considers the child as a household of one;

(b) Determines the countable earned and unearned income and resources available to the child;

(c) Disregards the income and resources of each caretaker relative;

(d) Includes the child placed in substitute care in the household of one's assistance unit;

(e) Denies Title IV-E eligibility when all available countable income and unearned income (in the eligibility month) exceeds the No Adult payment or need standard for the ADC-BAS and Medically Needy programs under rules in effect on July 16, 1996.

Stat. Auth.: ORS 409.010, 409.050 & 418.005

Stats. Implemented: ORS 409.010, 409.050 & 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 1-1997, f. 2-18-97, cert. ef. 3-1-97; SOSCF 4-1998, f. 2-5-98, cert. ef. 2-6-98; SOSCF 20-2000(Temp), f. & cert. ef. 8-11-00 thru 2-6-01; SOSCF 4-2001, f. & cert. ef. 2-7-01; CWP 30-2003(Temp), f. & cert. ef. 9-2-03 thru 2-28-04; CWP 2-2004, f. & cert. ef. 2-10-04; CWP 14-2007, f. & cert. ef. 8-1-07; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 13-2011, f. & cert. ef. 6-30-11

## 413-100-0180

### AFDC Eligibility — Earned Income of Students

(1) A child or young adult with a GED or high school diploma and employed must have his or her earnings considered as income that reduces the maintenance payment, even if they are attending a secondary education program. Otherwise, the child or young adult is not eligible for Title IV-E foster care eligibility.

(2) Effective April 1, 2010, section (1) of this rule no longer applies to Title IV-E eligibility redeterminations.

(3) Earned income is not counted for:

(a) A child, 18 years old or younger, who is a full-time student in grade 12 or below (or the equivalent level of vocational training or GED courses); or

(b) A child, who is a full-time or part-time student (as defined by the institution) in grade 12 or below (or in the equivalent level of vocational training or GED courses), and not employed full-time.

Stat. Auth.: ORS 409.010, 409.050, 412.144 & 418.005

Stats. Implemented: ORS 409.010, 409.050, 412.144 & 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 20-2000(Temp), f. & cert. ef. 8-11-00 thru 2-6-01; SOSCF 4-2001, f. & cert. ef. 2-7-01; CWP 14-2007, f. & cert. ef. 8-1-07; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 13-2011, f. & cert. ef. 6-30-11

## 413-100-0190

### AFDC Eligibility — Unearned Income

(1) For Title IV-E foster care purposes, all unearned income and benefits potentially available to the child must be counted against his or her maintenance payment on a dollar-for-dollar basis.

(2) Benefits awarded to the child for which the Department is not yet payee and benefits not readily available to the child still must be counted.

(3) Effective April 1, 2010, sections (1) and (2) of this rule no longer apply to Title IV-E eligibility redeterminations.

(4) The following are examples of countable unearned income:

(a) All Social Security benefits;

(b) Veteran's benefits;

(c) Cash contributions from any source;

(d) State or private accident or disability payments;

(e) Personal injury settlements;

(f) Lump sum income (except SOIL and IRS recoveries and lump sum support payments applied in the month of receipt to offset prior months Title IV-E maintenance costs);

(g) Effective April 1, 2010, subsection (f) of this section no longer applies to Title IV-E eligibility redeterminations.

(h) Child support;

(i) Railroad Retirement and other pensions;

(j) Annuities, dividends, interest, royalties.

Stat. Auth.: ORS 409.010, 409.050, 412.144 & 418.005

Stats. Implemented: ORS 409.010, 409.050, 412.144 & 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 20-2000(Temp), f. & cert. ef. 8-11-00 thru 2-6-01; SOSCF 4-2001, f. & cert. ef. 2-7-01; CWP 14-2007, f. & cert. ef. 8-1-07; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 13-2011, f. & cert. ef. 6-30-11

## 413-100-0200

### AFDC Eligibility — Lump Sum Benefits

(1) Lump sum benefits must be used to offset a child's cost of care. Federal lump sum benefits paid to the Department must be applied retroac-

tively to reimburse the Department from the date paid placement was initiated. The Department must be the representative payee. This can be accomplished by contacting the Children's Benefit Unit of the Department.

(2) A Title IV-E eligible child receiving lump sum benefits exceeding the cost of care is ineligible for Title IV-E foster care during the months that the calculated lump sum exceeds the foster care maintenance payment.

(3) Effective April 1, 2010, sections (1) and (2) of this rule no longer apply to Title IV-E eligibility redeterminations.

Stat. Auth.: ORS 409.010, 409.050 & 418.005

Stats. Implemented: ORS 409.010, 409.050, 412.144 & 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 1-1997, f. 2-18-97, cert. ef. 3-1-97; SOSCF 20-2000(Temp), f. & cert. ef. 8-11-00 thru 2-6-01; SOSCF 4-2001, f. & cert. ef. 2-7-01; SOSCF 44-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 14-2007, f. & cert. ef. 8-1-07; CWP 13-2011, f. & cert. ef. 6-30-11

## 413-100-0210

### U.S. Citizenship and Qualified Aliens

A Title IV-E eligible child or young adult must be:

(1) A United States citizen; or

(2) A qualified alien is defined by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), P.L. 104-193. Under Section 431 of PRWORA a qualified alien's access to federal public benefits is restricted for five years beginning on the date of the alien's entry into the United States, unless subsection (b), (c), or (d) of this section applies. Under PRWORA a qualified alien is:

(a) An alien lawfully admitted for permanent residence under the Immigration and Nationality Act (the "Act");

(b) An alien granted asylum under Section 208 of the Act;

(c) A refugee admitted to the United States under section 207 of the Act;

(d) An alien paroled into the United States under section 212(d)(5) of the Act for a period of at least one year;

(e) An alien whose deportation is being withheld under Section 243(h) of the Act;

(f) An alien granted conditional entry under section 203(a)(7) of the Act as in effect prior to April 1, 1980;

(g) If the child is a qualified alien who is placed with a qualified alien or United States citizen, the date the child entered the United States is irrelevant and the five-year restriction on federal public benefits does not apply; or

(h) If the child is a qualified alien who entered the United States on or after August 22, 1996, and is placed with an unqualified alien, the child would be subject to the five-year residency requirement for federal public benefits at section 403(a) of PRWORA unless the child is in one of the excepted groups identified at section 403(b).

Stat. Auth.: ORS 409.010, 409.050, 412.144 & 418.005

Stats. Implemented: ORS 409.010, 409.050, 412.144 & 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 20-2000(Temp), f. & cert. ef. 8-11-00 thru 2-6-01; SOSCF 4-2001, f. & cert. ef. 2-7-01; CWP 14-2007, f. & cert. ef. 8-1-07; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 13-2011, f. & cert. ef. 6-30-11

## 413-100-0220

### Residency

There is no minimum time-of residency requirement for a child to be eligible for Title IV-E foster care. There need only be the intent that the child reside in the State of Oregon.

Stat. Auth.: ORS 409.010, 409.050 & 418.005

Stats. Implemented: ORS 409.010, 409.050, 412.144 & 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 20-2000(Temp), f. & cert. ef. 8-11-00 thru 2-6-01; SOSCF 4-2001, f. & cert. ef. 2-7-01; SOSCF 44-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 14-2007, f. & cert. ef. 8-1-07; CWP 13-2011, f. & cert. ef. 6-30-11

## 413-100-0230

### Age Requirements

To be Title IV-E eligible, at the time of removal an individual must be:

(1) A child 17 years of age or younger.

(2) At redetermination:

(a) A child, 17 years of age or younger;

(b) A young adult, 18 years of age, regularly attending school or training, and on track to obtain a high school diploma or equivalent.

(A) "Attending" means the student's full-time or half-time school attendance as defined by the school.

(B) A student is considered to be attending school for the full month in which the student completes or discontinues school or training.

(C) "Regularly attending school" means the student is enrolled in and attending any of the following:

(i) A school in grade 12 or below;

(ii) GED classes in lieu of high school; or

(iii) A course of vocational or technical training in lieu of high school.

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(D) A child is considered to be regularly attending school during a training program, vacation, illness, or family emergency.

(c) A young adult, 18 through 20 years of age, who is:

(A) Completing his or her secondary education or a program leading to an equivalent credential;

(B) Enrolled in an institution that provides post-secondary or vocational education;

(C) Participating in a program or activity designed to promote, or remove barriers to employment;

(D) Employed for at least 80 hours per month; or

(E) Determined unable to perform any of the activities in paragraphs (A) to (D) of this section due to a physical condition, mental disability or physical disability documented by medical evidence and regularly updated information in the case plan of the young adult.

Stat. Auth.: ORS 409.010, 409.050, 412.144 & 418.005

Stats. Implemented: ORS 409.010, 409.050, 412.144 & 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 20-2000(Temp), f. & cert. ef. 8-11-00 thru 2-6-01; SOSCF 4-2001, f. & cert. ef. 2-7-01; CWP 14-2007, f. & cert. ef. 8-1-07; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 13-2011, f. & cert. ef. 6-30-11

## 413-100-0240

### Judicial Finding Requirements for Title IV-E Eligibility

(1) Contrary to the Welfare or Best Interest Findings Requirement. If the child's removal from the home was not the result of a voluntary placement or voluntary custody agreement a child is not Title IV-E eligible for the duration of the substitute care episode, unless the first court ruling that addresses the removal includes a determination to the effect that continued residence in the home would be contrary to the welfare of the child or that placement would be in the best interest of the child.

(2) Reasonable Efforts Finding at Removal. If the child's removal from the home was not the result of a voluntary placement or voluntary custody agreement a child is not Title IV-E eligible for the duration of the substitute care episode, unless a judicial finding is made, no later than 60 days from the date the child was removed, to the effect that reasonable efforts have been made to prevent or eliminate the need for removal or that reasonable efforts are not required to prevent a child's removal from the home or to reunify the child and family.

(3) When a court determines that reasonable efforts to return the child home are not required, a permanency hearing is held within 30 days of that determination, unless the requirements of the permanency hearing were fulfilled at the court hearing in which the court determined that reasonable efforts to reunify the child and family are not required. Reasonable efforts to prevent a child's removal from the home or to reunify the child and family are not required when the Department obtains a judicial finding that such efforts are not required because one or more of the following subsections applies:

(a) The court has determined that the parent has subjected the child to aggravated circumstances;

(b) As described in ORS 419B.340, the court has determined that the parent has been convicted of:

(A) Murder of another child of the parent;

(B) Voluntary manslaughter of another child of the parent;

(C) Aiding or abetting, attempting, conspiring, or soliciting to commit an offense described in subparagraphs (A) or (B) of this subsection;

(D) A felony assault that results in serious bodily injury to the child or another child of the parent; or

(c) The parental rights of the parent with respect to a sibling have been terminated involuntarily.

(4) Annual Reasonable Efforts Finding.

(a) If the child's removal from the home was not the result of a voluntary placement or voluntary custody agreement unless a judicial finding is made, no later than 12 months from the date the child is considered to have entered foster care, to the effect that reasonable efforts have been made for reunification of the family or to achieve the permanency plan, the child is temporarily ineligible for Title IV-E foster care. The child remains temporarily ineligible for Title IV-E foster care until such a judicial finding is made.

(b) At least once every 12 months thereafter while the child or young adult is in foster care, unless a judicial determination of reasonable efforts to finalize a permanency plan is made, the child or young adult is temporarily ineligible for Title IV-E foster care. The date of the child or young adult's last judicial determination determines the date the next judicial determination is due. The child or young adult remains temporarily ineligible for Title IV-E foster care until such a judicial finding is made.

(5) Judicial orders concerning placements.

(a) If the court disagrees with the Department's placement recommendation, Title IV-E eligibility may continue if --

(A) The court heard the relevant testimony and will continue to work with all parties, including the Department, to make appropriate placement decisions; and

(B) The Department continues to have responsibility for the placement and care of the child or young adult.

(b) If the court recommends a placement or names the child or young adult's placement in the court order as an endorsement or approval of the Department's placement choice the child or young adult's Title IV-E foster care eligibility is not affected.

(6) Nunc Pro Tunc Orders. The Department considers a nunc pro tunc order to correct the omission of a "best interest" or "reasonable efforts" finding only if a court transcript accompanies the order and verifies that the judicial determination was made at the original removal hearing.

(7) A court order that references state or tribal law to substantiate judicial determinations is not acceptable, even if the law provides that a removal must be based on a judicial determination that remaining in the home would be contrary to the child's welfare or that removal may be ordered only after reasonable efforts have been made.

Stat. Auth.: ORS 409.010, 409.050, 418.005 & 419B.340

Stats. Implemented: ORS 409.010, 409.050, 418.005 & 419B.340

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 1-1997, f. 2-18-97, cert. ef. 3-1-97; SOSCF 20-2000(Temp), f. & cert. ef. 8-11-00 thru 2-6-01; SOSCF 4-2001, f. & cert. ef. 2-7-01; SOSCF 44-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 30-2003(Temp), f. & cert. ef. 9-2-03 thru 2-28-04; CWP 2-2004, f. & cert. ef. 2-10-04; CWP 14-2007, f. & cert. ef. 8-1-07; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 13-2011, f. & cert. ef. 6-30-11

## 413-100-0250

### Voluntary Custody and Voluntary Placement Agreements

(1) In accordance with ORS 412.084, when a child is in substitute care pursuant to a Voluntary Custody Agreement or Voluntary Placement Agreement, the Department must, within 180 days of the date of placement, obtain a judicial finding to the effect that continuation of the placement is in the best interest of the child. This best interest finding also is a requirement for continuation of the child's Title IV-E eligibility for more than 180 days. This judicial finding may be obtained in a court hearing or by a letter to the court that results in an ex parte court order containing the best interest finding. Findings of reasonable efforts to prevent or eliminate the removal and to achieve the permanency plan are not required for Title IV-E eligibility.

(2) If the finding in section (1) of this rule is not made within the first 180 days after the placement, the child or young adult becomes ineligible for Title IV-E 181 days after the placement and is not Title IV-E eligible for the duration of the substitute care episode.

Stat. Auth.: ORS 409.010, 409.050, 412.084, 418.005, 419B.175, 419B.180 & 419B.185

Stats. Implemented: ORS 409.010, 409.050, 412.084, 418.005, 419B.175, 419B.180 & 419B.185

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 1-1997, f. 2-18-97, cert. ef. 3-1-97; SOSCF 20-2000(Temp), f. & cert. ef. 8-11-00 thru 2-6-01; SOSCF 4-2001, f. & cert. ef. 2-7-01; SOSCF 44-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 14-2007, f. & cert. ef. 8-1-07; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 13-2011, f. & cert. ef. 6-30-11

## 413-100-0260

### Voluntary Relinquishments

(1) A child in placement based on a voluntary relinquishment is Title IV-E eligible if:

(a) Within 60 days of placement, or within six months of a voluntary relinquishment to a private adoption agency, the first court order issued has a judicial finding to the effect that remaining in the home would be "contrary to the welfare" of the child or "placement is in the child's best interest"; and

(b) Within 60 days of placement, there is a judicial finding to the effect that "reasonable efforts" have been made to prevent or eliminate the need for removal from the home.

(2) When all other eligibility criteria are met, Title IV-E eligibility is effective the first of the month in which the judicial finding was made.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.010, 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 20-2000(Temp), f. & cert. ef. 8-11-00 thru 2-6-01; SOSCF 4-2001, f. & cert. ef. 2-7-01; CWP 14-2007, f. & cert. ef. 8-1-07; CWP 13-2011, f. & cert. ef. 6-30-11

## 413-100-0270

### Title IV-E Foster Care Eligibility Redetermination

(1) The Department must redetermine, for each month a child or young adult is in substitute care, whether the child or young adult continues to be Title IV-E eligible. This redetermination must be completed no later than 12 months from the date the child is considered to have entered foster care, and every 12 months thereafter for the duration of the child or young adult's substitute care episode. Eligibility may resume the first of the month in which all eligibility criteria are met.



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(2) A child or young adult may lose and regain eligibility. The loss of eligibility in any one month does not permanently end the child or young adult's eligibility in future months.

(3) Title IV-E Specialists must redetermine the child or young adult's circumstances to ensure the child or young adult continues to meet all of the following criteria for continued Title IV E eligibility:

(a) The child or young adult must continue to meet the age requirements under OAR 413-100-0230;

(b) The judicial finding requirements under OAR 413-100-0240 continue to be met; and

(c) The child or young adult was placed in a fully certified foster or relative caregiver home or with a licensed child caring agency during the redetermination period.

Stat. Auth.: ORS 409.010, 409.050 & 418.005

Stats. Implemented: ORS 409.010, 409.050 & 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 1-1997, f. 2-18-97, cert. ef. 3-1-97; SOSCF 20-2000(Temp), f. & cert. ef. 8-11-00 thru 2-6-01; SOSCF 4-2001, f. & cert. ef. 2-7-01; CWP 14-2007, f. & cert. ef. 8-1-07; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 13-2011, f. & cert. ef. 6-30-11

## 413-100-0280

### Redetermination of Deprivation at Relinquishment or Termination of Parental Rights

The Fostering Connections to Success and Increasing Adoptions Act of 2008 (122 Stat. 3949-3981) delinked Title IV-E eligibility redeterminations from AFDC eligibility, effective April 1, 2010. A redetermination of deprivation at relinquishment or termination of parental rights is no longer required.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.010, 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 20-2000(Temp), f. & cert. ef. 8-11-00 thru 2-6-01; SOSCF 4-2001, f. & cert. ef. 2-7-01; CWP 14-2007, f. & cert. ef. 8-1-07; CWP 13-2011, f. & cert. ef. 6-30-11

## 413-100-0300

### Parental Referral to Division of Child Support

Unless an exception is granted pursuant to Child Welfare Policy I-E.7.1, "Child Support Referrals", OAR 413-100-0800 to 413-100-0850, every case involving a Title IV-E eligible child must be referred to the Division of Child Support of the Oregon Department of Justice.

Stat. Auth.: ORS 409.010, 409.050 & 418.005

Stats. Implemented: ORS 409.010, 409.050 & 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 20-2000(Temp), f. & cert. ef. 8-11-00 thru 2-6-01; SOSCF 4-2001, f. & cert. ef. 2-7-01; SOSCF 44-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 14-2007, f. & cert. ef. 8-1-07; CWP 13-2011, f. & cert. ef. 6-30-11

## 413-100-0310

### Title XIX Medicaid Eligibility

A child found Title IV-E eligible is categorically eligible for Title XIX Medicaid benefits, as described in OAR 413-100-0430, except that a child found Title IV-E eligible who does not have a social security number is ineligible for Title XIX Medicaid benefits until a social security number application has been completed.

Stat. Auth.: ORS 409.010, 409.050 & 418.005

Stats. Implemented: ORS 409.010, 409.050 & 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 20-2000(Temp), f. & cert. ef. 8-11-00 thru 2-6-01; SOSCF 4-2001, f. & cert. ef. 2-7-01; SOSCF 44-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 14-2007, f. & cert. ef. 8-1-07; CWP 13-2011, f. & cert. ef. 6-30-11

## 413-100-0320

### Consolidated Omnibus Reconciliation Act (COBRA) and Title XIX Medicaid

(1) The COBRA of 1985, PL 99-272 enacted on April 7, 1986, permits a Title IV-E eligible child in paid substitute care or receiving adoption assistance to receive Title XIX Medicaid coverage from the state in which he or she resides.

(2) For a Title IV-E foster care eligible child being placed outside of Oregon, the Title IV-E Specialist must notify and provide the following documentation to the foster or adoptive parents:

(a) Confirmation of the child's Title IV-E eligibility;

(b) Notification of the discontinuance of the child's Oregon Medicaid coverage; and

(c) A letter stating the child's eligibility under COBRA for applying for Title XIX Medicaid coverage in the child's new state of residence.

Stat. Auth.: ORS 409.010, 409.050 & 418.005

Stats. Implemented: 409.010, 409.050 & 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 4-1998, f. 2-5-98, cert. ef. 2-6-98; SOSCF 20-2000(Temp), & cert. ef. 8-11-00 thru 2-6-01; SOSCF 4-2001, f. & cert. ef. 2-7-01; SOSCF 44-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 14-2007, f. & cert. ef. 8-1-07; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 13-2011, f. & cert. ef. 6-30-11

## 413-100-0335

### Adoption Assistance Title IV-E Eligibility Determination

(1) To be eligible for Title IV-E adoption assistance through age 17, the child must:

(a) Meet the age and education requirements specified in OAR 413-100-0230; and

(b) Meet one of the applicable child eligibility criteria as specified in section (2) of this rule; or

(c) Meet one of the non-applicable child eligibility criteria specified in section (4) of this rule.

(d) Effective October 1, 2011, to be eligible for an extension of Title IV-E adoption assistance through age 20, the young adult must also be part of an adoption assistance agreement that was made effective after the child reached 16 years of age, but before the child attained 18 years of age.

(2) For the purposes of this rule, effective October 1, 2009, an "applicable child", as defined in section 473(e) of the Social Security Act, is a child who meets the requirements of at least one of the following subsections:

(a) The child's oldest age attained in the current federal fiscal year (October 1 through September 30) meets the applicable child age requirements;

(A) The applicable child age requirements are set forth in the following document, which by this reference, is incorporated into this rule; Applicable Child — Age Requirements.

(B) The Department maintains this document on the Department's Child Welfare policy website at [http://www.dhs.state.or.us/policy/child-welfare/cross\\_index.htm](http://www.dhs.state.or.us/policy/child-welfare/cross_index.htm). A printed copy of this document may be obtained by contacting the Department of Human Services, Children, Adults and Families, Federal Compliance Unit, Attn: Title IV-E Federal Compliance Specialist, 500 Summer Street NE, Salem, Oregon 97301.

(b) The child has been in foster care under the responsibility of the Title IV-E agency for any 60 consecutive month period prior to finalization of the adoption; or

(c) The child is a sibling of another child the Department has determined is an applicable child and both children are placed in the same adoption arrangement.

(d) A child found to be an applicable child under subsections (2)(a) to (c) of this section must meet the applicable child eligibility requirements, inclusive of the special needs criteria, described in section 473(a)(2)(A)(ii) of the Social Security Act to be eligible for Title IV-E adoption assistance.

(3) An applicable child is not eligible for Title IV-E adoption assistance when:

(a) The child is not a citizen or resident of the United States; and

(b) The child was adopted outside of the United States or was brought into the United States for the purpose of being adopted.

(c) A child that is not a citizen or resident of the United States, and was adopted outside of the U.S. or brought into the U.S. for the purpose of being adopted may be eligible for Title IV-E adoption assistance for any subsequent adoptions if the initial adoption fails and the child is placed into foster care. For the subsequent adoption, the child will have to meet the Title IV-E eligibility requirements under this rule.

(4) A child who does not meet the applicable child criteria in section (1) must qualify under one of the following subsections:

(a) The child's eligibility for Title IV-E foster care was established at the time of removal.

(b) The child meets all eligibility requirements for Supplemental Security Income (SSI) benefits.

(c) The child's payments in a certified family home or private child caring agency are covered by the foster care maintenance payment being made for his or her minor parent.

(d) The child's eligibility for an adoption assistance payment was established for a prior adoption and the child is now available for adoption because of one of the following:

(A) The prior adoption has been dissolved and the parental rights of each adoptive parent have been terminated or relinquished; or

(B) Each adoptive parent of the child has died.

(5) Private Agency Adoptions: To be eligible for Title IV-E adoption assistance, a child voluntarily relinquished to a public or private nonprofit agency must meet all of the following criteria:

(a) The child meets the eligibility criteria for Supplemental Security Income (SSI);

(b) The child is in a subsequent adoption, if he or she received Title IV-E adoption assistance in a previous adoption;

(c) The child must meet the Title IV-E AFDC eligibility requirements (as described in OAR 413-100-0130 through 413-100-0230); and

# ADMINISTRATIVE RULES

(d) The child must meet Judicial Removal requirements, as described below:

(A) The child must be voluntarily relinquished either to the State agency (or another public agency [including Tribes] with whom the State has a Title IV-E agreement), or to a private, nonprofit agency; and

(B) Within six months of the date the child last lived with a specified relative, a petition must be filed with the court to remove the child from the home; and

(C) The court must make a subsequent judicial determination to the effect that remaining in the home would be contrary to the child's welfare.

(e) The child must meet the special needs criteria (as described in OAR 413-130-0020).

(f) Failure to meet any of the requirements listed above will result in a denial of Title IV-E adoption assistance eligibility.

(6) Independent Adoptions. To be eligible for Title IV-E adoption assistance, a child voluntarily relinquished to an individual must meet the following criteria:

(a) The child meets the eligibility criteria for Supplemental Security Income (SSI); or

(b) The child is in a subsequent adoption and he or she received Title IV-E adoption assistance in a previous adoption.

(c) The child must meet the special needs criteria (as described in OAR 413-130-0020).

(7) Eligibility after Removal from an Adoption Assistance Placement.

(a) **Finalized Adoption:** When a child in a finalized adoption is placed in substitute care:

(A) The local office must open a new case for the child; and

(B) The Title IV-E Specialist must perform an eligibility determination for Title IV-E foster care, based on the removal from the adoptive parents.

(b) **Non-finalized Adoption:** When a child in a non-finalized adoptive placement is placed in substitute care:

(A) The local office must open a substitute care service for the child; and

(B) The Title IV-E Specialist must perform an eligibility redetermination for Title IV-E foster care, based on the original removal of the child.

(8) Eligibility for Title IV-E adoption assistance may not be presumed for a child placed with a guardian, and receiving a guardianship assistance payment through the Department's Guardianship Assistance program. The Title IV-E Specialist must complete an adoption assistance eligibility determination (CF 969c) based on the original removal of the child.

Stat. Auth.: ORS 418.005 & 418.330 - 418.340

Stats. Implemented: ORS 418.005 & 418.330 - 418.340

Hist.: CWP 19-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 13-2011, f. & cert. ef. 6-30-11

## 413-100-0345

### Guardianship Assistance Eligibility

(1) To be eligible for Title IV-E guardianship assistance, the prospective guardian must meet the definition of a relative, as defined in Child Welfare Policy I-E.1.1, "Search for and Engagement of Relatives", under OAR 413-070-0063(10).

(2) To be eligible for Title IV-E guardianship assistance through age 17, the child must:

(a) Meet the age and education requirements specified in OAR 413-100-0230; and

(b) Be a United States citizen or a qualified alien (see OAR 413-100-0210) and meet the requirements of at least one of the following subsections:

(A) The child must have been removed from his or her home pursuant to a voluntary placement agreement or as a result of a judicial determination that continuation in the home would be contrary to the welfare of the child and the child must be or have been eligible to receive a Title IV-E foster care maintenance payment while residing in the home of the prospective relative guardian who met all certification requirements for any six consecutive months;

(B) The child is in receipt of Supplemental Security Income (SSI) benefits and the child would be or would have been eligible to receive Title IV E foster care maintenance payments for six consecutive months in the home of the prospective relative guardian; or

(C) The child is a sibling of another Title IV-E guardianship assistance eligible child who is or will be living with the same prospective relative guardian. The requirement for six consecutive months of eligibility for foster care maintenance payments under subsection (2)(a) of this section is waived for the sibling of the Title IV-E guardianship assistance eligible child.

(3) To be eligible for an extension of Title IV-E guardianship assistance through age 20, the young adult also must be part of a guardianship assistance agreement that was made effective after the child reached 16 years of age, but before the child attained 18 years of age.

(4) Eligibility for Title IV-E adoption assistance may not be presumed for a child placed with a guardian, and receiving a guardianship assistance payment through the Department's Guardianship Assistance program. The Title IV-E Specialist must complete an adoption assistance eligibility determination based on the original removal of the child.

(5) Removal from a guardianship placement (including guardianships established through or outside of the Guardianship Assistance program).

(a) Removal from a guardianship placement is considered a new removal for the Title IV-E Foster Care program, and an initial Title IV-E foster care eligibility determination is required when a child or young adult is removed from a guardianship placement:

(A) On the basis of a voluntary custody agreement or voluntary placement agreement, or

(B) As the result of a judicial determination that continuation in the home would be contrary to the welfare of the child.

(b) The Title IV-E foster care eligibility determination will be based on removal of the child or young adult from the guardian.

(c) If the child or young adult was removed from a guardianship assistance placement, the child or young adult's eligibility for Title IV-E guardianship assistance will resume if the child or young adult is later placed back with the same relative guardian.

(d) If the child or young adult is later placed with a different relative guardian, the Department must complete a new Title IV-E guardianship eligibility determination.

(6) Title IV-E Guardianship Assistance Eligibility Denial Notices and the Right to a Hearing

(a) Title IV-E Guardianship Assistance Denial Notices

(A) A "Denial of Title IV-E Guardianship Assistance Eligibility" form must be completed at the time of the child's Title IV-E eligibility denial for guardianship assistance.

(B) The "Denial of Title IV-E Guardianship Assistance Eligibility" form must be sent by certified mail (return receipt requested) to the prospective relative guardian when the child's eligibility for Title IV E guardianship assistance is denied.

(b) Rights for a Hearing

(A) When the "Denial of Title IV-E Guardianship Assistance Eligibility" form is mailed to the prospective relative guardian, information will be included about the prospective relative guardian's right to a hearing.

(B) If the prospective relative guardian does not agree with the Title IV-E eligibility decision that has been made, the prospective relative guardian has the right to request a contested case hearing under ORS 183, as described in Child Welfare Policy I-A.5.2, "Contested Case Hearings", OAR 413-010-0500 to 413-010-0535.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 19-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 13-2011, f. & cert. ef. 6-30-11

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**Rule Caption:** Changing OARs affecting Child Welfare programs.

**Adm. Order No.:** CWP 14-2011(Temp)

**Filed with Sec. of State:** 6-30-2011

**Certified to be Effective:** 6-30-11 thru 12-27-11

**Notice Publication Date:**

**Rules Amended:** 413-100-0135, 413-100-0150

**Subject:** PL 110-351 Fostering Connections to Success and Increasing Adoptions Act of 2008 (122 Stat. 3949 - 3981) implemented many changes to Title IV-E eligibility regulations. Most of the rules related to those regulations were revised in permanent rule changes filed June 30, 2011. Two additional rule changes need to be added at this time. OAR 413-100-0135 is being amended to clarify the removal and specified relative criteria as it applies to children ages 0 through 17, and to young adults, ages 18 through 20. The criteria for extension of Title IV-E eligibility through age 20 is described in PL 110-351 Fostering Connections to Success and Increasing Adoptions Act of 2008 (122 Stat. 3949 - 3981). OAR 413-100-0150 is being amended because the rule currently contains an uncommon acronym, which needs to be clarified because its meaning is not apparent to DHS staff or the public.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

# ADMINISTRATIVE RULES

## 413-100-0135

### Eligibility Determinations — Living with a “Specified Relative” and “Removal”

(1) **Specified Relative Requirements.** To meet Title IV-E eligibility requirements the child or young adult, at the time of the child’s removal from his or her home, must have been living with and removed from the same specified relative, as defined in OAR 413-100-0020.

(2) **Removal Requirements for a child age 17 or younger.** To meet Title IV-E eligibility requirements, the child’s removal from the home must occur pursuant to:

(a) A voluntary custody agreement or voluntary placement agreement, signed by a parent or specified relative, that results in the “physical” or “constructive” removal of the child from the home; or

(b) A judicial order that requires the child’s “physical” or “constructive” removal from the parent or specified relative and gives the Department responsibility for the placement and care of the child.

(3) **Removal Requirements for a young adult age 18, 19 or 20.** To meet Title IV-E eligibility requirements, the young adult’s removal from the home must occur pursuant to:

(a) Court ordered removal prior to age 18. A judicial order that requires the child’s “physical” or “constructive” removal from the parent or specified relative and gives the Department responsibility for the placement and care of the child. No new court ordered removal is required at the age of 18 or older to remain eligible for Title IV-E foster care maintenance payments, as long as the young adult remains in continuous foster care.

(b) A voluntary placement agreement prior to age 18, signed by a parent or specified relative, that results in the “physical” or “constructive” removal of the child from the home. No new voluntary placement agreement is required after the young adult attains the age of 18 for Title IV-E purposes as long as the young adult remains in continuous foster care.

(4) **Removal Home Requirements.** Effective June 9, 2006, for Title IV-E eligibility purposes, the child’s removal home must meet the requirements of one of the following subsections:

(a) **Physical Removal.** The Department considers a child’s removal a physical removal when the judicial order or the signing of a voluntary custody or voluntary placement agreement results in the removal of the child from the physical custody of the parent or specified relative and gives the Department responsibility for the placement and care of the child.

(b) **Constructive Removal.** The Department considers a child’s removal a constructive removal:

(A) When the child is living in the home of an interim caretaker (relative or non-relative) at the time of removal but the child lived with a parent or specified relative within the six months prior to the judicial order, voluntary custody agreement, or voluntary placement agreement which resulted in the constructive removal of the child from the parent or specified relative and gave the Department responsibility for the placement and care of the child; or

(B) When the parent or specified relative and the child live in another relative’s home, the Department considers the child’s removal a constructive removal from the parent or specified relative if:

(i) The parent or specified relative moves out of the home within the six months prior to the removal;

(ii) The child remains in the relative’s home; and

(iii) Within six months of the date the parent or specified relative left the relative’s home there is a judicial order or voluntary custody or placement agreement that results in the removal of the child from the parent or specified relative and gives the Department responsibility for the placement and care of the child.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 409.010, 409.050, 418.005 & 418.625

Hist.: SOSCF 20-2000(Temp), f. 8-11-00 thru 2-6-01; SOSCF 4-2001, f. & cert. ef. 2-7-01; SOSCF 44-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 30-2003(Temp), f. & cert. ef. 9-2-03 thru 2-28-04; CWP 2-2004, f. & cert. ef. 2-10-04; CWP 1-2007(Temp), f. & cert. ef. 2-7-07 thru 8-6-07; CWP 14-2007, f. & cert. ef. 8-1-07; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 14-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

## 413-100-0150

### Parental Deprivation

(1) The continued absence of one or both birth or adoptive parents, or a stepparent from the home constitutes the basis for deprivation of parental support or care.

(2) Deprivation of parental support in relation to the home from which the child is removed exists when:

(a) Death of a parent. Either parent of a child is deceased.

(b) Continued absence of the parent from the home. There is a Continued Absence of one or both parents when:

(A) One or both parents are out of the home and the nature of this absence is such as to either interrupt or terminate the parent’s functioning as a provider of maintenance, physical care, or guidance for the child;

(B) There is evidence of continued absence of over 30 days duration; or

(C) Predictable absence due to divorce, legal separation, incarceration, or other verified and documented circumstances.

(c) Physical or mental incapacity. Incapacity is documented as parental deprivation in a one-parent or two-parent household as follows:

(A) One or both parents’ receipt of Supplemental Security Income (SSI) or being found eligible for Old age, Survivors, and Disability Insurance (OASDI) or SSI based on disability or blindness;

(B) One or both parents receive Social Security Benefits (SSB) based on disability or blindness; or

(C) One or both parents have a physical or mental defect, illness, or impairment that is expected to last at least 30 days, is supported by competent medical testimony, and substantially reduces or eliminates the parent’s ability to support or care for the child.

(d) Unemployment or underemployment may be documented as parental deprivation in a two-parent household if each parent meets one of the following criteria:

(A) Is working less than 100 hours per month; or

(B) Has a temporary one-month increase to over 100 hours, but:

(i) Worked less than 100 hours in each of the two previous months; and

(ii) Is expected to work less than 100 hours in the following month.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 409.010, 409.050, 412.144 & 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 1-1997, f. 2-18-97, cert. ef. 3-1-97; SOSCF 20-2000(Temp), f. & cert. ef. 8-11-00 thru 2-6-01; SOSCF 4-2001, f. & cert. ef. 2-7-01; CWP 30-2003(Temp), f. & cert. ef. 9-2-03 thru 2-28-04; CWP 2-2004, f. & cert. ef. 2-10-04; CWP 14-2007, f. & cert. ef. 8-1-07; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 14-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

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**Rule Caption:** Changing OARs affecting Child Welfare programs.  
**Adm. Order No.:** CWP 15-2011(Temp)

**Filed with Sec. of State:** 6-30-2011

**Certified to be Effective:** 6-30-11 thru 12-27-11

**Notice Publication Date:**

**Rules Amended:** 413-100-0905, 413-100-0915, 413-100-0925, 413-100-0930

**Subject:** OAR 413-100-0905 defining certain terms used in rules about educational services for a child or young adult in substitute care is being changed to define the term “child”.

OAR 413-100-0915 about ensuring the enrollment of a child or young adult in substitute care in school or an educational setting is being amended to clarify the approval process for international study, clarify who has responsibilities for decision making on a child’s school or educational setting, and clarify the Department’s responsibilities to maintain a child in full time attendance in school, except for medical reasons, under Chapter 581 of the Oregon Administrative Rules.

OAR 413-100-0925 about consent for special education services for a child or young adult in substitute care is being amended to clarify authority to consent to special education services for a young adult.

OAR 413-100-0930 about the right to a child’s education records for a child in substitute care is being amended to clarify the protections for special education records.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 413-100-0905

### Definitions

The following definitions apply to OAR 413-100-0900 to 413-100-0940:

(1) “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.

(2) “Child” means a person under 18 years of age.

(3) “Department” means the Department of Human Services, Child Welfare.

(4) “GED” means a General Educational Development certificate issued pursuant to ORS 326.550.



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(5) "Homeless individual" for the purposes of the McKinney-Vento Homeless Education Act means children and youth who have a right to public school enrollment and are awaiting foster care placement or are in temporary foster settings awaiting permanent placement under ORS 339.115(7).

(6) "IEP team" means the participants who determine whether the child is a child with a disability and who develop the individualized education program (IEP) for the child as described under OAR 581-015-2000(15) and 581-015-2210(1).

(7) "Parent", except as provided otherwise in OAR 413-100-0930, means the biological or adoptive mother or the biological, legal, or adoptive father of the child.

(8) "Special education," as defined in OAR 581-015-2000(33), means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including instruction in the classroom, instruction in the home, and instruction in hospitals, institutions, special schools, and other settings. The term includes specially designed instruction in physical education, speech language services, vocational education, travel training, and orientation and mobility services.

(9) "Special education services" means assistance provided to a child with a disability to meet the child's unique needs and includes instruction in the classroom, in the home, and in hospitals, institutions, special schools, and other settings.

(10) "Substitute caregiver" means a relative caregiver, foster parent, or provider who is authorized to provide care to a child who is in the legal or physical custody of the Department.

(11) "Surrogate" means a person who has been appointed to safeguard a child's rights in the special education decision-making process. The person may be appointed pursuant to OAR 581-015-2320 for school-age children, OAR 581-015-2760 for preschool children, or by the juvenile court under ORS 419B.220.

(12) "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 409.050 & 418.005

Stats. Implemented: ORS 409.010, 418.005, 419B.192, 419B.220 & 419B.343

Hist.: CWP 30-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 13-2008, f. 6-27-08, cert. ef. 6-28-08; CWP 15-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

## 413-100-0915

### Ensure a Child or Young Adult's Enrollment in School or Educational Setting

(1) The child's caseworker must consider the following when arranging school enrollment and educational services when a child first enters substitute care.

(a) Preferred school or educational setting when a child first enters substitute care. The preferred school or educational setting when a child first enters substitute care is the school or educational setting the child attended prior to entry into substitute care whenever possible and when:

(A) Remaining in the same school or educational setting is in the best interest of the child; and

(B) Continuing to attend the same school or educational setting is consistent with the ongoing safety plan and does not jeopardize the child's safety.

(b) Consideration of continuity of previous school placement when a child enters substitute care or moves to another substitute care placement. A child who meets the definition of a homeless individual under the McKinney-Vento Homeless Education Act, may be referred to the local Department of Education District Homeless Liaison, and may qualify for services available through the Act.

(2) Responsibility for ensuring school enrollment. The caseworker must ensure a child or young adult in the Department's care or custody is enrolled in a school or educational setting, through eligibility established under ORS 339.115.

(3) Responsibility for school or educational setting placement decisions. Under the circumstances described in the following subsections, the identified individual has the authority to make school or educational setting placement decisions.

(a) A caseworker may determine or the juvenile court may find that it is in the child's or young adult's best interest to continue to attend the school that the child or young adult attended prior to placement in substitute care by the Department, the child or young adult shall be considered a resident of the school district the child or young adult attended prior to placement and may continue to attend the school the child or young adult

attended prior to placement through the highest grade level of the school, in accordance with ORS 339.133.

(b) The child's or young adult's IEP team makes the decision regarding special education services provided to the child or young adult when the child or young adult is receiving or eligible to receive special education services.

(c) The young adult makes the decision regarding educational services and school placement when educational rights have been passed to the young adult.

(d) The parent or legal guardian retains legal authority over the child and continues to be responsible to exercise and perform all parental duties and legal responsibilities except those that the parent or legal guardian specifically delegates to the Department by the signed agreement, when a child is in the care or custody of the Department under a Voluntary Placement Agreement.

(4) Regardless of the authority to make school or educational placement setting decisions in section (3) of this rule, the caseworker must ensure the school or educational setting is consistent with the ongoing safety plan of the child or young adult.

(5) Additional responsibilities when a private school, charter school, alternative school, or international study program is considered.

(a) Private School. Except as provided in subsections (3)(c)-(d) of this rule, when considering the enrollment of the child or young adult in a private school, the caseworker must:

(A) Ensure that enrollment would be consistent with the child's or young adult's permanency plan;

(B) Verify that the school is accredited in the state in which the school is located;

(C) Verify that an entity or person other than the Department will pay all costs except those approved under OAR 413-100-0935;

(D) Consider the religious affiliation of the child or young adult and the parent or legal guardian when considering enrollment in a religiously-affiliated private school;

(E) Consider recommendations from the child's or young adult's attorney, CASA, and substitute caregiver; and

(F) Obtain approval from the Child Welfare program manager.

(b) Charter school or alternative school. Except as provided in subsections (3)(c)-(d) of this rule, when considering the enrollment of a child or young adult in a charter school or alternative school, the caseworker must:

(A) Ensure that enrollment would be consistent with the child's or young adult's permanency plan;

(B) Verify that the charter school is approved by the local school district board or the Oregon Department of Education;

(C) Consider recommendations from the child's or young adult's attorney, CASA, and substitute caregiver; and

(D) Obtain approval from the Child Welfare program manager.

(c) International study program. Except as provided in subsections (3)(c)-(d) of this rule, when considering enrolling a child or young adult in an international study program, the caseworker must:

(A) Ensure that enrollment is consistent with the child's or young adult's permanency plan;

(B) Verify that the international study program is accredited;

(C) Consider recommendations from the child's or young adult's attorney, CASA, and substitute caregiver;

(D) Obtain approval from the Child Welfare program manager, the District Manager, the Diversity and International Affairs Manager; and

(E) Obtain approval of the juvenile court.

(6) Additional responsibilities when considering a GED program. Except as provided in subsections (3)(c)-(d) of this rule, when considering a GED program for the child or young adult, whether the program is held at a public school or at a location other than a public school, the caseworker must:

(a) Determine, that obtaining a GED meets the child's or young adult's educational needs better than obtaining a high school diploma;

(b) Verify that a GED program is consistent with the child's or young adult's case plan;

(c) Consider recommendations from the child's or young adult's attorney, CASA, and substitute caregiver; and

(d) Obtain approval from the Child Welfare program manager.

(7) Additional responsibilities when considering home schooling. Except as provided in subsections (3)(c)-(d) of this rule, when considering home schooling for the child or young adult in the substitute caregiver's home, the caseworker must:

# ADMINISTRATIVE RULES

(a) Determine that a home schooling environment would not interfere with the child's or young adult's social development;

(b) Determine that home schooling would promote inclusion in the substitute caregiver's home;

(c) Determine that a home school environment is consistent with the child's or young adult's permanency plan;

(d) Determine that the child's or young adult's enrollment in a home school program is permitted by state law in another state if the child or young adult is placed in another state through the Interstate Compact on the Placement of Children;

(e) Obtain the approval of the child's or young adult's parent, as defined in OAR 413-100-0905(6), or guardian for the substitute caregiver to act as a private teacher;

(f) Verify the substitute caregiver has provided written notification to the education service district of intent to provide home schooling;

(g) Obtain the approval of the Child Welfare program manager; and

(h) Obtain the approval of the juvenile court.

(8) Transportation to school. After the school or educational setting has been determined, the caseworker must assess the school district's available transportation options and, if school district transportation is unavailable, select and arrange the most reliable, safe, cost-effective transportation option to transport the child or young adult to and from the school or educational setting.

(9) Once a school or educational setting has been selected for a child or young adult, the caseworker must notify the school or educational setting that the child or young adult is in the legal custody of the Department and may provide information about the reason the child or young adult is in substitute care to the staff of the school or educational setting only when providing such information to a particular staff person is necessary for the child's or young adult's education planning or to ensure the safety of the child, young adult, or others in the school with whom the child or young adult has contact.

(10) Unless a child or young adult has achieved high school graduation or is incapable of attending school for a medical reason, the Department will ensure school enrollment under Chapter 581 of Oregon Administrative Rules for a child or young adult in the custody of the Department.

(11) The caseworker must document in the child's or young adult's case plan all of the following:

(a) Information about the current school or educational setting of the child or young adult.

(b) All schools or educational settings the child or young adult has attended since the date the child or young adult has been in the custody of the Department.

(c) The length of time the child or young adult has spent in each school or educational setting.

(d) The number of high school credits each child or young adult 14 years of age or older has earned.

(e) The child's surrogate, if one has been appointed.

(f) The reason for any change in the child's or young adult's school or educational setting.

(g) Information regarding the child's or young adult's educational records, which may include but is not limited to:

(A) Report cards;

(B) Transcripts;

(C) Individual Education Plan;

(D) A 504 plan, developed under the provisions of Section 504 of the Rehabilitation Act of 1973; and

(E) A transition plan.

(h) The basis the child or young adult is incapable of attending school under section (10) of this rule should that section apply.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 409.010, 418.005, 419B.192, 419B.220 & 419B.343

Hist.: CWP 30-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 13-2008, f. 6-27-08, cert. ef. 6-28-08; CWP 15-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

## 413-100-0925

### Consent for Special Education Services

(1) When a child or young adult is in the care and custody of the Department, and there is reason to believe the child has a disability under the Individuals with Disabilities Education Act, 20 USC §§ 1400 et seq., or the Oregon Department of Education administrative rules regarding special education (OAR 581, division 15), the caseworker must determine who is the parent or surrogate making educational decisions for the child or young adult.

(2) If a surrogate has not been appointed, or if more than one person is qualified to make special education decisions for the child or young adult, the caseworker may ask the court to determine the education decision maker. Persons who qualify to make educational decisions include:

(a) The biological or adoptive parent of the child or young adult.

(b) A foster parent or relative caregiver of the child or young adult.

(c) A legal guardian.

(d) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child or young adult lives, or a person who is legally responsible for the welfare of the child or young adult.

(3) When a child or young adult with a disability is being considered for home schooling, in addition to the requirements of OAR 413-100-0915, the caseworker must:

(a) Ensure the surrogate of the child or young adult has approved home schooling; and

(b) Ensure the surrogate participates in the special education planning for the child or young adult in the home school environment.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 409.050, 418.005, 419B.192, 419B.220 & 419B.343

Hist.: CWP 30-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 13-2008, f. 6-27-08, cert. ef. 6-28-08; CWP 15-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

## 413-100-0930

### Rights to a Child's Education Records

(1) The Family Educational Rights and Privacy Act (FERPA), 20 USC § 1232g, protects the authority of parents to review their minor children's education records, limit the records' release without written consent by the parents, and correct errors in those records. 34 CFR 99.3, one of FERPA's implementing regulations, defines "parent" as "a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian." Under this definition, a Department employee may act as a "parent," for FERPA purposes, if the Department is the legal guardian of the child.

(2) A Department employee may demonstrate his or her authority to exercise the FERPA rights of a child's parent by providing the educational agency or institution with evidence that the Department is the legal guardian of the child, which may include a juvenile court order appointing the Department as the legal guardian of the child.

(3) This rule does not apply to the special education records for a student who is eligible for special education services or is suspected of being eligible for special education services under the Individuals with Disabilities Education Act, 20 USC §§ 1400 et seq., or the Oregon Department of Education administrative rules regarding special education (OAR 581, division 015). To receive these records, a Department employee may:

(a) Receive information from the school of a child's personally identifiable information in connection with a child protective services (CPS) investigation under OAR 581-021-0380;

(b) Be advised by the school of a child's disabling conditions prior to an interview with the child during the course of a CPS assessment under ORS 419B.045;

(c) Seek a court order to obtain the special education records; or

(d) Seek a release of information to obtain the special education records from a child's or young adult's parent, guardian, surrogate, or from a young adult whose special education rights have been passed to the student.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 326.575, 336.187, 409.010, 418.005, 419B.045, 419B.192, 419B.220 & 419B.343

Hist.: CWP 30-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 13-2008, f. 6-27-08, cert. ef. 6-28-08; CWP 15-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

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**Rule Caption:** Changing OARs affecting Child Welfare programs.

**Adm. Order No.:** CWP 16-2011(Temp)

**Filed with Sec. of State:** 6-30-2011

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**Notice Publication Date:**

**Rules Adopted:** 413-130-0015, 413-130-0055

**Rules Amended:** 413-130-0000, 413-130-0010, 413-130-0020, 413-130-0040, 413-130-0050, 413-130-0070, 413-130-0075, 413-130-0080, 413-130-0090, 413-130-0100, 413-130-0110, 413-130-0125, 413-130-0130

**Rules Suspended:** 413-130-0045, 413-130-0060, 413-130-0115

**Rules Ren. & Amend:** 413-130-0030 to 413-130-0077

**Subject:** OAR 413-130-0000 is being amended to clarify the purposes of the rules about adoption assistance and to state that the rules

## ADMINISTRATIVE RULES

cover when adoption assistance may be extended for certain young adults.

OAR 413-130-0010 is being amended to add current and revise or remove outdated definitions of terms used throughout the rules about adoption assistance.

OAR 413-130-0015 about funding for adoption assistance is being adopted to set out when the Department uses federal funds for adoption assistance payments, when state funds are used, and how the Department responds to adoption assistance applications when neither are available.

OAR 413-130-0020 about special needs determination for adoption assistance eligibility is being amended to clarify the special needs determination requirements.

OAR 413-130-0030 about eligibility for nonrecurring expenses is being renumbered to OAR 413-130-0077.

OAR 413-130-0040 about eligibility for an adoption assistance payment is being amended to revise its description of federal requirements. This rule is also being amended to revise its description of when state-funded adoption assistance may be provided for children.

OAR 413-130-0045 about the connection between a child's immigrant status and adoption assistance is being suspended because this topic is being covered in OAR 413-130-0040.

OAR 413-130-0050 about adoption assistance application requirements and responsibilities is being amended to revise its description of these requirements and to explain situations that might delay the negotiation of adoption assistance base rate.

OAR 413-130-0055 about extension of adoption assistance for a young adult is being adopted to implement HB 2052 (2011), which implements the federal Fostering Connections to Success and Increasing Adoptions Act of 2008, allowing extension of adoption assistance for certain young adults.

OAR 413-130-0060 about written agreements between the Department and adoptive or pre-adoptive families when there is no current need for adoption assistance benefits is being suspended because the topic is now covered in OAR 413-130-0070.

OAR 413-130-0070 about negotiation and determination of the monthly adoption assistance payment is being amended to revise the policies about the negotiation of adoption assistance base rate, level of care requirements, and the review process when an agreement cannot be reached during negotiation.

OAR 413-130-0075 about renegotiation of an adoption assistance agreement is being amended to update terminology and clarify the conditions under which a pre-adoptive family or adoptive family can request a renegotiation of an adoption assistance agreement.

OAR 413-130-0077 about eligibility for nonrecurring adoption expenses is being amended and renumbered from OAR 413-130-0030 to comply with federal requirements regarding citizenship or residency in the U.S. for an adopted child to receive nonrecurring adoption expenses.

OAR 413-130-0080 about payment for nonrecurring expenses is being amended to update terminology and references, and clarify the expenses that the Department will reimburse for nonrecurring expenses.

OAR 413-130-0090 about payments for unanticipated short-term costs which are directly related to the child's special needs of a child or young adult or are essential to the welfare of the child or young adult is being amended to clarify this policy and clarify Department authorization of a special payment.

OAR 413-130-0100 about medical assistance and social services is being amended to remove topics now covered in Child Welfare Policy I-E.6.2, "Title XIX and General Assistance Medical Eligibility", OAR 413-100-0400 to 413-100-0610 and to set out the citizenship and residency requirements that apply to medical assistance and social services in the context of adoption assistance.

OAR 413-130-0110 about administration of approved adoption assistance is being amended to reorganize to make the rule easier to understand. This rule is also being amended to set out new federal

education requirements for adoption assistance and the policies about changes of payees and overpayments.

OAR 413-130-0115 about the adoption assistance review committee and appeals procedure is being suspended because this topic is now covered in OAR 413-130-0070.

OAR 413-130-0125 about adjustments of adoption assistance is being amended to revise the policy about when adjustments may and may not be made to adoption assistance. This rule is also being amended to set out the policy about automatic expiration of an adoption assistance agreement for a young adult.

OAR 413-130-0130 about applications for adoption assistance after the judgment of adoption is being amended to clarify the conditions under which the Department may consider adoption applications once a judgment of adoption has been issued.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

### 413-130-0000

#### Purpose

(1) The purpose of these rules (OAR 413-130-0000 to 413-130-0130) is to describe the criteria for program eligibility and the types of adoption assistance that may be established for:

(a) A child in the legal custody of:

(A) The Department;

(B) A participating tribe; or

(C) A licensed adoption agency in Oregon.

(b) A child relinquished by a parent directly to a pre-adoptive family residing in Oregon.

(2) These rules do not include criteria for program eligibility for adoption assistance for a child placed for adoption in Oregon by another public child welfare agency, as adoption assistance is the responsibility of the sending state.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 8-1999, f. & cert. ef. 5-17-99; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 22-2009, f. & cert. ef. 12-29-09; CWP 16-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

### 413-130-0010

#### Definitions

The following definitions apply to OAR 413-130-0000 to 413-130-0130:

(1) "Adoption assistance" means assistance provided on behalf of an eligible child or young adult to offset the costs associated with adopting and meeting the on-going needs of the child or young adult. Adoption assistance may be in the form of payments, medical coverage, reimbursement of nonrecurring expenses, or special payments.

(2) "Adoption assistance agreement" means a written agreement, binding on the parties to the agreement, between the Department and the pre-adoptive family or adoptive family of an eligible child or young adult, setting forth the assistance the Department is to provide on behalf of the child or young adult, the responsibilities of the pre-adoptive family or adoptive family and the Department, and the manner in which the agreement and amount of assistance may be modified or terminated.

(3) "Adoption assistance agreement only" means a written agreement, binding on the parties to the agreement, between the Department and the pre-adoptive family or adoptive family of an eligible child or young adult, when the pre-adoptive family or adoptive family is not receiving an adoption assistance payment or medical coverage at the time of the agreement but may request it at a later date.

(4) "Adoption assistance base rate" means the portion of the adoption assistance payment that is negotiated with a pre-adoptive family or an adoptive family and cannot exceed the amount of the Oregon foster care base rate payment for the child's or young adult's age.

(5) "Adoption assistance payment" means a monthly payment made by the Department to the pre-adoptive family or adoptive family on behalf of an eligible child or young adult.

(6) "Adoption Assistance Review Committee" means a committee composed of local and central office staff with expertise in the area of adoption.

(7) "Adoptive family" means an individual or individuals who have legalized a parental relationship to the child who joined the family through a judgment of the court.

(8) "Applicable child" has the same meaning as in OAR 413-100-0335.



# ADMINISTRATIVE RULES

(9) "Base rate payment" means a payment to the foster parent or relative caregiver for the costs of providing the child or young adult with the following:

(a) Food — including the cost to cover a child's or young adult's special or unique nutritional needs;

(b) Clothing — including purchase and replacement;

(c) Housing — including maintenance of household utilities, furnishings, and equipment;

(d) Daily supervision — including teaching and directing to ensure safety and well-being at a level which is appropriate based on the child's or young adult's chronological age;

(e) Personal incidentals — including personal care items, entertainment, reading materials, and miscellaneous items; and

(f) The cost of providing transportation — including local travel associated with expenditure for gas and oil, and vehicle maintenance and repair associated with transportation to and from extracurricular, child care, recreational, and cultural activities.

(10) "CANS screening" means Child and Adolescent Needs and Strength screening, a process of gathering information on a child's or young adult's needs and strengths used for one or more of the following purposes:

(a) Identifying case planning, service planning, and supervision needs of the child or young adult in substitute care with a certified family; and

(b) Determining the level of care payment while in substitute care with a certified family; and

(c) Determining the level of care payment included in an adoption assistance agreement or guardianship assistance agreement.

(11) "Child" means a person under 18 years of age.

(12) "Department" means the Department of Human Services, Child Welfare.

(13) "Enhanced supervision" means the additional support, direction, observation, and guidance necessary to promote and ensure the safety and well-being of a child or young adult when the child or young adult qualifies for a level of care payment.

(14) "Legally free" means that, with respect to a child, the legal rights of all parents with legal standing have been judicially terminated, voluntarily relinquished, or otherwise terminated by operation of law, thus allowing for the child to be adopted.

(15) "Level of care payment" means the payment provided to an approved or certified family, a guardian, a pre-adoptive family or an adoptive family based on the child's or young adult's need for enhanced supervision as determined by applying the CANS algorithm to the results of the CANS screening.

(16) "Licensed adoption agency" means an adoption agency licensed by the state of Oregon to place children for adoption, or an adoption agency that holds a license from another state and is authorized under the laws of that state to place children for adoption.

(17) "Nonrecurring adoption assistance agreement" means a written agreement, binding on the parties to the agreement, between the Department and the pre-adoptive family of an eligible child for a one-time payment to reimburse the adoptive family for the reasonable and necessary expenses incurred in legally finalizing the adoption of a child who has been determined to have special needs.

(18) "Nonrecurring expenses" mean a one-time payment up to \$1,500 per child, which the Department will pay to an adoptive family to assist with the reasonable and necessary expenses incurred in legally finalizing the adoption of an eligible child.

(19) "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.

(20) "Participating tribe" means a federally recognized Indian tribe in Oregon with a Title IV-E agreement with the Department.

(21) "Pre-adoptive family" means an individual or individuals who:

(a) Has been selected to be the child's adoptive family; and

(b) Is in the process of legalizing the relationship to the child through the judgment of the court.

(22) "Qualified alien" has the same meaning as OAR 413-100-0210(2) and 8 USC 1641(b).

(23) "Qualified vendor attorney" means an attorney who has a price agreement with the Department to process the adoption of a child who is eligible for adoption assistance.

(24) "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 adult's legal or biological parents; or

(c) Through a legal or biological parent who is the registered domestic partner of the legal or biological parent of the children or young adults.

(25) "Special payment" means a payment for unanticipated short-term costs which are directly related to the special needs of the child or young adult or are essential to the welfare of the child or young adult, and are not covered by another resource available to the adoptive family.

(26) "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.

(27) "Young adult" means a person aged 18 through 20 years.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 23-2005(Temp), f. 12-30-05, cert. ef. 1-1-06; CWP 16-2006, f. 6-30-06, cert. ef. 7-1-06; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 22-2009, f. & cert. ef. 12-29-09; CWP 16-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

## 413-130-0015

### Funding for Adoption Assistance

(1) The Department makes efforts to establish Title IV-E adoption assistance eligibility under Child Welfare Policy I-E.6.1, Title IV-E Foster Care, Adoption Assistance, and Guardianship Assistance Eligibility, OAR 413-100-0335 to access federal reimbursement for adoption assistance.

(2) A child determined to have special needs under OAR 413-130-0020 who is ineligible for Title IV-E funded adoption assistance is eligible for state funded adoption assistance as described in OAR 413-130-0040. Administration of state funded adoption assistance is dependent upon the availability of such funds.

(3) When all available state funds are obligated, the Department must continue to:

(a) Accept new applications;

(b) Accept requests to adjust an adoption assistance payment; and

(c) Establish a waiting list.

(4) As state funds become available, an adoption assistance payment may be made according to the date that the adoption assistance agreement is signed by all parties. The adoption assistance agreement may be retroactive for up to twelve months only when a foster care base rate payment, level of care payment or personal care service payment was not made on behalf of the child.

(5) When state funds are unavailable and a new adoption assistance application is received, the pre-adoptive family may sign an adoption assistance agreement only to prevent delay in finalizing the adoption, with the understanding that adoption assistance may be requested at a later date.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: CWP 16-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

## 413-130-0020

### Special Needs Determination for Adoption Assistance Eligibility

(1) In order to be eligible for adoption assistance, funded through either federal or state funds, a child must be determined to have special needs.

(2) The Department must make the determination that the child has special needs under each of the following subsections:

(a) The child cannot or should not be returned to the home of his or her parent or parents. This decision is based on one of the following:

(A) An order from a court of competent jurisdiction terminating parental rights;

(B) The existence of a petition for termination of parental rights;

(C) For a child under the jurisdiction of the court, a signed relinquishment;

(D) For a child not under the jurisdiction of the court, a signed relinquishment and a subsequent court finding signed within six months of the date the child was last living with the parent that it would be contrary to the welfare of the child to return home at that time;

(E) For a child who can be adopted in accordance with state or tribal law without a termination of parental rights or voluntary relinquishment of parental rights, the valid reason why the child cannot or should not be returned to the home of his or her parents; or

# ADMINISTRATIVE RULES

(F) In the case of an orphan, verification of the death of the parent or parents.

(b) The child has at least one of the following factors or conditions that make adoptive placement difficult to achieve:

(A) A documented medical, physical, mental, emotional condition or other clinically diagnosed disability, or a documented history of abuse or neglect or other identified predisposing factor that places the child at significant risk for future problems that need treatment;

(B) Is a member of a sibling group which will be placed together and is difficult to place because there are three or more children, or if in a sibling group of two, at least one of the children is six years of age or older;

(C) Is a member of an ethnic, racial, or cultural minority (such as African American, Hispanic, Asian, Indian, or Pacific Islander); or

(D) Is eight years of age or older.

(3) A reasonable but unsuccessful effort to place the child with an appropriate adoptive family for adoption without adoption assistance has been made, unless such an effort is not in the best interest of the child for reasons including placement with a relative or another person with whom the child has an established significant relationship.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 6-1996, f. & cert. ef. 9-17-96; SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 22-2009, f. & cert. ef. 12-29-09; CWP 16-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

## 413-130-0040

### Eligibility for Adoption Assistance Payments

(1) In determining eligibility for an adoption assistance payment, the Department must not impose an income eligibility requirement for the pre-adoptive family or adoptive family.

(2) To be eligible for a Title IV-E funded adoption assistance payment, a child must meet all of the following requirements.

(a) Be a citizen of the United States or a qualified alien as described in OAR 413-100-0210(2) and in 8 USC 1641 (b) or (c).

(b) When the child is a qualified alien and is placed with a pre-adoptive parent who is an unqualified alien, the child must meet the five year residency requirement set forth in The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193.

(c) Be determined eligible for Title IV-E adoption assistance under OAR 413-100-0335.

(3) A licensed adoption agency, participating tribe, or another individual applying to receive adoption assistance on behalf of a child determined to have special needs must make all requested efforts to assist the Department in establishing Title IV-E eligibility.

(4) Except as provided in section (5) of this rule, a child determined to be ineligible for a Title IV-E adoption assistance payment is eligible for a state-funded adoption assistance payment when the child meets all of the following criteria.

(a) Is in the legal custody of:

(A) The Department;

(B) A participating tribe; or

(C) A licensed adoption agency and the child is placed with a family residing in Oregon.

(b) Is not eligible for or receiving adoption assistance for the same child through another state.

(c) Is determined to have special needs in accordance with OAR 413-130-0020.

(d) Meets the requirements in section (6) of this rule.

(5) A child relinquished by a parent directly to a family residing in Oregon who is not eligible for a Title IV-E funded adoption assistance payment is only eligible for a state funded adoption assistance payment when:

(a) A state funded adoption assistance agreement was previously in effect on behalf of the child;

(b) The pre-adoptive family or adoptive family is not eligible for or receiving adoption assistance for the same child through another state.

(c) The child is in a subsequent adoption; and

(d) The child meets the requirements in section (6) of this rule.

(6) In addition to the eligibility requirements in section (4) or (5) of this rule, a child must also be a citizen of the United States to receive a state funded adoption assistance payment when the child is being brought into the United States for the purpose of adoption or being placed outside of the United States, or a territory or possession thereof or the District of Columbia.

(7) When an adopted child becomes legally free for re-adoption due to the relinquishment or termination of the legal parent or parents rights or the death of the legal parent or parents:

(a) The child must be determined to have special needs under OAR 413-130-0020 at the time the child again becomes available for adoption; and

(b) The determination of funding eligibility of the adopted child for adoption assistance remains as it was the last time the child was determined eligible for adoption assistance.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 11-1999(Temp), f. & cert. ef. 6-3-99 thru 11-30-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 22-2009, f. & cert. ef. 12-29-09; CWP 16-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

## 413-130-0045

### Child's Immigrant Status

(1) The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Public Law 104-193, as amended, limited federal public benefits to qualified aliens. Adoption assistance under Title IV-E of the Act is considered a federal public benefit for the purposes of the PRWORA and, therefore, limited to U.S. citizens and qualified aliens.

(2) If a substitute caregiver or adoptive parent is not a qualified alien, a child who is otherwise eligible under section 473 of PRWORA must meet the five-year residency requirement to receive Title IV-E adoption assistance as Section 403 of PRWORA requires a qualified alien entering the United States on or after the date of enactment of PRWORA (August 22, 1996), unless excepted, to live in the United States for five years before becoming eligible for certain federal public benefits. In accordance with section 403(c)(2)(F) of PRWORA, however, a federal payment for adoption assistance is excluded from the five-year residency requirement if the child and the foster or adoptive parent with whom the child is placed are qualified aliens under OAR 413-130-0050.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

Hist.: CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 22-2009, f. & cert. ef. 12-29-09; Suspended by CWP 16-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

## 413-130-0050

### Adoption Assistance Application Requirements and Responsibilities

(1) A licensed adoption agency recommending adoption assistance for a pre-adoptive family must verify and document that recruitment efforts under OAR 413-130-0020(2)(c) were made for the child.

(2) A pre-adoptive family under OAR 413-130-0040(5) may contact the Adoption Assistance and Guardianship Assistance Unit for help in submitting a written adoption assistance application directly to the Department.

(3) A pre-adoptive family of a child in the custody of the Department must notify the Department in writing if they choose not to accept any form of adoption assistance.

(4) An adoption assistance application is considered complete when the Adoption Assistance and Guardianship Assistance Unit has received a signed adoption assistance application form and all supporting documentation.

(5) Except as described in subsection (a) and (b) of this section, the Adoption Assistance and Guardianship Assistance Unit must begin negotiation of the adoption assistance agreement no later than 60 days after receipt of a completed adoption assistance application submitted for a legally free child in the home of an approved pre-adoptive family.

(a) The Department may delay negotiation of the adoption assistance base rate for a completed application when the child is due for an updated CANS screening, a new CANS screening is warranted, or a CANS screening is in process or completed but a decision is pending regarding the level of care payment.

(b) When negotiation is delayed under subsection (a) of this section, the Adoption Assistance and Guardianship Assistance Unit must begin negotiation of the adoption assistance base rate no later than 30 days from receipt of the final decision regarding the level of care payment.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 22-2009, f. & cert. ef. 12-29-09; CWP 16-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

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## 413-130-0055

### Extension of Adoption Assistance for a Young Adult

(1) When an initial adoption assistance agreement is entered into on behalf of a child who is age 16 or 17, the Department may approve an extension of the adoption assistance agreement until the individual reaches age 21, only when the child, upon reaching the age of 18 on or after October 1, 2011, is:

- (a) Completing secondary school (or equivalent);
- (b) Enrolled in post-secondary or vocational school;
- (c) Participating in a program or activity that promotes or removes barriers to employment;
- (d) Employed 80 hours a month; or
- (e) Determined incapable of any of the above due to a documented medical condition, physical disability or mental disability.

(2) The Department will review the young adult's eligibility for continued adoption assistance when an extension of adoption assistance has been granted:

- (a) At least annually; or
- (b) When information is received that indicates the young adult may no longer be eligible for adoption assistance or may be eligible for adoption assistance in a different amount.

(3) In order for the extension of adoption assistance to continue on behalf of a young adult, the adoptive family must submit to the Department, upon request:

- (a) Proof that the young adult continues to be enrolled in a secondary, post-secondary, vocational school or a program or activity that promotes or removes barriers to employment;
- (b) Proof that the young adult is employed 80 hours a month; or
- (c) Verification from a medical or mental health professional that the young adult is incapable of attending school or obtaining employment due to a medical condition.

(d) The adoptive family must notify the Department, orally or in writing, of any changes in circumstances that may make the young adult:

- (A) Ineligible for adoption assistance; or
- (B) Eligible for adoption assistance in a different amount.

Stat. Auth.: ORS 418.005 & 418.340

Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: CWP 16-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

## 413-130-0060

### Agreement Only

(1) An Agreement Only between the Department and the pre-adoptive family or adoptive family is signed when there is no current need for an adoption assistance payment or medical coverage, the adoptive family requests such an agreement, and the child is eligible for adoption assistance under OAR 413-130-0020.

(2) The Agreement Only becomes effective on the date the completed adoption assistance agreement is approved and signed by the Department, and automatically terminates when the child reaches 18 years of age.

(3) The adoptive family must make a written request to the Department to initiate any adoption assistance benefits subsequent to completing an Agreement Only. The adoptive family must provide documentation to the Department describing the child's need for services at the time an adoption assistance benefit is requested as provided in OAR 413-130-0075.

(4) The pre-adoptive family must notify the Department in writing if the family chooses not to accept any form of adoption assistance benefits, including an Agreement Only.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 22-2009, f. & cert. ef. 12-29-09; Suspended by CWP 16-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

## 413-130-0070

### Negotiation and Determination of the Monthly Adoption Assistance Payment

(1) When adoption assistance is not provided, a pre-adoptive family or adoptive family may enter into an adoption assistance agreement only.

(2) The monthly adoption assistance payment may not exceed the total of:

- (a) The adoption assistance base rate, and
- (b) When applicable, the level of care payment determined by the CANS screening conducted under OAR 413-020-0230.

(3) The monthly adoption assistance base rate:

(a) Is determined through discussion and negotiation between the Department and the pre-adoptive family or adoptive family.

(b) May not exceed the current foster care base rate payment the child or young adult would be eligible to receive in foster care under OAR 413-090-0010(1)(b).

(c) Is negotiated between the pre-adoptive family or adoptive family and the Department, taking into consideration relevant factors which include, but are not limited to:

- (A) The ordinary and special needs of the child or young adult;
- (B) The services and goods required to meet the needs of the child or young adult;

(C) The cost of the services and goods required to meet the needs of the child or young adult;

(D) The circumstances of the pre-adoptive family or adoptive family and their ability to provide the required services and goods for the child or young adult; and

(E) The resources available to the pre-adoptive family or adoptive family such as medical coverage, private health insurance, public education, other income sources and community resources.

(4) When, during negotiation of the adoption assistance base rate, the Adoption Assistance and Guardianship Assistance Coordinator and the pre-adoptive family or adoptive family are unable to reach agreement, the Adoption Assistance and Guardianship Assistance Coordinator or the family may request a review by the Adoption Assistance Review Committee. When a review is requested:

(a) An Adoption Assistance and Guardianship Assistance Coordinator must:

(A) Prepare documentation for the scheduled Adoption Assistance Review Committee;

(B) Notify the pre-adoptive family or adoptive family and the assigned caseworkers of the date of the committee; and

(C) Attend and participate in the Adoption Assistance Review Committee.

(b) The pre-adoptive family or adoptive family may provide written documentation to the Adoption Assistance and Guardianship Assistance Coordinator for the review and consideration by the Adoption Assistance Review Committee.

(c) The caseworker for the pre-adoptive family or adoptive family and the caseworker for the child or young adult may participate in an Adoption Assistance Review Committee meeting and may present information and respond to questions. The caseworkers must not participate in the deliberations of the Adoption Assistance Review Committee.

(d) The Adoption Assistance Review Committee members must:

(A) Consider written documentation provided by the pre-adoptive family or adoptive family, the caseworker for the pre-adoptive family or adoptive family, the caseworker for the child or young adult, and the Adoption Assistance and Guardianship Assistance Coordinator.

(B) Review materials submitted to the Adoption Assistance Review Committee, deliberate and make a recommendation regarding the adoption assistance base rate.

(e) At the conclusion of the Adoption Assistance Review Committee, the Adoption Assistance and Guardianship Assistance Coordinator must:

(A) Document the recommendation of the Adoption Assistance Review Committee; and

(B) Submit the recommendation to the Assistant Adoption Program Manager or designee within one business day of the Adoption Assistance Review Committee meeting.

(f) The Assistant Adoption Program Manager or designee must:

(A) Attend the Adoption Assistance Review Committee and may ask clarifying questions, but does not participate in the deliberation or recommendation of the Adoption Assistance Review Committee; and

(B) Make a decision and provide written notification of the decision regarding the adoption assistance base rate to the Adoption Assistance and Guardianship Assistance Coordinator within one business day of the Adoption Assistance Review Committee meeting.

(g) The Adoption Assistance and Guardianship Assistance Coordinator must notify the pre-adoptive family or adoptive family of the Assistant Adoption Program Manager or designee's decision, including a written notice, within ten business days of the decision.

(5) A pre-adoptive family or adoptive family unsatisfied with the adoption assistance base rate decision of the Assistant Adoption Program Manager or designee under section (4)(f)(B) of this rule, may submit a written request for a review of the decision by the Adoption Program Manager or designee within fourteen days of the date of the written notice in subsection (4)(g) of this rule.



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(6) The Adoption Program Manager or designee must complete each of the following actions.

(a) Review and consider:

(A) The materials submitted to the Adoption Assistance Review Committee;

(B) The recommendation of the committee;

(C) The decision made by the Assistance Adoption Program Manager or designee following the committee recommendation; and

(D) The information presented by the pre-adoptive family or adoptive family in the request submitted under section (5) of this rule.

(b) Make a decision within 60 days of the date of the request for review.

(c) Provide written notification to the pre-adoptive family or adoptive family and the Adoption Assistance and Guardianship Assistance Coordinator within ten business days of the decision in subsection (b) of this section.

(7) The monthly level of care payment:

(a) Is determined based on the results of a CANS screening conducted under OAR 413-020-0230;

(b) Cannot exceed the amount of the level of care payment set forth in OAR 413-090-0010(2)(g); and

(c) Is included in the adoption assistance payment when the child or young adult qualifies for a level of care payment and when requested by the pre-adoptive family or adoptive family.

(8) When a pre-adoptive family or adoptive family is unsatisfied with the final adoption assistance offer from the Department, consisting of the adoption assistance base rate and, when applicable, a level of care payment, the pre-adoptive family or adoptive family has the right to a contested case hearing under Child Welfare Policy I-A.5.2, "Contested Case Hearings", OAR 413-010-0500 to 413-010-0535.

(9) An initial adoption assistance payment begins on a date determined by the Department when all of the following criteria are met:

(a) The child is legally free for adoption;

(b) Unless the child is in the custody of a pre-adoptive family eligible to apply for adoption assistance under OAR 413-130-0040(5) or the Department has approved an adoptive family to apply for adoption assistance under OAR 413-130-0130, the Department, participating tribe or licensed adoption agency has approved the pre-adoptive family as the adoptive placement; and

(c) An adoption assistance agreement has been signed by the pre-adoptive family or adoptive family and by the Department representative.

(10) An adoption assistance payment is issued at the end of each month of eligibility.

(11) An adoption assistance payment made to a pre-adoptive family or an adoptive family by the Department is inalienable by any assignment or transfer and exempt from garnishment, levy or execution under the laws of this state.

Stat. Auth.: ORS 418.005 & 418.340

Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 23-2008, f. & cert. ef. 10-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 22-2009, f. & cert. ef. 12-29-09; CWP 16-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

## 413-130-0075

### Renegotiation of an Adoption Assistance Payment

(1) The Department or pre-adoptive family or adoptive family may request renegotiation of an adoption assistance agreement. When the pre-adoptive family or adoptive family has previously signed an adoption assistance agreement only and requests adoption assistance at a later date, it is considered a renegotiation.

(2) A request for renegotiation of the adoption assistance agreement made by a pre-adoptive family or adoptive family must:

(a) Be in writing in a format provided by the Department to the pre-adoptive family or adoptive family;

(b) Document changes in the circumstances of the pre-adoptive family or adoptive family, when applicable;

(c) Document the needs of the child or young adult;

(d) Provide information about the financial expenses of the pre-adoptive family or adoptive family in meeting the needs of the child or young adult; and

(e) Provide additional documentation of the child's or young adult's current behaviors when the child or young adult meets the eligibility requirements for consideration of a level of care payment under OAR 413-020-0230 and the pre-adoptive family or adoptive family is requesting a level of care payment.

(3) Renegotiation of the adoption assistance base rate will be conducted using the negotiation process described in OAR 413-130-0070(2)-(8).

(4) A new adoption assistance agreement must be signed by all parties each time adoption assistance payment changes as a result of renegotiation.

(5) The Department may authorize a renegotiated adoption assistance payment increase or decrease for the period commencing the first day of the month in which the Department receives the documentation required to complete the requested renegotiation, or another date agreed upon by the pre-adoptive family or adoptive family and the Department.

(6) The Department may approve up to twelve months of retroactive payments unless a contested case hearing was requested and a subsequent decision necessitates a payment of more than twelve months. The decision includes any decision by the Department, including:

(a) A final order;

(b) A stipulated final order;

(c) A settlement agreement; or

(d) Any other agreement resulting in withdrawal of the contested case.

Stat. Auth.: ORS 418.005, 418.340

Stats Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 22-2009, f. & cert. ef. 12-29-09; CWP 16-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

## 413-130-0077

### Eligibility for Nonrecurring Adoption Expenses

(1) Except as provided in section (2) of this rule, a pre-adoptive family is eligible for reimbursement of nonrecurring adoption expenses through Title IV-E funding on behalf of a child determined to have special needs under OAR 413-130-0020 when the child is in the custody of:

(a) The Department, a participating tribe, a licensed adoption agency;

or

(b) An Oregon family following a direct relinquishment by the legal parent directly to the Oregon family.

(2) For applications received on or after October 1, 2010, reimbursement for nonrecurring adoption expenses is prohibited on behalf of an applicable child who:

(a) Is not a citizen or resident of the United States; and

(b) Was either adopted outside the United States or was brought to the United States for the purpose of being adopted.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 22-2009, f. & cert. ef. 12-29-09; CWP 16-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11, Renumbered from 413-130-0030

## 413-130-0080

### Payment for Nonrecurring Expenses

(1) An agreement, indicating the nature and amount of nonrecurring adoption expenses, must be signed prior to the final judgment of adoption. Payment for nonrecurring adoption expenses is made when the Department receives the final judgment of adoption.

(2) The Department will reimburse an adoptive family up to \$1,500 for each eligible child for approved nonrecurring expenses, including but not limited to:

(a) The cost of a home study;

(b) Court costs;

(c) Legal fees, as authorized by the Department;

(d) Physical and psychological examinations required for the adoption; and

(e) Travel to visit with the adoptive child prior to the placement.

(3) The Department will consider nonrecurring adoption expense requests that:

(a) Are submitted with written documentation to the Adoption Assistance and Guardianship Assistance Unit;

(b) Are not in violation of state or federal law; and

(c) Do not duplicate expenses covered by:

(A) The Interstate Compact for Placement of Children;

(B) A Department contract with a licensed adoption agency; or

(C) Another resource available to the adoptive family.

(4) When a pre-adoptive family indicates that they will be using a qualified vendor attorney, the Adoption Assistance and Guardianship Assistance Unit must send the pre-adoptive family a list of qualified vendor attorneys.

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(5) The pre-adoptive family may select and contact an attorney from the list of qualified vendor attorneys, in which case the pre-adoptive family must:

(a) Sign the legal fees agreement, and

(b) Send the legal fees agreement to the attorney, who will sign it and return it to the Department for payment after the judgment of adoption is received.

(6) The pre-adoptive family may privately retain an attorney, in which case:

(a) The adoptive family is responsible for paying the attorney; and

(b) The Department will reimburse the adoptive family reasonable charges equal to the amount allowed for a qualified vendor attorney unless the Adoption Assistance and Guardianship Assistance Coordinator has determined that a higher amount may be considered due to extraordinary circumstances.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 23-2005(Temp), f. 12-30-05, cert. ef. 1-1-06; CWP 16-2006, f. 6-30-06, cert. ef. 7-1-06; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 22-2009, f. & cert. ef. 12-29-09; CWP 16-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

## 413-130-0090

### Special Payments

(1) A request for a special payment:

(a) May be made after finalization of the adoption by an adoptive family who has an existing adoption assistance agreement with the Department;

(b) Must include documentation from the adoptive family when requested by the Department.

(2) The Department may authorize a special payment for a limited duration, on a case-by-case basis, subject to the availability of resources.

(3) An approved special payment may only be issued to the adoptive family.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 6-1996, f. & cert. ef. 9-17-96; SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 22-2009, f. & cert. ef. 12-29-09; CWP 16-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

## 413-130-0100

### Medical Assistance

(1) A child or young adult who is the subject of an adoption assistance agreement funded by Title IV-E funds is categorically eligible for medical assistance through Title XIX and eligible for social services through Title XX.

(2) A child or young adult who is the subject of an adoption assistance agreement funded with state general funds, is eligible for medical assistance under Child Welfare Policy I-E.6.2, "Title XIX and General Assistance Medical Eligibility" OAR 413-100-0400 to 413-100-0610 when:

(a) The child or young adult resides in Oregon; or

(b) The child or young adult resides outside of Oregon but in the United States or a territory or possession thereof or the District of Columbia and is not able to obtain medical assistance in his or her place of residence.

(3) When the adoptive child or young adult resides outside of Oregon, the Department provides the necessary documentation to the state of residence of the child or young adult through the Interstate Compact on Adoption and Medical Assistance (ICAMA) to assist the pre-adoptive family or adoptive family in obtaining medical assistance for the child or young adult.

(4) Medical assistance is not provided for a child or young adult who resides outside of the United States, a territory or possession thereof, or the District of Columbia.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 22-2009, f. & cert. ef. 12-29-09; CWP 16-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

## 413-130-0110

### Administration of Approved Adoption Assistance

(1) Except as provided in OAR 431-130-0130, in order for the Department to provide adoption assistance on behalf of an eligible child:

(a) An adoption assistance agreement must be signed by each individual who is a party to the agreement and a Department representative; and

(b) The adoption assistance agreement must be in effect before the judgment of adoption.

(2) An adoption assistance agreement must include each of the following:

(a) A statement indicating that an adoption assistance agreement remains in effect regardless of the state or residency of the pre-adoptive family or the adoptive family and the child.

(b) An effective date which:

(A) Must be after the completion of a signed adoption assistance application; and

(B) Except as provided in OAR 413-120-0130, must be before the date of the judgment of adoption.

(c) Information identifying the child's or young adult's eligibility to receive medical assistance and specify the child's or young adult's eligibility for Title XIX and XX.

(d) Information that ORS 192.520 allows the Oregon Health Plan (OHP) and OHP managed care plans to exchange the following protected health information without authorization from the pre-adoptive family or adoptive family for the purpose of treatment activities related to behavioral or physical health of the child or young adult when the child or young adult is the recipient of OHP services:

(A) The name and Medicaid recipient number for the child or young adult;

(B) The hospital or medical provider for the child or young adult;

(C) The hospital or medical provider's Medicaid number;

(D) Each diagnosis for the child or young adult;

(E) Each treatment activity's date of service;

(F) Each treatment activity's procedure or revenue code;

(G) The quantity of units or services provided; and

(H) Information about medication prescription and monitoring.

(e) Specification of the amount and nature of all adoption assistance to be provided.

(f) A statement informing the pre-adoptive family or adoptive family of the right to a contested case hearing under Child Welfare Policy I-A.5.2, "Contested Cases" OAR 413-010-0500 to 413-010-0535.

(3) The Department remains financially responsible for providing the services specified in the adoption assistance agreement if the needed service is not available in the new state or service area of residence, except as described in OAR 413-130-0100(4).

(4) The foster care base rate payment, level of care payment, any level of personal care payment, and medical coverage end when adoption assistance begins. Medical assistance, as determined by the child's eligibility, may continue when requested by the pre-adoptive family or adoptive family.

(5) The Department may require documentation from the pre-adoptive family or adoptive family verifying that the child:

(a) Is enrolled in an elementary or secondary school as determined by the law of the state of residence;

(b) Is home schooled in accordance with the law of the state of residence;

(c) Is enrolled in an independent study program in accordance with the law of the state of residence;

(d) Has completed secondary school; or

(e) Is incapable of attending school due to a documented medical condition, mental disability or physical disability.

(6) A pre-adoptive family or adoptive family must immediately inform the Adoption Assistance and Guardianship Assistance Unit of a change in circumstances that may make them ineligible for adoption assistance or eligible for an adoption assistance payment in a different amount.

(7) An individual who is a party to an adoption assistance agreement may request a change of payee due to a divorce, legal separation, or other judicially recognized modification of custody.

(a) The requesting individual must provide the Department with the current address and telephone number of the current payee.

(b) The Department must notify the current payee that there has been a request to change the payee within 30 days of receipt of a request for a change of payee.

(c) Unless the current payee submits a challenge to the request to change payee within 30 days of the date the Department sends the notice in subsection (b), the request to change payee will be approved.

(d) If the change of payee is challenged, the Department requires legal documentation describing physical custody of the child to make a change in payee.

(e) The new payee must be one of the parties to the adoption assistance agreement.

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(8) Overpayment.

(a) If the Department issues an adoption assistance payment on behalf of a child or young adult after the date the adoption assistance agreement automatically expires, the Department may seek reimbursement of the overpayment and the pre-adoptive family or the adoptive family must repay the Department.

(b) If the pre-adoptive family or adoptive family fails to comply with any provisions of the adoption assistance agreement, including failing to notify the Department of any of the events or circumstances described in section (6) of this rule, the Department may collect any adoption assistance payment or medical assistance which the Department would not have provided had the pre-adoptive family or adoptive family complied with the provisions of the adoption assistance agreement.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 11-1999(Temp), f. & cert. ef. 6-3-99 thru 11-30-99; SOSCF 22-1999, f. & cert. ef. 11-24-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 16-2006, f. 6-30-06, cert. ef. 7-1-06; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 22-2009, f. & cert. ef. 12-29-09; CWP 16-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

## 413-130-0115

### Adoption Assistance Review Committee and Appeals Procedure

(1) The Adoption Assistance Review Committee serves as a consultation and review body for the adoption assistance program.

(a) Adoption Program staff may refer unusual or exceptionally costly benefit requests to the Adoption Assistance Review Committee for consultation; or

(b) If, during negotiations of adoption assistance benefits, Adoption Program staff and the adoptive family or pre-adoptive family are unable to reach agreement, the matter may be referred to the Adoption Assistance Review Committee for review at the request of either Adoption Program staff or the adoptive family or pre-adoptive family.

(2) The adoptive family or pre-adoptive family and the assigned caseworker must provide written documentation for the Committee's consideration.

(3) The caseworker for the pre-adoptive family may participate in an Adoption Assistance Review Committee meeting by phone.

(4) The Adoption Assistance Review Committee reviews relevant materials and provides a recommendation regarding level of benefits to the Department's adoption assistance coordinator. The Adoption Assistance Review Committee takes into consideration the special needs of the child and the financial circumstances of the adoptive family or pre-adoptive family.

(5) If the adoptive family or pre-adoptive family is unsatisfied with the adoption assistance offer made by the Adoption Assistance Review Committee, the family may request further review by the Department's Adoption Program Manager.

(6) Requests for further review must be made in writing and received by the Department's Adoption Program Manager within 14 days from the date of the Adoption Assistance Review Committee recommendation.

(7) The Adoption Program Manager reviews the material and makes a decision within 60 days from the date of the Adoption Assistance Review Committee recommendation.

(8) After receipt of the Adoption Program Manager's decision, the adoptive family or pre-adoptive family may request a contested case hearing as provided in Child Welfare Policy I-A.5.2, "Contested Case Hearings" OAR 413-010-0500 to 413-010-0535.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

Hist.: SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 22-2009, f. & cert. ef. 12-29-09; Suspended by CWP 16-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

## 413-130-0125

### Adjustments of Adoption Assistance

(1) The Department may request updated information from the pre-adoptive family or the adoptive family when the Department becomes aware of a change in circumstances that may make the pre-adoptive family or the adoptive family ineligible for adoption assistance or eligible for adoption assistance in a different amount.

(2) When the adoptive family divorces, legally separates, or is party to a judicially recognized modification of custody, the Department may request updated information, including financial information, to reflect the change in family circumstances.

(3) The Department may not adjust the adoption assistance payment without the agreement of the adoptive family, except when there is an

across-the-board reduction or increase in a foster care base rate payment or level of care payment, the Department, following a case-by case review, based on the specific needs of the child or young adult and without concurrence of the pre-adoptive family or adoptive family, may adjust the adoption assistance payment to an amount that does not exceed the new foster care payment the child or young adult would receive if the child or young adult was currently in foster care. In the case of a reduction, only those payments that exceed the amount the child or young adult would be eligible for if currently in foster care would be reduced and the reduction would only be to the amount that the child or young adult would be eligible to receive if currently in foster care.

(4) The Department, with the concurrence of the pre-adoptive family or adoptive family may adjust or suspend the adoption assistance payment, to reflect a change in the pre-adoptive family or adoptive family's circumstances or expenses on behalf of the child or young adult.

(5) The Department will terminate the adoption assistance agreement upon ten days written notice to the pre-adoptive family or adoptive family when it becomes known to the Department that the pre-adoptive family or adoptive family is no longer providing any support to the child or young adult or legally responsible for the support of the child or young adult, including under the following circumstances:

(a) When the parental rights of the adoptive family have been terminated or relinquished.

(b) When the child becomes an emancipated minor.

(c) When the child or young adult:

(A) Marries.

(B) Enlists in the military.

(C) Dies.

(d) When the young adult no longer meets the eligibility requirements in 413-130-0055.

(6) The adoption assistance agreement automatically expires when the child reaches the age of 18 or, when an extension has been granted under OAR 413-130-0055, up to the age of 21 as documented in the adoption assistance agreement.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: CWP 16-2003, f. 1-21-03, cert. ef. 2-1-03; CWP 38-2003(Temp), f. & cert. ef. 11-19-03 thru 5-17-04; CWP 4-2004, f. & cert. ef. 4-1-04; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 22-2009, f. & cert. ef. 12-29-09; CWP 16-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

## 413-130-0130

### Post Judgment of Adoption Applications for Adoption Assistance

(1) An adoptive family asking to apply for adoption assistance after the judgment of adoption must submit a written request to the Adoption Assistance and Guardianship Assistance Unit, 500 Summer Street NE, E-71, Salem, Oregon 97301, based on one or more of the following extenuating circumstances:

(a) Relevant facts regarding the child, the biological family, or background of the child were known, but not shared with the adoptive family prior to legal finalization of the adoption;

(b) Adoption assistance was denied based on an assessment of the financial need of the adoptive family;

(c) The Department determined the child was ineligible for adoption assistance, but information becomes known which indicates a review of the determination is appropriate; or

(d) The Department failed to advise the adoptive family of a special needs child of the availability of adoption assistance.

(2) Upon receipt of the written request, the Department must determine, within thirty days, whether the child meets Title IV E eligibility requirements.

(3) The Department or adoptive family may seek historic information regarding the child to determine eligibility for adoption assistance through a:

(a) Request to the adoption registry as provided by ORS 109.425 through 109.507; or

(b) Court order to review the sealed adoption file.

(4) When a child is Title IV-E eligible, a decision is made through a contested case hearing on whether the adoptive family may apply for adoption assistance after the judgment of adoption based on the extenuating circumstances in section (1) of this rule:

(a) The Adoption Assistance and Guardianship Assistance Coordinator must write a summary of the situation and submit a hearing referral and supporting documentation to the Office of Administrative Hearings within 45 days of receipt of the request in section (1) of this rule.



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(b) An adoptive family has the burden of proof to show that extenuating circumstances exist. The Department may provide corroborating facts to both the adoptive family and the administrative law judge.

(c) The contested case hearing is conducted under Child Welfare Policy I-A.5.2, "Contested Case Hearings", OAR 413-010-0500 to 413-010-0535.

(5) When a child does not meet Title IV E eligibility requirements, the Adoption Program Manager determines if extenuating circumstances under section (1) of this rule exist that justify accepting an adoption assistance application from the adoptive family.

(a) The Adoption Assistance and Guardianship Assistance Coordinator must prepare information for review by the Adoption Program Manager including information submitted by both the adoptive family and Department records.

(b) A written finding will be sent to the adoptive family within sixty days of the receipt of the request for review.

(c) When the Adoption Program Manager finds that extenuating circumstances do not exist, the adoptive family may request a contested case hearing under Child Welfare Policy I-A.5.2, "Contested Case Hearings", OAR 413-010-0500 to 413-010-0535.

(A) The administrative law judge in the contested case hearing reviews whether the adoptive family may submit an application for adoption assistance.

(B) The approval of the adoption assistance application is a separate determination made by the Department.

(6) When the decision, through a contested case hearing or Adoption Program Manager review, is that the adoptive family is eligible to apply for adoption assistance on behalf of the child, an adoption assistance application may be signed, effective the date of the written request described in section (1) of this rule. The process for application in OAR 413-130-0050 and negotiation in OAR 413-130-0070 apply.

Stat. Auth.: ORS 418.005, 418.340  
Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340  
Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 22-2009, f. & cert. ef. 12-29-09; CWP 16-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11

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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 14-2011(Temp)

**Filed with Sec. of State:** 6-29-2011

**Certified to be Effective:** 6-29-11 thru 12-12-11

**Notice Publication Date:**

**Rules Suspended:** 461-135-1250(T)

**Subject:** The temporary rule amendment to OAR 461-135-1250 adopted on June 15, 2011 is being suspended. Post-TANF program payments will continue after June 30, 2011.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

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

**Adm. Order No.:** SSP 15-2011(Temp)

**Filed with Sec. of State:** 6-29-2011

**Certified to be Effective:** 6-29-11 thru 12-26-11

**Notice Publication Date:**

**Rules Amended:** 461-180-0130

**Subject:** OAR 461-180-0130 about the restoration of benefits is being amended to align the time period for clients in the TANF program to be eligible for restoration of administrative error underpayments with the time period for the SNAP program and with other public assistance programs covered by the rule. This amendment shortens the time period for the TANF program.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 461-180-0130

### Effective Dates; Restored Benefits

(1) The effective date for restoring benefits that were underpaid (including erroneous collections of overpayments) or denied or closed in error is one of the following:

(a) In all programs except SNAP, for underpayments resulting from administrative error, the effective date is the date the error was made, except as provided in subsection (b) of this section.

(b) In all programs, benefits can be restored only for the preceding 12 months.

(c) In all programs except SNAP, for underpayments resulting from client error, the effective date is the earliest of the following:

(A) The month the benefit group notifies the branch office of the possible loss.

(B) The month the branch office discovers the loss.

(C) The date a hearing is requested.

(2) In the SNAP program, for underpayments resulting from administrative error, benefits are restored for not more than twelve months prior to whichever of the following occurs first:

(a) The date the benefit group notifies the branch office of the possible loss.

(b) The date the branch office discovers the loss.

(c) The date a hearing is requested.

(3) In the SNAP program, benefits are not restored for underpayments resulting from client error.

(4) The effective date for restoring benefits that have been suspended is:

(a) The first of the month after the suspension, if suspension was for only one month; or

(b) The date the benefit group again becomes eligible, if benefits have been suspended for more than 30 days. Treat the month in which benefits are restored as an initial month.

Stat. Auth.: ORS 409.050, 411.060, 411.404, 411.816, 412.014, 412.049

Stats. Implemented: ORS 409.010, 411.060, 411.404, 411.816, 412.014, 412.049

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 15-2011(Temp), f. & cert. ef. 6-29-11 thru 12-26-11

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

**Adm. Order No.:** SSP 16-2011(Temp)

**Filed with Sec. of State:** 6-29-2011

**Certified to be Effective:** 6-29-11 thru 11-29-11

**Notice Publication Date:**

**Rules Adopted:** 461-190-0212

**Rules Suspended:** 461-190-0212(T)

**Subject:** OAR 461-190-0212 which ended various case plan activities and support services in the JOBS, Post-TANF, Pre-TANF, REF, SFPSS, Temporary Assistance for Domestic Violence Survivors (TA-DVS), and TANF programs as of June 30, 2011 is being amended to clarify that the Temporary Assistance for Domestic Violence Survivors (TA-DVS) program is not ending but rather support services for that program are ending.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 461-190-0212

### Case Plan Activities and Support Services; JOBS, Post-TANF, Pre-TANF, REF, SFPSS, TA-DVS, TANF

Notwithstanding any other administrative rule in Chapter 461, except as provided in section (4) of this rule, effective at the end of the day on June 30, 2011, in the JOBS, Post-TANF, Pre-TANF, REF, SFPSS, TA-DVS, and TANF programs:

(1) The following *activities* (see OAR 461-001-0025) and services specific to case plans (see OAR 461-001-0025) will end:

(a) *Adult Basic Education* (see OAR 461-001-0025).

(b) *Community Service Program* (see OAR 461-001-0025).

(c) *Drug and alcohol services* (see OAR 461-001-0025).

(d) *English as a second language* (see OAR 461-001-0025).

(e) Family Support and Connections.

(f) *High school or GED Completion* (see OAR 461-001-0025).

(g) *Initial job search and Job Search* (see OAR 461-001-0025).

(h) *Job Skills Training* (see OAR 461-001-0025).

(i) *Life Skills* (see OAR 461-001-0025).

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- (j) Medical services.
- (k) *Mental Health Services* (see OAR 461-001-0025).
- (l) *Micro-enterprise* (see OAR 461-001-0025).
- (m) *On-the-job training* (see OAR 461-001-0025).
- (n) Program Entry.
- (o) *Providing child care services to a Community Service Program participant* (see OAR 461-001-0025).
- (p) *Rehabilitation activities* (see OAR 461-001-0025).
- (q) Retention Services.
- (r) Services to families served by Child Welfare.
- (s) *Sheltered or supported work* (see OAR 461-001-0025).
- (t) Social Security Application process.
- (u) *Stabilization, intervention and other activities* (see OAR 461-001-0025). These are:
  - (A) *Child health and development* (see OAR 461-001-0000).
  - (B) *Crisis intervention* (see OAR 461-001-0000).
  - (C) *Domestic violence services* (see OAR 461-001-0000).
  - (D) *Family stability activity* (see OAR 461-001-0000).
  - (v) *Vocational training* (see OAR 461-001-0025).
  - (w) *Work experience* (see OAR 461-001-0025).
  - (x) *Work supplementation* (see OAR 461-001-0025).
- (2) Payments made on behalf of an individual participating in one or more activities or services in section (1) of this rule end. These payments are:
  - (a) *Support Services* (see OAR 461-001-0025).
  - (b) Specific Requirements; Pre-TANF Program (see OAR 461-135-0475(5)(b)).
  - (c) *Support services for Temporary Assistance for Domestic Violence Survivors Program* (see OAR 461-135-1205(4)).
  - (3) *Transition Services* (see OAR 461-190-0241). Eligibility for, and payments made on behalf of, an individual who is ineligible for the Pre-TANF or TANF programs because of an increase in earned income, ends.
  - (4) This rule does not apply to an individual in the *JOBS Plus program* (JOBS Plus) (see OAR 461-001-0025 and 461-101-0010) or the *Parents as Scholars* (PAS) (see OAR 461-001-0025) activity.
  - (5) Support services ended under this rule are not continued after June 30, 2011 regardless of whether a hearing request is submitted or pending.  
Stat. Auth.: ORS 409.050, 411.060, 411.070, 412.014, 412.049  
Stats. Implemented: ORS 409.010, 411.060, 411.070, 412.014, 412.049, 2009 OL 827  
Hist.: SSP 12-2011(Temp), f. & cert. ef. 6-2-11 thru 11-29-11; SSP 16-2011(Temp), f. & cert. ef. 6-29-11 thru 11-29-11

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

**Adm. Order No.:** SSP 17-2011

**Filed with Sec. of State:** 7-1-2011

**Certified to be Effective:** 7-1-11

**Notice Publication Date:** 5-1-2011

**Rules Adopted:** 461-155-0575

**Rules Amended:** 461-115-0530, 461-120-0315, 461-135-0400, 461-135-1120, 461-145-0140, 461-145-0220, 461-145-0530, 461-155-0150, 461-155-0180, 461-155-0290, 461-155-0291, 461-155-0295, 461-155-0528, 461-155-0693, 461-160-0800, 461-165-0160, 461-165-0171, 461-175-0200, 461-190-0416, 461-195-0521

**Rules Repealed:** 461-115-0530(T), 461-135-0400(T), 461-135-1120(T), 461-145-0143(T), 461-145-0530(T), 461-155-0180(T), 461-155-0290(T), 461-155-0291(T), 461-155-0295(T), 461-155-0528(T), 461-190-0416(T)

**Subject:** OAR 461-115-0530 about Oregon Health Plan (OHP) program certification periods is being amended to lengthen the Oregon Health Plan — Adults (OHP-OPU) program certification period (the period for which a client is certified eligible for a program). This rule also is being amended to make permanent the temporary changes adopted March 1, 2011.

OAR 461-120-0315 about the assignment of the right to reimbursement for health care costs for clients in the Department medical programs is being amended to state that a Program for All-Inclusive Care for the Elderly (PACE) client in a nursing facility who is receiving long-term care insurance payments may meet the requirement to assign rights for medical care reimbursements to the Department

by assigning them to the long-term care facility or immediately turning them over to the long-term care facility if received directly.

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 remove the requirement that new applicants (and any ERDC program client with a break in ERDC benefits of more than 30 days) must have received benefits in the Refugee Assistance (REF), State Family Pre-SSI/SSDI (SFPSS), or Temporary Assistance to Needy Families (TANF) programs within at least one of the prior three months. In addition, this rule is being amended to remove provisions related to the Child Care Reservation List. This rule also is being amended to make permanent the temporary changes adopted March 22, 2011.

OAR 461-135-1120 about when an Oregon Health Plan — Adult (OHP-OPU) program benefit group (the individuals who receive benefits) must pay a monthly premium to receive program benefits is being amended to restate how the Department determines when a premium payment is paid on time or past due, and to state when a premium payment is in arrears. This rule also is being amended to cross-reference other administrative rules for the definitions of terms used in this rule and to italicize the defined terms throughout the rule. This rule also is being amended to make permanent the temporary changes adopted March 1, 2011.

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 restate how the Making Work Pay (MWP) tax credit under the American Recovery and Reinvestment Act of 2009 (Pub. Law 11-5) is received by a client. This rule also is being amended to remove the earned income exclusion for 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 clients who received an MWP tax credit as the option to receive an MWP tax credit on a monthly basis expired December 31, 2010. This rule also is being amended to make permanent the temporary changes adopted January 1, 2011.

OAR 461-145-0143 about how the Department treats Making Work Pay and American Recovery and Reinvestment Act of 2009 (Pub. Law 11-5) economic recovery payments when determining a client's eligibility for Department program benefits is being repealed as the federal provisions authorizing these payments expired December 31, 2010. This rule also is being repealed to make permanent the temporary suspension adopted January 1, 2011.

OAR 461-145-0220 about the treatment of a client's home when the Department is determining a client's assets for individuals receiving long-term care services is being amended to revise the policy about when the equity value of the home is excluded from the client's assets. This rule also is being amended to make permanent the temporary changes adopted January 1, 2011.

OAR 461-145-0530 about how the Department treats tax refunds when determining a client's assets (income and resources) is being amended to restate how the Department treats federal income tax refunds in compliance with recent federal legislation Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (Pub. Law 111-312). This rule also is being amended to make permanent the temporary changes adopted February 4, 2011.

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 in response to an Oregon Legislature Emergency Board directive (September 23, 2010) to restate which child care providers the Department may pay at a part-time monthly rate. This rule also is being amended to state when the

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Department may pay more than one child care provider at a part-time monthly rate for the same child for the same month.

OAR 461-155-0180 about poverty-related income standards is being amended to reflect the annual increase in the federal poverty guidelines. This rule also is being amended to make permanent the temporary changes adopted January 20, 2011.

OAR 461-155-0290 about the income standards in the Qualified Medicare Beneficiaries — Basic (QMB-BAS) program, OAR 461-155-0291 about the income standards in the Qualified Medicare Beneficiaries — Disabled Worker (QMB-DW) program, and OAR 461-155-0295 about the income standards in the Qualified Medicare Beneficiaries — Specified Limited Medicare Beneficiary (QMB-SMB), and Qualified Medicare Beneficiaries — Qualified Individuals (QMB-SMF) programs are being amended to reflect the annual changes in the income standards based on changes to the federal poverty level. OAR 461-155-0295 also is being amended to clarify the income standards being applied. These rules also are being amended to make permanent the temporary changes adopted March 1, 2011.

OAR 461-155-0528 about emergency assistance in the Oregon Supplemental Income Program Medical (OSIPM) program is being amended to restate which OSIPM program clients receiving Supplemental Security Income (SSI) payments are eligible for emergency assistance payments. This rule also is being amended to increase the amount of the authorized maximum emergency assistance payment. This rule also is being amended to make permanent the temporary changes adopted February 1, 2011.

OAR 461-155-0575 is being adopted to set out the policy for providing special need in-home supplementary payments to certain Oregon Supplemental Income Program Medical (OSIPM) clients who receive specified in-home services. This rule also is being adopted to make permanent the temporary rule adopted April 1, 2011.

OAR 461-155-0693 about transportation services payments in the Oregon Supplemental Income Program Medical (OSIPM) program is being amended to increase the amount of the authorized maximum monthly payment. This rule also is being amended to make permanent the temporary changes adopted February 1, 2011.

OAR 461-160-0800 about how the Department calculates the participant fee for Oregon Supplemental Income Program — Employed Persons with Disabilities (OSIP-EPD) and Oregon Supplemental Income Program Medical - Employed Persons with Disabilities (OSIPM-EPD) program clients is being amended to restate the cross-referenced Oregon Administrative Rule used to determine the Federal Poverty Level (FPL) used in calculating the participant fees.

OAR 461-165-0160 about how the Department makes payments to child care providers is being amended in response to an Oregon Legislature Emergency Board directive (September 23, 2010) to indicate that in the Job Opportunity and Basic Skills (JOBS), JOBS Plus, and Temporary Assistance for Needy Families (TANF) programs (in addition to ERDC which the rule already covers) the Department will not authorize a child care provider payment unless the client has designated a primary provider.

OAR 461-165-0171 about the methods Employment Related Day Care (ERDC), Job Opportunity and Basic Skills (JOBS), and Temporary Assistance for Needy Families (TANF) program child care providers are required to follow to receive payments from the Department is being amended in response to an Oregon Legislature Emergency Board directive (September 23, 2010) to state the requirements the providers using the Department's Child Care Billing and Attendance Tracking system must meet to receive payments from the Department.

OAR 461-175-0200 which provides general information about the decision notices (written notices of decisions by the Department regarding an individual's eligibility for benefits in a program) the Department sends to clients is being amended to restate which type

of decision notice is sent to a Supplemental Nutrition Assistance Program (SNAP) client.

OAR 461-190-0416 about how the Department determines eligibility for and calculates the amount of a Temporary Assistance for Needy Families (TANF) or Supplemental Nutrition Assistance Program (SNAP) program supplemental payment made to a client when the client's Job Opportunity and Basic Skills (JOBS) Plus income reduces the client's TANF or SNAP program benefits is being amended to restate how the Department determines a client's full benefit equivalency income and minimum benefit equivalency income (the income amounts used to determine eligibility for and the amount of the supplemental payment under this rule). This rule also is being amended in response to recently enacted federal legislation (The Education Jobs and Medicaid Assistance Act of 2010 (Pub. Law 111-226)) to state how, effective January 1, 2011, the Department determines eligibility for and calculates the amount of a supplemental payment under this rule. This rule also is being amended to make permanent the temporary changes adopted February 14, 2011.

OAR 461-195-0521 about how the Department calculates the amount of a client or provider's overpayment liability is being amended to restate how the Department calculates the amount of Oregon Supplemental Income Program (OSIP), Oregon Supplemental Income Program Medical (OSIPM), Oregon Supplemental Income Program — Employed Persons with Disabilities (OSIP-EPD), and Oregon Supplemental Income Program Medical - Employed Persons with Disabilities (OSIPM-EPD) program overpayments.

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### 461-115-0530

#### **Certification Period; HKC, OHP**

(1) For an HKC, OHP-CHP, OHP-OPC, OHP-OPU, or OHP-OP6 program applicant not currently receiving BCCM, EXT, HKC, MAA, MAF, OHP, OSIPM, REFM, SAC, or child welfare medical program benefits, the initial 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 twelve calendar months. Any other HKC, OHP-CHP, OHP-OPC, OHP-OPU, or OHP-OP6 program certification period is for twelve months.

(2) A client's HKC or OHP program benefits end before the end of the certification period if the client no longer meets the program eligibility requirements or the program ends.

(3) To establish a new certification period, an HKC or OHP program benefit group (see OAR 461-110-0750) must complete a redetermination of eligibility and be found eligible.

(4) When an individual wishes to be added to an OHP program benefit group already certified for OHP program, 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.

(5) When an HKC program certification period is established, the HKC program subsidy may not be reduced or eliminated during the certification period.

(6) When an individual wishes to be added to an HKC program benefit group already certified for HKC program benefits, the entire benefit group must be redetermined.

(a) If as a result of the new redetermination process, the new HKC program countable (see OAR 461-001-0000) income of the filing group increases from less than 251 percent of the Federal Poverty Level (FPL) and is equal to or greater than 251 percent of the FPL, the original HKC program 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 redetermination process, the new HKC program countable income of the filing group decreases to less than 251 percent of the FPL, a new certification period is established for the new benefit group.

(7) If a member leaves an HKC or OHP program benefit group, that individual and other members of the benefit group remain eligible for the remainder of the certification period.

(8) If a current OHP program client moves into another current OHP program filing group, that client and the members of that filing group who



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are OHP program eligible are combined into one benefit group if the client is required to be in the current household's OHP program 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.

(9) If a current HKC program client moves into another current HKC program filing group, that client and the members of that filing group who are HKC program eligible are combined into one benefit group if the client is required to be in the current household's HKC program 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) 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 & 414.231  
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; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 8-2011(Temp), f. & cert. ef. 3-1-11 thru 8-28-11; SSP 17-2011, f. & cert. ef. 7-1-11

## 461-120-0315

### Medical Assignment

(1) In the CEC, CEM, EXT, GAM, MAA, MAF, OHP, OSIPM, QMB, REF, and SAC programs, by signing the application for assistance, clients agree to turn over their rights to reimbursement for medical care costs to the Department.

(a) If a client or the client's authorized representative (see OAR 461-115-0090) refuses to assign the rights to reimbursement for medical care costs to the Department, the *filing group* is ineligible until the client complies with this requirement. This includes a client eligible for long term care (see OAR 461-001-0000) insurance payments who fails to comply as described in subsection (b) of this section.

(b) When a client has long term care insurance, the client complies with the requirements of this rule by reducing the Department's share of the long term care service costs by taking the following actions for the entire period of time that the client is eligible for Department-covered long term care services:

(A) For a client in a nursing facility:

(i) Submitting the necessary paperwork to receive the long term care insurance payments and designating the long term care facility as the payee for the long term care insurance benefits; or

(ii) When the insurance company will not pay the long term care insurance benefits directly to the long term care facility, submitting the necessary paperwork to receive insurance payments and then promptly turning over the long term care insurance payments to the long term care facility upon receipt.

(B) For a client in community based care (see OAR 461-001-0000):

(i) Submitting the necessary paperwork to receive the long term care insurance payments and designating the Department as the payee for the long term care insurance benefits; or

(ii) When the insurance company will not pay the long term care insurance benefits directly to the Department, submitting the necessary paperwork to receive the insurance payments and then promptly turning over the long term care insurance payments to the Department upon receipt.

(2) The Department may refuse to pay medical expenses for anyone in the benefit group (see OAR 461-110-0750) when another party or resource should pay first.

(3) The amount the Department may collect in reimbursement is limited to the amount of medical services paid by the Department on the client's behalf.

(4) The Department establishes an overpayment if it is discovered after-the-fact that during any period of time a client or another individual submitting a long term care insurance claim on the client's behalf received a long term care insurance payment that was not turned over to the long term care facility or Department as required by subsection (1)(b) of this rule.

Stat. Auth: ORS 411.060, 414.042  
Stats. Implemented: ORS 411.060, 414.042  
Hist.: AFS 28-1992, f. & cert. ef. 10-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 17-2011, f. & cert. ef. 7-1-11

## 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, 411.060, 411.070  
Stats. Implemented: ORS 409.010, 409.050, 409.610, 411.010, 411.060, 411.070, 411.122, 411.141, 418.485, 2009 OL ch. 827  
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 35-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 4-2009(Temp), f. 3-11-09, cert. ef. 4-1-09 thru 9-28-09; SSP 6-2009(Temp), f. & cert. ef. 4-1-09 thru 9-28-09; SSP 27-2009, f. & cert. ef. 9-29-09; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 34-2010(Temp), f. & cert. ef. 10-1-10 thru 3-30-11; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 7-2011(Temp), f. & cert. ef. 2-16-11 thru 8-15-11; SSP 9-2011(Temp), f. & cert. ef. 3-22-11 thru 8-15-11; SSP 17-2011, f. & cert. ef. 7-1-11

## 461-135-1120

### Premium Requirement; OHP-OPU

In the OHP-OPU program, a monthly premium must be paid when the *benefit group* (see OAR 461-110-0750) includes at least one non-exempt (HPN) client (see OAR 461-135-1100) as follows:

(1) The following HPN clients are exempt from the premium requirement:

(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.

(c) An individual eligible for benefits through an Indian Health Program.

(d) An individual eligible for the CAWEM program (see OAR 461-135-1070).

(e) An individual in a need group (see OAR 461-110-0630) with countable (see OAR 461-001-0000) income that is 10 percent or less of the federal poverty level in at least one of the following situations:

(A) Using income assigned to the budget month (see OAR 461-001-0000) at certification or recertification;

(B) Using income assigned to the budget month from the current certification for the need group formed when an HPN client leaves the filing group (see OAR 461-110-0310 and 461-110-0400); or

(C) Using income assigned to the budget month from the current certification when multiple OHP program cases are combined into one case.

(2) The amount of the premium is determined in accordance with OAR 461-155-0235.

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(3) Each non exempt client in the benefit group is responsible for payment of premiums.

(4) Once the amount of the premium is established, the amount will not change during the certification period (see OAR 461-001-0000) unless the conditions under at least one of the following subsections apply:

- (a) An HPN client becomes pregnant.
- (b) An HPN client becomes eligible for another program (for example, MAA or OSIPM).
- (c) An HPN client leaves the filing group.
- (d) OHP program cases are combined during their certification periods.

- (e) An HPN client's exemption status changes.
- (f) An HPN client is no longer a member of the benefit group.

(5) A premium is considered paid on time when the payment is received by the Oregon Health Plan billing office on or before the due date which is the 20th of the month for which the premium was billed. The day the payment arrives in the billing office's post office box when sent via mail or the day it is submitted via telephone or electronically to the billing office is the date it is received. A premium not paid on time is in arrears. A premium is past due when it has not been paid within six months of the due date. A client will not be disenrolled during his or her certification period for premiums in arrears or past due premiums. All premiums in arrears and past due premiums for a filing group must be paid before a client can establish a new certification period.

(6) For any billed premium, the Department cancels the arrearage if the applicant is otherwise eligible for the OHP program and one of the following subsections applies:

- (a) The arrearage was incurred while the client was exempt from the requirement to pay a premium; or
- (b) The applicant is exempt from the requirement to pay premiums under subsection (1)(e) of this rule.
- (7) The Department cancels any premium arrearage over three years old.

Stat. Auth.: ORS 411.060, 411.404, 411.431 & 411.432  
Stats. Implemented: ORS 411.060, 411.404, 411.431, 411.432 & 414.025  
Hist.: AFS 19-1997, f. & cert. ef. 10-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; Administrative correction 2-23-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 19-2003(Temp), f. & cert. ef. 7-1-03 thru 9-30-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 3-2004(Temp), f. & cert. ef. 2-19-04 thru 6-30-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 8-2006, f. & cert. ef. 6-1-06; SSP 8-2011(Temp), f. & cert. ef. 3-1-11 thru 8-28-11; SSP 17-2011, f. & cert. ef. 7-1-11

## 461-145-0140

### Earned Income Tax Credit (EITC) and Making Work Pay (MWP) Tax Credit

(1) There are federal and state earned income tax credit (EITC) programs for low-income families.

- (a) An EITC may be received in one of two ways:

(A) As one annual payment received at the time of the normal income tax returns.

- (B) As an advance in the employee's paycheck.
- (b) The EITC is excluded from assets (see OAR 461-001-0000).

(2) The American Recovery and Reinvestment Act (ARRA) of 2009 created the Making Work Pay (MWP) tax credit. This credit applies to tax years 2009 and 2010. An MWP tax credit is received as one annual payment at the time of the normal income tax returns. An MWP tax credit received as a portion of an individual's federal tax return is excluded from assets.

Stat. Auth.: ORS 411.060, 411.404, 411.706, 411.816, 412.049, 414.231  
Stats. Implemented: ORS 411.060, 411.083, 411.404, 411.706, 411.816, 412.049, 414.231  
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 6-1991(Temp), f. & cert. ef. 2-8-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 10-2002, f. & cert. ef. 7-1-02; 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 11-2010(Temp), f. & cert. ef. 4-22-10 thru 10-19-10; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 42-2010(Temp), f. 12-30-10, cert. ef. 1-1-11 thru 6-30-11; SSP 17-2011, f. & cert. ef. 7-1-11

## 461-145-0220

### Home

(1) Home defined: A home is the place where the filing group lives. A home may be a house, boat, trailer, mobile home, or other habitation. A home also includes the following:

- (a) Land on which the home is built and contiguous property.
- (A) In all programs except the GA, GAM, OSIP, OSIPM, QMB, and SNAP programs property must meet all the following criteria to be considered contiguous property:

(i) It must not be separated from the land on which the home is built by land owned by people outside the financial group (see OAR 461-110-0530).

- (ii) It must not be separated by a public right-of-way, such as a road.
- (iii) It must be property that cannot be sold separately from the home.

(B) In the GA, GAM, OSIP, OSIPM, QMB, and SNAP programs, contiguous property is property not separated from the land on which the home is built by land owned by people outside the financial group.

(b) Other dwellings on the land surrounding the home that cannot be sold separately from the home.

- (2) Exclusion of home and other property:

(a) For a client who has an initial month (see OAR 461-001-0000) of long-term care on or after January 1, 2006:

- (A) For purposes of this subsection:

(i) The definition of "child" in OAR 461-001-0000 does not apply.

(ii) "Child" means a biological or adoptive child who is:

- (I) Under age 21; or

(II) Any age and meets the Social Security Administration criteria for blindness or disability.

(B) The equity value of a home is excluded if the requirements of at least one of the following subparagraphs are met:

- (i) The child of the client occupies the home.
- (ii) The spouse of the client occupies the home.
- (iii) The equity in the home is \$506,000 or less, and the requirements of at least one of the following sub-subparagraphs are met:

- (I) The client occupies the home.
- (II) The home equity is excluded under OAR 461-145-0250.
- (III) The home is listed for sale per OAR 461-145-0420.

(iv) Notwithstanding OAR 461-120-0330, the equity in the home is more than \$506,000 and the client is unable legally to convert the equity value in the home to cash.

(b) For all other filing groups, the value of a home is excluded when the home is occupied by any member of the filing group.

(c) In the SNAP program, the value of land is excluded while the group is building or planning to build their home on it, except that if the group owns (or is buying) the home they live in and has separate land they intend to build on, only the home in which they live is excluded, and the land they intend to build on is treated as real property in accordance with OAR 461 145 0420.

(3) Exclusion during temporary absence: If the value of a home is excluded under section (2) of this rule, the value of this home remains excluded in each of the following situations:

(a) In all programs except the GA, GAM, OSIP, OSIPM, and QMB programs, during the temporary absence of all members of the filing group from the property, if the absence is due to illness or uninhabitability (from casualty or natural disaster), and the filing group intends to return home.

(b) In the SNAP program, when the financial group is absent because of employment or training for future employment.

(c) In the GA, GAM, OSIP, OSIPM, and QMB programs, when the client is absent to receive care in a medical institution, if one of the following is true:

(A) The absent client has provided evidence that he or she will return to the home. The evidence must reflect the subjective intent of the client, regardless of the client's medical condition. A written statement from a competent client is sufficient to prove the intent.

(B) The home remains occupied by the client's spouse, child, or a relative dependent on the client for support. The child must be less than 21 years of age or, if over the age of 21, blind or an individual with a disability as defined by SSA criteria.

(d) In the MAA, MAF, REF, REFM, SAC, and TANF programs, when all members of the filing group are absent because:

(A) The members are employed in seasonal employment and intend to return to the home when the employment ends; or

(B) The members are searching for employment, and the search requires the members to relocate away from their home. If all members of the filing group are absent for this reason, the home may be excluded for up to six months from the date the last member of the filing group leaves the home to search for employment. After the six months, if a member of the filing group does not return, the home is no longer excluded.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.816, 412.049  
Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.816, 412.049  
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 42-2010(Temp), f. 12-30-10, cert. ef. 1-1-11 thru 6-30-11; SSP 17-2011, f. & cert. ef. 7-1-11

# ADMINISTRATIVE RULES

## 461-145-0530

### Tax Refund

(1) Effective December 17, 2010, a federal income tax refund received after December 31, 2009 and before January 1, 2013 is excluded as a resource for the 12 calendar months following receipt of the refund.

(2) Any income tax refund not excluded under section (1) of this rule is counted as a resource.

(3) Property tax refunds, including Elderly Rental Assistance (ERA), are counted as a resource.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 414.042, 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.816, 414.042, 412.049

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 8-1992, f. & cert. ef. 4-1-92; 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 8-2008, f. & cert. ef. 4-1-08; SSP 9-2008(Temp), f. & cert. ef. 4-1-08 thru 9-26-08; Administrative correction 10-21-08; SSP 4-2011(Temp), f. & cert. ef. 2-4-11 thru 8-3-11; SSP 17-2011, f. & cert. ef. 7-1-11

## 461-155-0150

### Child Care Eligibility Standard, Payment Rates, and Copayments

The following provisions apply to child care in the ERDC, JOBS, JOBS Plus, and TANF programs:

(1) The following definitions apply to the rules governing child care rates:

(a) Infant: A child aged newborn to 1 year.

(b) Toddler: A child aged 1 year to 3 years.

(c) Preschool: A child aged 3 years to 6 years.

(d) School: A child aged 6 years or older.

(e) Special Needs: A child who meets the age requirement of the program (ERDC or TANF) and who requires a level of care over and above the norm for his or her age due to a physical, behavioral or mental disability. The need for a higher level of care must be determined by the provider and the disability must be verified by one of the following:

(A) A physician, nurse practitioner, licensed or certified psychologist or clinical social worker.

(B) Eligibility for Early Intervention and Early Childhood Special Education Programs, or school-age Special Education Programs.

(C) Eligibility for SSI.

(2) The following definitions apply to the types of care specified in the child care rate charts in subsections (4)(a) through (4)(c) of this rule:

(a) The Standard Family Rate applies to child care provided in the provider's own home or in the home of the child when the provider does not qualify for the enhanced rate allowed by subsection (b) of this section.

(b) The Enhanced Family Rate applies to child care provided in the provider's own home or in the home of the child when the provider meets the training requirements of the Oregon Registry, established by the Oregon Center for Career Development in Childhood Care and Education.

(c) The Registered Family Rate applies to child care provided in the provider's own home when the provider meets criteria established by the Child Care Division.

(d) The Certified Family Rate applies to child care provided in a residential dwelling that is certified by the Child Care Division as a Certified Family Home. To earn this designation, the facility must be inspected, and both provider and facility are required to meet certain standards not required of a registered family provider.

(e) The Standard Center Rate applies to child care provided in a facility that is not located in a residential dwelling and is exempt from Child Care Division Certification rules (see OAR 414-300-0000).

(f) The Enhanced Center Rate applies to child care provided in an exempt center whose staff meet the training requirements of the Oregon Registry established by the Oregon Center for Career Development in Childhood Care and Education. Eligibility to receive the enhanced center rate for care provided in an exempt center is subject to the following requirements:

(A) A minimum of one staff member for every 20 children in care must meet the Oregon Registry training requirements noted in paragraph (2)(b) of this rule.

(B) New staff must meet the Oregon Registry training requirements within 90 days of hire, if necessary to maintain the trained staff-to-children ratio described in paragraph (A) of this subsection.

(C) There must be at least one person present where care is provided who has a current certificate in infant and child CPR and a current American Red Cross First Aid card or an equivalent.

(g) An enhanced rate will become effective not later than the second month following the month in which the Department receives verification that the provider has met the requirements of subsection (2)(b), (f), or (g) of this rule.

(h) The Certified Center Rate applies to child care provided in a center that is certified by the Child Care Division.

(3) The following provisions apply to child care payments:

(a) Providers not eligible for the enhanced or licensed rate will be paid at an hourly rate for children in care less than 158 hours per month subject to the maximum full-time monthly rate.

(b) Providers eligible for the enhanced or licensed rate will be paid at an hourly rate for children in care less than 136 hours a month, unless the provider customarily bills all families at a part-time monthly rate (subject to the maximum full-time monthly rate) and is designated as the primary provider for the case.

(c) At their request, providers eligible for the enhanced or licensed rate may be paid at the part-time monthly rate if they provide 63 or more hours of care in the month, customarily bill all families at a part-time monthly rate, and are designated as the primary provider for the case.

(d) Unless required by the circumstances of the client or child, the Department will not pay for care at a part-time monthly or a monthly rate to more than one provider for the same child for the same month.

(e) The Department will pay at the hourly rate for less than 63 hours of care in the month subject to the maximum full-time monthly rate.

(f) The Department will pay for up to five days each month the child is absent if:

(A) The child was scheduled to be in care and the provider bills for the amount of time the child was scheduled to be in care;

(B) The absent child's place is not filled by another child; and

(C) It is the provider's policy to bill all families for absent days.

(g) The Department will not pay for more than five consecutive days of scheduled care for which the child is absent.

(4) The following are the child care rates, the rates are based on the type of provider, the location of the provider (shown by zip code), the age of the child, and the type of billing used (hourly or monthly): [Table not included. See ED. NOTE.]

(5) This section establishes the ERDC eligibility standard and the client's copayment (copay).

(a) The ERDC eligibility standard is met for need groups (see OAR 461-110-0630) of eight or less if monthly countable income (see OAR 461-001-0000) for the need group is less than 185 percent of the federal poverty level (FPL), as described in OAR 461-155-0180(6). The eligibility standard for a need group size of eight applies to any need group larger than eight.

(b) The minimum monthly ERDC copay is \$25.

(c) For filing groups (see OAR 461-110-0310) whose countable income is at or below 50 percent of the 2007 FPL, the copay is \$25 or 1.5 percent of the filing group's monthly countable income, whichever is greater.

(d) For filing groups whose countable income is over 50 percent of the 2007 FPL, the copay amount is determined with the following percentage of monthly income:

(A) Determine filing group's countable income as a percent of FPL (rounding to the nearest whole number percentage), subtract 50, and multiply this difference by 0.12.

(B) Add 1.5 to the amount in paragraph (A) of this subsection. This sum is the percentage of monthly income to determine the copay amount.

(e) The 2007 federal poverty level used to determine copay amounts under subsections (c) and (d) of this section is set at the following amounts: [Table not included. See ED. NOTE.]

(6) Subject to the provisions in section (9) of this rule, the monthly limit for each child's child care payments is the lesser of the amount charged by the provider or providers and the following amounts:

(a) The monthly rate provided in section (4) of this rule.

(b) The product of the hours of care, limited by section (8) of this rule, multiplied by the hourly rate provided in section (4) of this rule.

(7) The limit in any month for child care payments on behalf of a child whose caretaker is away from the child's home for more than 30 days because the caretaker is a member of a reserve or National Guard unit that is called up for active duty is the lesser of the following:

(a) The amount billed by the provider or providers.

(b) The monthly rate established in this rule for 215 hours of care.

(8) The number of payable billed hours of care for a child is limited as follows:

(a) In the ERDC and TANF programs, the total payable hours of care in a month may not exceed:

(A) 125 percent of the number of hours necessary for the client to perform the duties of his or her job, or to participate in activities included in a case plan (see OAR 461-001-0025) including, for clients in the JOBS Plus



# ADMINISTRATIVE RULES

program, the time the client searches for unsubsidized employment and for which the employer pays the client; or

(B) The monthly rate established in section (4) of this rule multiplied by a factor of not more than 1.5, determined by dividing the number of hours billed by 215, when the client meets the criteria for extra hours under section (10) of this rule.

(b) In the ERDC program, for a client who earns less than the Oregon minimum wage, the total may not exceed 125 percent of the anticipated earnings divided by the state minimum wage not to exceed 172 hours (which is full time). The limitation of this subsection is waived for the first three months of the client's employment.

(c) In the TANF program, for a client who earns less than the Oregon minimum wage or is self-employed, the total may not exceed 125 percent of the anticipated earnings divided by the state minimum wage not to exceed 172 hours (which is full time). The limitation of this subsection is waived for the first three months of the client's employment.

(9) The limit in any month for child care payments on behalf of a child whose caretaker has special circumstances, defined in section (10) of this rule, is the lesser of one of the following:

(a) The amount billed by the provider or providers; or

(b) The monthly rate established in section (4) of this rule multiplied by a factor, of not more than 1.5, determined by dividing the number of hours billed by 215.

(10) The limit allowed by section (9) of this rule is authorized once the Department has determined the client has special circumstances. For the purposes of this section, a client has special circumstances when it is necessary for the client to obtain child care in excess of 215 hours in a month to perform the requirements of his or her employment or training. This is limited to the following situations:

(a) The commute time to and from work exceeds two hours per day.

(b) The caretaker works an overnight shift and care is necessary for both work hours and sleep hours.

(c) The caretaker works a split shift and it is not feasible to care for the child between shifts.

(d) The caretaker consistently works more than 40 hours per week.

(e) Weekend work or other nonstandard work hours require care by more than one provider, and the total allowable hours billed by both providers exceeds the maximum limit.

(f) The caretaker needs child care for both full-time work and participation in Department assigned activities.

(11) The payment available for care of a child who meets the special needs criteria described in subsection (1)(e) of this rule is increased in accordance with OAR 461-155-0151 if the requirements of both of the following subsections are met:

(a) The child requires significantly more direct supervision by the child care provider than normal for a child of the same age; and

(b) The child is enrolled in a local school district Early Intervention or Early Childhood Special Education program or school-age Special Education Program. The enrollment required by this subsection is waived if determined inappropriate by a physician, nurse practitioner, licensed or certified psychologist, clinical social worker, or school district official.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 411.060, 411.070 & 412.049

Stats. Implemented: ORS 411.060, 411.070 & 412.049

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 19-1991(Temp), f. & cert. ef. 10-1-91; AFS 4-1992, f. 2-28-92, cert. ef. 3-1-92; AFS 14-1992, f. & cert. ef. 6-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 10-1993, f. & cert. ef. 6-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 9-1994, f. 4-29-94, cert. ef. 5-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 23-1995, f. 4-20-95, cert. ef. 10-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 14-1999, f. & cert. ef. 11-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 4-2000(Temp), f. 2-29-00, cert. ef. 3-1-00 thru 8-25-00; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; AFS 23-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03; SSP 2-2003(Temp), f. & cert. ef. 2-7-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 24-2003(Temp), f. & cert. ef. 10-1-03 thru 12-31-03; SSP 35-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 35-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 7-2006(Temp), f. 3-31-06, cert. ef. 4-1-06 thru 9-28-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 4-2009(Temp), f. 3-11-09, cert. ef. 4-1-09 thru 9-28-09; SSP 27-2009, f. & cert. ef. 9-29-09; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 17-2011, f. & cert. ef. 7-1-11

## 461-155-0180

### Poverty Related Income Standards; Not OSIP, OSIPM, QMB, TANF

(1) A Department program may cite this rule if the program uses a monthly income standard based on the federal poverty level.

(2) A monthly income standard set at 100 percent of the 2011 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

(3) A monthly income standard set at 133 percent of the 2011 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

(4) A monthly income standard set at 150 percent of the 2011 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

(5) A monthly income standard set at 163 percent of the 2011 federal poverty level is set at the following amounts:

(6) A monthly income standard set at 185 percent of the 2011 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

(7) A monthly income standard set at 200 percent of the 2011 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

(8) A monthly income standard set at 201 percent of the 2011 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 411.060, 411.070, 411.816, 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.816, 412.049

Hist.: SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 1-2007, f. & cert. ef. 1-24-07; SSP 1-2008(Temp), f. & cert. ef. 1-24-08 thru 6-30-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 1-2009, f. & cert. ef. 1-27-09; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 4-2010, f. & cert. ef. 3-31-10; SSP 25-2010(Temp), f. & cert. ef. 8-16-10 thru 2-12-11; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 1-2011(Temp), f. & cert. ef. 1-20-11 thru 7-19-11; SSP 17-2011, f. & cert. ef. 7-1-11

## 461-155-0290

### Income Standard; QMB-BAS

The adjusted income standard for the QMB-BAS program is 100 percent of the 2011 federal poverty level. [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]

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 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 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 16-1996, 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 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 4-2006, f. & cert. ef. 3-1-06; SSP 2-2007(Temp), f. & cert. ef. 3-1-07 thru 3-31-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 6-2008(Temp), f. 2-29-08, cert. ef. 3-1-08 thru 8-28-08; SSP 8-2008, f. & cert. ef. 4-1-08; SSP 6-2009(Temp), f. & cert. ef. 4-1-09 thru 9-28-09; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 8-2011(Temp), f. & cert. ef. 3-1-11 thru 8-28-11; SSP 17-2011, f. & cert. ef. 7-1-11

## 461-155-0291

### Income Standard; QMB-DW

The adjusted income standard for the QMB-DW program is 200 percent of the 2011 federal poverty level (see OAR 461-155-0290). [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060 & 411.070

Hist.: AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 16-1996, 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 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 4-2006, f. & cert. ef. 3-1-06; SSP 2-2007(Temp), f. & cert. ef. 3-1-07 thru 3-31-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 6-2008(Temp), f. 2-29-08, cert. ef. 3-1-08 thru 8-28-08; SSP 8-2008, f. & cert. ef. 4-1-08; SSP 6-2009(Temp), f. & cert. ef. 4-1-09 thru 9-28-09; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 8-2011(Temp), f. & cert. ef. 3-1-11 thru 8-28-11; SSP 17-2011, f. & cert. ef. 7-1-11

## 461-155-0295

### Income Standard; QMB-SMB, QMB-SMF

(1) Eligibility for QMB-SMB requires income greater than 100 percent (see OAR 461-155-0290) but less than 120 percent of the federal poverty level. The adjusted income standard for QMB-SMB is 120 percent of the 2011 federal poverty level. [Table not included. See ED. NOTE.]

(2) Eligibility for QMB-SMF requires income equal to or greater than 120 percent (see section (1) of this rule) but less than 135 percent of the fed-

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eral poverty level. The adjusted income standard for QMB-SMF is 135 percent of the 2011 federal poverty level. [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 411.060 & 411.070

Stats. Implemented: ORS 411.060 & 411.070

Hist.: AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 5-1993, f. & cert. ef. 4-1-93; 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 16-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 19-2002(Temp), f. 12-10-02, cert. ef. 1-1-03 thru 5-31-03; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 4-2006, f. & cert. ef. 3-1-06; SSP 2-2007(Temp), f. & cert. ef. 3-1-07 thru 3-31-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 6-2008(Temp), f. & cert. ef. 3-1-08 thru 8-28-08; SSP 8-2008, f. & cert. ef. 4-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 6-2009(Temp), f. & cert. ef. 4-1-09 thru 9-28-09; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 8-2011(Temp), f. & cert. ef. 3-1-11 thru 8-28-11; SSP 17-2011, f. & cert. ef. 7-1-11

## 461-155-0528

### Special Need; Emergency Assistance; OSIPM

(1) The Department provides an emergency assistance payment for a client if the client meets the requirements of all of the following subsections:

(a) The client must:

(A) Receive SSI; or

(B) Have an adjusted income (see OAR 461-001-0000) less than the SSI standard, and the Department has determined the client meets the eligibility requirements under OAR 461-125-0370(1)(c).

(b) The client does not reside in a community-based care facility (see OAR 461-155-0630(1)) or nursing facility;

(c) The client experiences an unexpected cost or loss of income or resources (not including garnishments or other withholdings authorized by Section 207 of the Social Security Act) resulting from circumstances beyond the client's control; and

(d) The client lacks sufficient income for basic needs such as food, housing, and shelter.

(2) The Department makes emergency assistance payments in accordance with the following subsections:

(a) The Department may authorize an emergency assistance payment for a client only once in any 12-month period;

(b) An emergency assistance payment is limited to the lesser of the following amounts:

(A) The unexpected cost or loss of income or resources; or

(B) \$250.

(c) The Department must pay the total emergency assistance payment to the client over a two-month period.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.706

Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.704, 411.706

Hist.: SSP 36-2010(Temp), f. & cert. ef. 10-13-10 thru 4-11-11; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 3-2011(Temp), f. & cert. ef. 2-1-11 thru 7-31-11; SSP 17-2011, f. & cert. ef. 7-1-11

## 461-155-0575

### Special Need; In-home Supplement; OSIPM

In the OSIPM program:

(1) The Department may provide a monthly supplementary payment for a client who meets the requirements of all of the following subsections:

(a) The client must receive SSI as his or her only source of income.

(b) The client must receive in-home services authorized by:

(A) The Independent Choices Program (covered under the State Medicaid Plan);

(B) A 1915(c) Home and Community-Based Service Waiver; or

(C) State Plan Personal Care Services authorized under chapter 411, division 034 of Oregon Administrative Rules.

(2) The amount and duration of payments authorized under this rule are subject to availability of funding as determined by the Department and are considered reimbursement for uncovered assistance needs.

(3) All eligible clients will receive the same monthly payment amount.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.706

Stats. Implemented: ORS 411.060, 411.070, 411.083, 411.404, 411.704, 411.706

Hist.: SSP 11-2011(Temp), f. 3-31-11, cert. ef. 4-1-11 thru 9-28-11; SSP 17-2011, f. & cert. ef. 7-1-11

## 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; 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 \$50 per month.

(5) Service costs must be verified annually or when questionable.

Stat. Auth.: ORS 411.060, 411.070, 411.083, 411.404, 411.706

Stats. Implemented: ORS 411.060, 411.070, 411.083, 411.404, 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; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 33-2010(Temp), f. & cert. ef. 10-1-10 thru 3-30-11; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 3-2011(Temp), f. & cert. ef. 2-1-11 thru 7-31-11; SSP 17-2011, f. & cert. ef. 7-1-11

## 461-160-0800

### Determining Participant Fee; OSIP-EPD, OSIPM-EPD (Including In-Home Services)

(1) Individuals who receive OSIP-EPD and OSIPM-EPD program benefits will have a participant fee (see section (2) of this rule) but do not have a client liability as discussed in OAR 461-160-0620.

(2) In the OSIP-EPD and OSIPM-EPD programs, the participant fee is calculated using the Federal Poverty Level (FPL) (see OAR 461-155-0290) and the individual's total countable (see OAR 461-001-0000) income as follows:

(a) For clients with countable income less than 75 percent of the FPL, the participant fee is \$0.

(b) For clients with countable income equal to or greater than 75 percent but less than 100 percent of the FPL, the participant fee is \$50 per month.

(c) For clients with countable income equal to or greater than 100 percent but less than 250 percent of the FPL, the participant fee is \$100 per month.

(d) For clients with countable income equal to or greater than 250 percent of the FPL, the participant fee is \$150 per month.

(3) The participant fee under section (2) of this rule must be paid each month as a condition of eligibility for as long as the individual is an OSIP-EPD or OSIPM-EPD client.

(4) OSIP-EPD and OSIPM-EPD clients in a licensed community-based care facility must pay room and board costs in addition to their participant fees.

(5) The local office may waive unpaid participant fees if the individual provides verification (OAR 461-115-0610) of significant economic difficulty, such as, but not limited to, homelessness, divorce, domestic violence (see OAR 461-001-0000), or illness.

Stat. Auth.: ORS 411.060, 411.070, 414.042

Stats. Implemented: ORS 411.060, 411.070, 414.042

Hist.: 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 17-2000, f. 6-28-00, cert. ef. 7-1-00; SSP 6-2008(Temp), f. 2-29-08, cert. ef. 3-1-08 thru 8-28-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 17-2011, f. & cert. ef. 7-1-11

## 461-165-0160

### Direct Provider Payments; General Information

(1) The Department makes payments on behalf of eligible clients to the providers they select to care for their children. The payments are made directly to the provider unless made directly to the client in accordance with OAR 461-165-0190. To be eligible for payment, a provider must:

(a) Charge Department clients at a rate no higher than the rate charged other customers;

(b) Provide the Department his or her social security number (SSN) or IRS identification number; and

(c) Meet the requirements of OAR 461-165-0180.

(2) Payments to a client's provider are subject to each of the following limitations:

(a) A payment is made only for child care already provided.

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(b) Payment is made for the amount charged to the client but may not exceed the rate authorized in OAR 461-155-0150.

(c) No payment will be authorized unless the client has designated a primary provider.

(d) No payment will be made for less than one dollar.

(3) In the ERDC and TANF programs, the Department may issue a payment 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 a covered child. The payment may be made if, without the payment, continued care by the same provider would be jeopardized and the client could not immediately obtain child care from another provider

Stat. Auth.: ORS 411.060, 411.122

Stats. Implemented: ORS 411.060, 411.122

Hist.: AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; 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 2-1994, f. & cert. ef. 2-1-94; 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 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 11-1999, f. & cert. ef. 10-1-99; AFS 22-2000(Temp) f. 9-27-00, cert. ef. 9-27-00 thru 12-31-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 17-2011, f. & cert. ef. 7-1-11

## 461-165-0171

### Direct Provider Payments; Payment Forms

In the ERDC, JOBS, OFSET, and TANF programs:

(1) Child care providers must submit claims for child care on the appropriate form or through the Child Care Billing and Attendance Tracking system.

(a) The provider is responsible to obtain the appropriate payment form from the Department and to return the completed form to the Direct Pay Unit of the Department; or

(b) If using the Department tracking system, the provider is responsible to ensure children are checked in and out appropriately and payment requests are submitted through the system.

(2) No payment will be made for:

(a) A paper claim not received by the Department by the last day of the third month after the form was issued unless the Department determines the provider had good cause for not returning the form timely.

(b) An electronic claim if the request is not submitted by the 10th of the month following the month care is provided unless the Department determines the provider has good cause for not submitting the electronic claim timely.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: SSP 7-2003, f. & cert. ef. 4-1-03; SSP 17-2011, f. & cert. ef. 7-1-11

## 461-175-0200

### Notice Situations; General Information

(1) In the EA program, a basic decision notice (see OAR 461-001-0000) is sent for all situations.

(2) In the SNAP program, a basic decision notice is sent for all actions on applications for assistance.

(3) In the JOBS program:

(a) A basic decision notice is sent whenever a request for a support service payment is denied.

(b) No decision notice is required if request for a support service is approved.

(4) 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.

(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.

(9) When a child is found eligible for HKC program benefits based on an ELA determination, the Department sends a basic decision notice which includes a statement about how the child may qualify for HKC or OHP program benefits with a lower or no premium payment.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.706, 411.816, 412.014, 412.049, 414.231

Stats. Implemented: ORS 183.415, 183.417, 411.060, 411.070, 411.117, 411.404, 411.706, 411.816, 412.014, 412.049, 414.231, 414.826

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 21-2004, f. & cert. ef. 10-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 16-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; SSP 8-2008, f. & cert. ef. 4-1-08; SSP 11-2008(Temp), f. & cert. ef. 4-7-08 thru 9-30-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 3-2010(Temp), f. & cert. ef. 2-23-10 thru 8-22-10; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 25-2010(Temp), f. & cert. ef. 8-16-10 thru 2-12-11; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 17-2011, f. & cert. ef. 7-1-11

## 461-190-0416

### Supplemental Payments; JOBS

In the JOBS Plus program (see OAR 461-001-0025):

(1) If the net monthly full-time wage paid to a participant is less than the amount of the TANF program and the SNAP program benefits the participant would otherwise receive, the Department will determine and pay to the participant a supplemental payment as provided in section (3) or (6) of this rule.

(2) Income Calculations prior to January 1, 2011:

(a) JOBS Plus income for sections (2) and (3) of this rule is calculated retrospectively as follows:

(A) For the full benefit equivalency income test, the applicable hourly wage is multiplied by the hours that were available for work, specifically the hours for which the participant was paid, including sick leave used and hours the participant was engaged in job search (see OAR 461-001-0025),



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and hours the participant missed work without being excused by the employer. From that product, a \$90 standard deduction and the amount of garnishments withheld are subtracted. To the remainder is added any child support received by the participant and \$102 to account for the participant's potential earned income credit. If the participant missed work referred to in this paragraph due to good cause (see OAR 461-130-0327), the hours are excluded from the calculation.

(B) For the minimum benefit equivalency income test, the applicable hourly wage is multiplied by the hours for which the participant was paid. From that product, a \$90 standard deduction and the amount of garnishments withheld are subtracted. To the remainder is added any child support received by the participant and \$102 to account for the participant's potential earned income credit.

(b) Full benefit equivalency income is the total of the TANF program and SNAP program benefits as determined for the need group (see OAR 461-110-0630).

(c) Minimum benefit equivalency income is determined by deducting from the full benefit equivalency income the difference between the TANF program payment standard under OAR 461-155-0030 for the need group with the participant included and the TANF program payment standard for the need group without the participant included.

(3) Wage supplements prior to January 1, 2011: A participant is entitled to a wage supplement payment for any month in which JOBS Plus income is exceeded by either the full benefit equivalency income or the minimum benefit equivalency income. The supplement payment amount is determined by subtracting the JOBS Plus income calculated in accordance with paragraph (2)(a)(A) of this rule from the full benefit equivalency income and by subtracting the JOBS Plus income calculated in accordance with paragraph (2)(a)(B) of this rule from the minimum benefit equivalency income. The larger remainder, if greater than zero, is the wage supplement payment amount.

(4) SNAP program supplemental payment prior to January 1, 2011:

(a) To ensure that a SNAP program client does not incur a net loss of income because of her or his participation in the JOBS Plus program, the Department provides a supplemental payment equal to the amount by which the participant's JOBS Plus income is less than the Thrifty Food Stamp Plan benefit standard for the participant's need group.

(b) The JOBS Plus income for this section is calculated prospectively by subtracting \$90 from the sum of the gross JOBS Plus wages the participant already has received for the month and any that the participant reasonably can expect to receive during the month, and adding the remainder to any EIC payment the participant received or anticipates receiving during the month and any other prospective income, and then subtracting the amount scheduled to be garnished during the month.

(5) Effective January 1, 2011:

(a) JOBS Plus income for this section and section (6) of this rule is calculated retrospectively as follows:

(A) For the full benefit equivalency income test, the applicable hourly wage is multiplied by the hours that were available for work, specifically the hours for which the participant was paid, including hours of sick leave used, hours the participant was engaged in job search (see OAR 461-001-0025), and hours the participant missed work without being excused by the employer. From that product, a \$90 standard deduction and the amount of any garnishments withheld are subtracted. To the remainder is added any child support received by the participant. If the participant missed work referred to in this paragraph due to good cause (see OAR 461-130-0327), the hours are excluded from the calculation.

(B) For the minimum benefit equivalency income test, the applicable hourly wage is multiplied by the hours for which the participant was paid. From that product, a \$90 standard deduction and the amount of garnishments withheld are subtracted. To the remainder is added any child support received by the participant.

(b) Full benefit equivalency income is the total of the TANF program benefits and SNAP program benefits as determined for the participant's need group (see OAR 461-110-0630).

(c) Minimum benefit equivalency income is determined by deducting from the full benefit equivalency income the difference between the TANF payment standard under OAR 461-155-0030 for the need group with the participant included and the TANF payment standard for the need group without the participant included.

(6) Wage supplements effective January 1, 2011: A participant is entitled to a wage supplement payment for any month in which JOBS Plus income is exceeded by either the full benefit equivalency income or the minimum benefit equivalency income. The wage supplement payment amount is determined by subtracting the JOBS Plus income calculated in

accordance with paragraph (5)(a)(A) of this rule from the full benefit equivalency income and by subtracting the JOBS Plus income calculated in accordance with paragraph (5)(a)(B) of this rule from the minimum benefit equivalency income. The larger remainder, if greater than zero, is the wage supplement payment amount.

(7) SNAP program supplemental payment effective January 1, 2011:

(a) To ensure that a SNAP program client does not incur a net loss of income because of their participation in the JOBS Plus program, the Department provides a supplemental payment equal to the amount by which the JOBS Plus income of the participant is less than the Thrifty Food Stamp Plan benefit standard for the need group of the participant.

(b) The JOBS Plus income for this section is calculated prospectively by subtracting \$90 from the sum of the gross JOBS Plus wages the participant has already received for the month and any the participant can reasonably expect to receive during the month plus any other prospective income, and then subtracting the amount scheduled to be garnished during the month.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.408, 411.816, 411.877, 411.892, 412.006, 412.009, 412.014, 412.049, 412.124

Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.400, 411.404, 411.408, 411.816, 411.877, 411.892, 412.006, 412.009, 412.014, 412.049, 412.124

Hist.: AFS 18-1998, f. & cert. ef. 10-2-98; SSP 6-2011(Temp), f. & cert. ef. 2-14-11 thru 8-13-11; SSP 17-2011, f. & cert. ef. 7-1-11

### 461-195-0521

#### Calculation of Overpayments

This rule specifies how the Department calculates an overpayment (see OAR 461-195-0501).

(1) The Department calculates an overpayment by determining the amount the client received or the payment made by the Department on behalf of the client that exceeds the amount for which the client was eligible.

(2) When a *filing group*, ineligible student, or authorized representative (see OAR 461-115-0090) fails to report income, the Department calculates and determines the overpayment by assigning unreported income to the applicable budget month without averaging the unreported income, except a client's earned income reported quarterly from the Employment Department is considered received by the client in equal amounts during the months identified in the report.

(3) When using prospective budgeting (see OAR Division 461-150) and the actual income differs from the amount determined under OAR 461-150-0020(2), there may be a client error overpayment only when the filing group, ineligible student, or authorized representative withheld information, failed to report a change, or provided inaccurate information. In such a case, the Department uses the actual income to determine the amount of an overpayment.

(4) When a filing group, ineligible student, or authorized representative fails to report all earned income within the reporting time frame, the earned income deduction (see OAR 461-145-0930, 461-160-0160, 461-160-0190, 461-160-0430, 461-160-0550, and 461-160-0552) is applied as follows:

(a) In the ERDC, OSIP, OSIPM, QMB, and REFM programs, the Department allows the earned income deduction.

(b) In the MAA, MAF, REF, and TANF programs, the Department allows the earned income deduction when good cause (see section (5) of this rule) exists.

(c) In the SNAP program, no deduction is applied to earned income not timely reported.

(5) For the purposes of OAR 461-195-0501 to 461-195-0561, "good cause" means circumstances beyond the client's reasonable control that caused the client to be unable to report income timely and accurately.

(6) When the Department retains support:

(a) In the TANF program, the amount of support (other than cash medical support) the Department retains as a current reimbursement each month is added to other income to determine eligibility. When a client is not eligible for TANF program benefits, the overpayment is offset by the support the Department retains as a current reimbursement.

(b) In the medical programs, the amount of the cash medical support the Department retains each month is excluded income and not used to determine eligibility for medical program benefits. When a client has incurred a medical program overpayment, the overpayment is offset by the amount of the cash medical support the Department retains during each month of the overpayment.

(7) In the REF and TANF programs, when a client directly receives support used to determine eligibility or calculate benefits, the overpayment is:

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(a) If still eligible for REF or TANF program benefits, the amount of support the client received directly; or

(b) If no longer eligible for REF or TANF program benefits, the amount of program benefits the client received.

(8) When an overpayment occurs due to the failure of an individual to reimburse the Department, when required by law to do so, for benefits or services (including cash medical support) provided for a need for which that individual is compensated by another source, the overpayment is limited to the lesser of the following:

(a) The amount of the payment from the Department;

(b) Cash medical support; or

(c) The amount by which the total of all payments exceeds the amount payable for such a need under the Department's rules.

(9) Benefits paid during a required notice period (see OAR 461-175-0050) are included in the calculation of the overpayment when:

(a) The filing group, ineligible student, or authorized representative failed to report a change within the reporting time frame under OAR 461-170-0011; and

(b) Sufficient time existed for the Department to adjust the benefits to prevent the overpayment if the filing group, ineligible student, or authorized representative had reported the change at any time within the reporting time frame.

(10) In the SNAP program:

(a) If the benefit group (see OAR 461-110-0750) was categorically eligible, there is no overpayment based on resources.

(b) For a filing group (see OAR 461-110-0370) found eligible for SNAP program benefits under OAR 461-135-0505(1)(a) to (c), and the actual income made the group ineligible for the related program, the group remains categorically eligible for SNAP program benefits as long as the eligibility requirement under OAR 413-135-0505(1)(d) is met. A benefit group of one or two individuals would be entitled to at least the minimum SNAP program benefit allotment under OAR 461-165-0060.

(c) For a filing group found eligible for SNAP program benefits only under OAR 461-135-0505(1)(d), and the actual income equals or exceeds 185 percent of the Federal Poverty Level, the filing group is no longer categorically eligible. The overpayment is the amount of SNAP program benefits incorrectly received.

(11) In the OSIP and OSIPM programs, when a client does not pay his or her share of the cost of services (see OAR 461-160-0610) or the OSIP-EPD or OSIPM-EPD program participant fee (see OAR 461-160-0800) in the month in which it is due, an overpayment is calculated as follows:

(a) All payments made by the Department on behalf of the client during the month in question are totaled, including but not limited to any payment for:

(A) Capitation;

(B) Long term care services;

(C) Medical expenses for the month in question;

(D) Medicare buy-in (when not concurrently eligible for an MSP);

(E) Medicare Part D;

(F) Mileage reimbursement;

(G) Special needs under OAR 461-155-0500 to 416-155-0710; and

(H) Waivered services, including home delivered meals and non-medical transportation.

(b) Any partial or late liability payment made by a client receiving in-home waived services (see OAR 461-001-0030) or participant fee paid by an OSIP-EPD or OSIPM-EPD program client is subtracted from the total calculated under subsection (a) of this section. The remainder, if any, is the amount of the overpayment.

(12) When a client's liability is unreduced pending the outcome of a contested case hearing about that liability the overpayment is the difference between the liability amount determined in the final order and the amount, if any, the client has repaid.

(13) When a client was not eligible for benefits under his or her medical program during the period in question, but during the period in question was eligible for another medical program with a lesser benefit level, the overpayment is the amount of medical program benefit payments made on behalf of the client exceeding the amount for which the client was eligible.

(14) When an overpayment is caused by administrative error (see OAR 461-195-0501), any overpayment of GA, OSIP, REF, SFPSS, or TANF program benefits is not counted as income when determining eligibility for the EXT, GAM, MAA, MAF, OSIPM, REFM, and SAC programs.

(15) Credit against an overpayment is allowed as follows:

(a) In the GA, REF, and TANF programs, a credit is allowed for a client's payment for medical services made during the period covered by the overpayment, in an amount not to exceed the Department fee schedule for the service, but credit is not allowed for an elective procedure unless the Department authorized the procedure prior to its completion.

(b) In the SNAP program, if the overpayment was caused by unreported earned income, verified child care costs are allowed as a credit to the extent the costs would have been deductible under OAR 461-160-0040 and 461-160-0430.

(c) In the SFPSS and TANF programs, if the overpayment is caused by reported earned income, a credit is allowed for the Post-TANF grant if the client meets eligibility under OAR 461-135-1250 and the client has received less than 12 months of Post-TANF program benefits.

(d) In all programs, for an underpayment of benefits.

(16) In the SNAP program, in compliance with the American Recovery and Reinvestment Act of 2009, effective April 1, 2009 through September 30, 2009, the amount between the normal Thrifty Food Plan (TFP) benefit amount under this section and the increased TFP benefit amount under OAR 461-155-0190 is not counted in the overpayment amount unless the filing group was ineligible for SNAP program benefits. [Table not included. See ED. NOTE]

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 411.060, 411.660, 411.816, 412.049

Stats. Implemented: ORS 411.060, 411.620, 411.630, 411.635, 411.640, 411.660, 411.690, 411.816, 412.049

Hist.: AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 20-2003, f. & cert. ef. 8-15-03; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 8-2008, f. & cert. ef. 4-1-08; SSP 6-2009(Temp), f. & cert. ef. 4-1-09 thru 9-28-09; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 17-2011, f. & cert. ef. 7-1-11

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

**Adm. Order No.:** SSP 18-2011(Temp)

**Filed with Sec. of State:** 7-1-2011

**Certified to be Effective:** 7-1-11 thru 12-28-11

**Notice Publication Date:**

**Rules Amended:** 461-001-0025, 461-125-0170, 461-130-0310, 461-130-0327, 461-135-0070, 461-135-1110, 461-160-0620, 461-190-0199

**Subject:** OAR 461-001-0025 about the definitions of terms, components, and activities in the Job Opportunity and Basic Skills (JOBS), Post-Temporary Assistance for Needy Families (Post-TANF), Pre-Temporary Assistance for Needy Families (Pre-TANF), and Temporary Assistance for Needy Families (TANF) programs is being amended in response to recent legislation (House Bill 2049 (2011)) to add and revise the definitions of certain terms used throughout the chapter 461 administrative rules.

OAR 461-125-0170 about when deprivation exists based on the unemployment or underemployment of a primary wage earner in the Temporary Assistance for Needy Families (TANF) and Medical Assistance Assumed programs, in response to recent legislation (House Bill 2049, 2011), is being amended to revise the criteria for determining deprivation for a primary wage earner separated from his or her most recent employment.

OAR 461-130-0310 about how the Department assigns clients to one or more participation classifications in the Post-Temporary Assistance for Needy Families (Post-TANF), Pre-Temporary Assistance for Needy Families (Pre-TANF), Refugee (REF), Supplemental Nutrition Assistance Program (SNAP), and Temporary Assistance for Needy Families (TANF) programs is being amended to expand the list of which Post-TANF, Pre-TANF, or TANF program clients are exempt from employment program participation and potential disqualification from program benefits.

OAR 461-130-0327 about what the Department considers to be good cause for non-participation in the employment programs is being amended to include good cause for non-participation if there

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are no appropriate activities available or support services to support an activity.

OAR 461-135-0070 about the specific eligibility requirements in the Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF) and Temporary Assistance for Needy Families (TANF) programs is being amended in response to recent legislation (House Bill 2049 (2011)) to revise the definition of “most recent employment”. This rule also is being amended to restate when a need group (the individuals whose basic and special needs are used in determining eligibility and benefit level) is not eligible for TANF program benefits due to a caretaker relative in the need group being separated from his or her most recent employment.

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 461-160-0620 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 reflect the federal changes effective July 1, 2011 in the amounts used when calculating the maintenance needs allowance and the dependent income allowance deducted from the income of an institutionalized spouse.

OAR 461-190-0199 about the operation of and the eligibility, selection, and participation requirements for the Parents as Scholars (PAS) component of the Job Opportunity and Basic Skills (JOBS) program, in response to recent legislation (House Bill 2049, 2011), is being amended to state which clients, effective July 1, 2011, may participate in PAS and how the Department manages applications for PAS received after June 30, 2011.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

### 461-001-0025

#### Definitions of Terms, Components, and Activities; JOBS, Pre-TANF, Post-TANF, TANF

In the JOBS, Pre-TANF, Post-TANF, and TANF programs, the following definitions apply to rules in Chapter 461 unless the context indicates otherwise.

(1) Activity: An action or set of actions to be taken by the client, as specified in the case plan. An activity is intended to reduce barriers and:

- (a) Increase the likelihood of self sufficiency, employment, job retention, wage enhancement, and financial independence; or
- (b) Promote family stability (see OAR 461-001-0000).

(2) Adult Basic Education (ABE): An activity in the basic education component that involves remedial education coursework intended to ensure functional literacy.

(3) Assessment: An activity of the program entry component that involves gathering information to identify the strengths, interests, family circumstances, status in the JOBS program, and vocational aptitudes and preferences of the client and to mutually determine an employment goal, the level of participation of the client in the JOBS program, and which support services are needed. This activity includes providing screenings and evaluations (if appropriate) to determine the level of participation, accommodation, and modification for the client in the JOBS program. The screenings include but are not limited to physical and mental health needs, substance abuse, domestic violence, and learning needs.

(4) Barrier: A personal condition or circumstance that reduces the likelihood the client will become employed or the client’s ability to participate in an activity listed in the case plan.

(5) Basic education: A component of non-core activities intended to ensure functional literacy for all JOBS clients. Basic education activities are high school attendance, English as a second language (ESL) instruction, job skills training, adult basic education (ABE) instruction, and services that result in obtaining a general equivalency diploma (GED). The component is discussed in OAR 461-190-0171 and 461-190-0181.

(6) Case plan (formerly also known as an employment development plan (EDP), a personal plan, or personal development plan): A written outline, developed in partnership by the client and case manager, with input from partners as appropriate, listing activities and goals for the client. The case plan also identifies the support service payments, accommodations,

and modifications to help the client complete the plan. The DHS 1543 - Domestic Violence Assistance Agreement - is the case plan for clients with safety concerns about domestic violence.

(7) Community Service Program: An activity in the unpaid employment component in which the client works without pay at a job site to enhance the likelihood the client will become employed and perform work for the direct benefit of the community. This activity is available through nonprofit organizations or public agencies.

(8) Component: A set of one or more activities of the JOBS program. Components of the JOBS program are paid unsubsidized employment, paid subsidized employment, unpaid employment, vocational training, job search and readiness, and basic education activities.

(9) Core activities: Federally-defined countable work activities that include: paid unsubsidized employment; paid subsidized employment; work experience; on-the-job training; job search and readiness; community service programs; vocational training; and providing child care assistance to a community service program participant.

(10) Degree Completion Initiative (DCI): An activity in which a limited number of TANF recipients may participate for up to 12 months to complete an educational degree at a two- or four-year educational institution.

(11) Drug and alcohol services: An activity in the job search and readiness component that provides substance abuse screenings and evaluations, outpatient or resident treatment, and support groups such as AA or NA.

(12) Employer contact: A client communication with an employer or employer’s representative through a visit, phone call, or mail to request consideration for employment.

(13) English as a second language (ESL): An activity in the basic education component. ESL classes are designed to give clients with limited English proficiency better working skills in the language.

(14) Fair Labor Standards Act (FLSA): Applies to subject employers with clients working in the unpaid employment component. FLSA requires that clients engaged in unpaid employment, in effect, cannot “work off” their SNAP and TANF benefits at an hourly rate less than the state minimum wage.

(15) Federally required participation rates: The participation rates required by section 407 of the Social Security Act (42 USC 607).

(16) High School or GED Completion Attendance: An activity in the basic education component that involves attendance at a secondary school or in a course of study that leads to the completion of the GED.

(17) Job search: An activity in the job search and readiness component that focuses on clients looking for and obtaining employment. It is designed to improve skills in locating and competing for employment in the local labor market and may include writing resumes, receiving instruction in interviewing skills, and participating in group and individual job search. There are two categories of job search: initial job search and regular job search. Initial job search may occur during the Pre-TANF program. Regular job search begins not later than the day after the Department finds the client eligible for TANF benefits.

(18) Job search and readiness: A component designed to prepare clients to compete in the local labor market. Job search, life skills, drug and alcohol services, mental health services, and rehabilitation activities are the activities of the job search and readiness component.

(19) Job skills training: An activity in the basic education component designed to provide classroom training in vocational and technical skills or equivalent knowledge and abilities in a specific job area.

(20) JOBS Plus program (JOBS Plus): An activity in the paid subsidized employment component that provides TANF clients with on the job training and pays their benefits as wages (see the rules at OAR 461-190-0401 to 461-190-0426).

(21) Life skills: An activity of the job search and readiness component. The activity develops employment-preparation skills and skills and attitudes that are commonly found in the workplace.

(22) Mental health services: An activity in the job search and readiness component that provides mental health screenings and assessments, counseling, medication management, and support groups.

(23) Microenterprise: An activity in the paid unsubsidized employment component in which the client is self-employed in a sole proprietorship, partnership, or family business that has fewer than five employees and has capital needs no greater than \$35,000.

(24) Non-core activities: Federally-defined countable work activities that include: job skills training directly related to employment; education directly related to employment; and satisfactory school attendance at a secondary level or leading to a GED.



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(25) On-the-job training (OJT): An activity in the paid subsidized employment component in which a client works for an employer for a contracted period. The employer trains the client and is reimbursed by the Department, usually at 50 percent of the wages of the participant, for those training costs.

(26) Paid subsidized employment: A component in which clients are employed in a subsidized public or private sector job. JOBS Plus, work supplementation, and on-the-job training are the activities in the paid subsidized employment component.

(27) Paid unsubsidized employment: A component in which clients are employed full- or part-time in an unsubsidized job and receiving TANF benefits. Unsubsidized employment is a job that is not subsidized by TANF or any other public program. The UN work program and microenterprise are the activities in the paid unsubsidized employment component.

(28) Parents as Scholars (PAS): A JOBS program component that assists TANF parents who are or will be undergraduates to begin or continue their education at a two- or four-year educational institution (see OAR 461-190-0199).

(29) Program entry: An activity that includes all the activities that prepare a client to actively participate in the JOBS program. Program entry activities include assessment and writing the initial case plan.

(30) Progress (good or satisfactory): For federal reporting purposes, a client participating in an education or training activity makes good progress or satisfactory progress by receiving a passing grade or progressing toward completion of high school or GED completion at no less than the normal rate of a half-time student.

(31) Providing child care services to a Community Service Program participant: An activity in the unpaid employment component.

(32) Rehabilitation activities: An activity in the job search and readiness component that provides medical or therapeutic screenings, assessments, and treatment. This activity also includes medical management and support groups.

(33) Self Initiated Training (SI): A JOBS program component that allows a participant to continue an ongoing two-year or four-year degree program or Vocational Training education opportunities for up to 12 months. Each SI participant is limited to 12 months of participation, and a participant must meet the requirements of one of the following subsections:

(a) Be a client on the PAS wait list as of June 30, 2011 who has contacted his or her case manager on or before July 15, 2011; or

(b) Be a client who is transitioned from Vocational Training to SI by his or her local DHS office.

(34) Sheltered or supported work: An activity in the unpaid employment component that gives clients intensive staff support, skill training, intervention and counseling that will enable them to function independently at work.

(35) Stabilization, intervention, and other activities: A group of activities that are non-countable for federal participation purposes. These activities include child health and development, crisis intervention, domestic violence services, family stability activities (see OAR 461-001-0000), medical services, retention services, services to child welfare families, social security application, and stabilized living services.

(36) Support services: Services that case-managed clients need to participate successfully in activities outlined in their case plan, seek and maintain employment, or remove barriers.

(37) Teen parent: A parent (see OAR 461-001-0000) under 20 years of age who has not completed a high school diploma or GED.

(38) Transition services: Services included in a client's case plan when the client becomes employed or becomes ineligible for cash benefits because of an increase in income or resources.

(39) Unpaid employment: A component in which a client is placed in an unpaid job to develop good work habits, training and knowledge to obtain employment. Employment may be in the private or public sector or through a work simulation program. Work experience, Community Service Program, providing child care services to a Community Service Program participant, and sheltered or supported work are the activities of the unpaid employment component.

(40) UN work program: An activity in the paid unsubsidized employment component in which TANF clients work in unsubsidized employment and may also participate in another JOBS work site training activity.

(41) Vocational Training: An activity and component of the JOBS program that provides JOBS participants with access to specific vocational training that will lead to a career with an appropriate wage level and opportunity for employment.

(42) Work experience: An activity in the unpaid employment component in which the client works without pay at a job site to develop good

work habits and basic vocational skills that enhance the likelihood the client will become employed. Work experience is available through private for-profit businesses, nonprofit organizations, or public agencies.

(43) Work supplementation: An activity in the unpaid employment component. Up to six months of work-site training provided by an employer. The component and activity are both called work supplementation. In work supplementation, the Department subsidizes the wages of the participant by providing up to \$200 per month to the employer.

Stat. Auth.: ORS 411.060, 412.006, 412.009, 412.049

Stats. Implemented: ORS 411.060, 412.001, 412.006, 412.009, 412.049

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 10-1991, f. & cert. ef. 4-19-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; 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 40-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 18-1998, f. & cert. ef. 10-2-98; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; Renumbered from 461-190-0110, SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 18-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

## 461-125-0170

### Deprivation Based on Unemployment or Underemployment of the Primary Wage Earner (PWE); MAA, TANF

(1) In the MAA and TANF programs, deprivation based on the unemployment or underemployment of the primary wage earner (PWE) exists if all the following are true:

(a) A child lives with two parents.

(b) The PWE is unemployed or underemployed.

(c) The PWE is not participating in a labor dispute.

(d) Except as provided otherwise under section (2) of this rule, the

PWE is not separated from his or her most recent employment (see OAR 461-135-0070), for any of the following reasons:

(A) Discharged or fired without good cause (see OAR 461-135-0070)

for:

(i) Misconduct (see OAR 461-135-0070); or

(ii) Felony or theft.

(B) Voluntary quit:

(i) In anticipation of discharge; or

(ii) Without good cause.

(2) A need group (see OAR 461-110-0630) may not be denied TANF program benefits based on subsections (1)(c) and (d) of this rule if the PWE is one of the following:

(a) A Parents as Scholars (PAS) participant who temporarily becomes ineligible for TANF program benefits for four months or less due to income from a paid work experience (see OAR 461-190-0199);

(b) A teen parent returning to high school or equivalent;

(c) An individual fleeing from or at risk of domestic violence (see OAR 461-001-0000);

(d) An individual in the ninth month of pregnancy or experiencing a medical complication due to the pregnancy which is documented by a qualified and appropriate professional;

(e) An individual unable to work due to a disability or medical condition documented by a qualified and appropriate professional, and which is expected to last for 30 days or more from the date of request (see OAR 461-115-0030) for TANF program benefits;

(f) An individual who is separated from his or her most recent employment for a reason the Department determines is good cause.

Stat. Auth.: ORS 411.060, 412.006, 411.070, 412.006, 412.016, 412.049, 2009 OL Ch. 827

Stats. Implemented: ORS 411.060, 411.070, 412.006, 412.016, 412.049, 2009 OL Ch. 827  
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 28-1992, f. & cert. ef. 10-1-92; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; SSP 18-2009(Temp), f. 7-29-09, cert. ef. 8-1-09 thru 1-28-10; SSP 32-2009(Temp), f. & cert. ef. 10-29-09 thru 1-28-10; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 18-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

## 461-130-0310

### Participation Classifications: Exempt, Mandatory, and Volunteer

(1) In the Post-TANF, Pre-TANF, REF, SNAP, and TANF programs:  
(a) The Department assigns a client to one or more employment program participation classifications--exempt, mandatory, and volunteer (see OAR 461-130-0305 for definitions of all three terms).

(b) In the Post-TANF program, a client is classified as a volunteer.

(2) In the Pre-TANF, REF, and TANF programs:

(a) A client is exempt from employment program participation and disqualification if the client meets the requirements of at least one of the following paragraphs. The client is:

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(A) Pregnant and in the month before the month in which the due date of the pregnancy falls.

(B) A parent (see OAR 461-001-0000) during the first six months after the birth of the parent's dependent child (see OAR 461-001-0000) except that the Department may require the parent to participate in parenting classes or a family stability activity (see OAR 461-001-0000). An exemption allowed under this paragraph may apply only to one mandatory participant in each filing group.

(C) Under 20 years of age during the first 16 weeks after giving birth except that the client may be required to participate in suitable activities with a preference for educational activities, parenting classes, and family stability activity.

(D) A parent providing care for a family member who is an individual with a disability (see OAR 461-001-0000) and is in the household group (see OAR 461-110-0210) with the parent.

(E) An REF client 65 years of age or older.

(F) A TANF client 60 years of age or older.

(G) A noncitizen who is not authorized to work in the United States.

(H) An individual who is eligible for and receives supplemental security income (SSI) from the Social Security Administration.

(I) A caretaker relative (see OAR 461-001-0000) who is non-needy.

(J) A client whose participation is likely to cause undue hardship or is contrary to the best interests of the dependent child or needy caretaker relative.

(K) A pregnant client who participates more than 10 hours per week during the two months before the month in which the pregnancy due date falls.

(L) A VISTA volunteer.

(M) In a one-parent household with a dependent child (see OAR 461-001-0000) under two years of age, and the client is not a teen parent (see OAR 461-001-0000).

(b) A parent of a dependent child who receives REF or TANF program benefits is mandatory if the parent is in the same filing group (see OAR 461-110-0330) with the dependent child (even if the parent is not in the REF or TANF program benefit group under OAR 461-110-0750), unless the parent is otherwise exempt from participation under subsection (a) of this section.

(3) In the SNAP program:

(a) A client is exempt from employment program participation and disqualification if the client meets the requirements of one of the following paragraphs. The client is --

(A) Working a minimum of 30 hours a week or earning money equal to at least the federal minimum wage multiplied by 30 hours per week multiplied by 4.3 weeks. A self-employed client with allowable costs must meet the earnings threshold after allowing the 50 percent deduction. This includes migrant and seasonal farm workers (see OAR 461-001-0015) who are under contract or similar agreement with an employer or crew chief to begin employment within 30 days.

(B) An individual with a physical or mental condition that prevents performance of any work.

(C) Responsible for the care of a child in the household under 6 years of age or an individual in the household with a disability (see OAR 461-001-0015) that substantially reduces or eliminates the individual's ability to care for himself or herself.

(D) Providing care for at least 30 hours a week for an individual in another household with a disability (see OAR 461-001-0015) that substantially reduces or eliminates the individual's ability to care for himself or herself.

(E) Enrolled at least half-time, as defined by the school, in any high school or equivalent program recognized by a school district or enrolled at least half-time in any school, training program, or institution of higher education. Clients remain exempt during normal periods of class attendance, vacation and recess but no longer qualify for the student exemption when a break in enrollment occurs due to graduation, suspension or expulsion or when the student drops out of school or does not enroll in classes for the next regular school term (excluding summer term).

(F) Receiving REF or TANF program benefits, while a mandatory participant in the JOBS or NAES programs.

(G) In receipt of unemployment insurance benefits or has completed an application for unemployment insurance benefits and is waiting for an initial decision on the claim.

(H) Participating in a drug or alcohol treatment and rehabilitation program.

(I) Pregnant.

(J) Lacking adequate dependent care.

(K) Without adequate transportation available.

(L) Experiencing a barrier to employment, such as being homeless or having a short-term physical or mental limitation or a serious family problem.

(b) A mandatory client is an individual in the need group (see OAR 461-110-0630); who is 16 or 17 years of age and a primary person (see OAR 461-001-0015), or 18 years of age and older and 59 years of age and younger; and who is not exempt under subsection (a) of this section.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.660, 411.710, 411.816, 412.006, 412.009, 412.014, 412.049

Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.660, 411.710, 411.816, 412.006, 412.009, 412.014, 412.049

Hist.: AFS 17-1998, f. & cert. ef. 10-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 12-2000(Temp), f. 5-1-00, cert. ef. 5-1-00 thru 9-30-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 18-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

## 461-130-0327

### Good Cause; Employment Programs

In a Department employment program administered under these rules (OAR 461-130-0305 to 461-130-0335):

(1) The Department does not require a client to provide verification of good cause if providing the verification would expose the client to increased risk of domestic violence (see OAR 461-001-0000).

(2) If in making a determination under this rule a client's physical or mental impairment is in question, the Department may require the client to provide documentation from a qualified and appropriate medical professional.

(3) A client is excused for good cause from a failure to comply with a requirement of an employment program, including an activity in a case plan (both terms defined in OAR 461-001-0025) in the following circumstances:

(a) Participation in a required activity in a case plan would have an adverse effect on or risk to the client's physical or mental health or would expose the client to increased risk of domestic violence (see OAR 461-001-0000).

(b) Except in the SNAP program, participation is likely to cause undue hardship for the dependent child (see OAR 461-001-0000) or the client.

(c) Appropriate child care, or day care for an individual in the household who has a disability (see OAR 461-001-0000 and 461-001-0015 as applicable) that substantially reduces or eliminates the individual's ability to care for himself or herself, cannot be obtained. "Appropriate child care" means that --

(A) Both the provider and the place where care is provided meet health, safety, and provider requirements as required in OAR 461-165-0180;

(B) The care accommodates the parent's work schedule; and

(C) The care meets the specific needs of the dependent child, such as age and special-needs requirements.

(d) The work attachment position or employment offered is vacant due to a strike, lockout, or other labor dispute.

(e) The work attachment position or employment requires the client to join a union, and the client has religious objections to unions.

(f) The client belongs to a union and the employment violates the conditions of the client's membership in the union.

(g) The wage for the client's current or potential job is:

(A) Less than applicable minimum wage; or

(B) If minimum wage laws do not apply, the wage (rate for piece work) is less than that normally paid for similar work.

(h) The client's prospective employer engages in employment practices that are illegally discriminatory on the basis of age, sex, race, religious or political belief, marital status, disability, sexual orientation, or ethnic origin.

(i) The client's participation in a required activity in a case plan would prevent or interfere with the client's participation in an activity of the Grande Ronde Tribe's NEW program.

(j) The client's failure to participate is due to a circumstance beyond his or her reasonable control.

(k) When the failure to comply is caused by an aspect of the client's disability, including the Department's failure to provide a reasonable accommodation.

(l) The client quits a job to accept another job with a monthly income at least equal to the monthly income of the first job.

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(m) The Department determines there are no appropriate activities or necessary support services (see OAR 461-001-0025) to support an activity (see OAR 461-001-0025) in order for the client to participate.

(4) In the SNAP program, a client is excused from not accepting employment or for leaving a job under the following circumstances:

(a) The hours or nature of the job interferes with the client's religious observances, convictions, or beliefs.

(b) The client accepts employment or enrolls at least half-time in any recognized school, training program, or institution of higher education that requires the client to quit a job.

(c) A client accepts employment or enrolls in school in another county, requiring the benefit group to move and the client to quit a job.

(d) A client less than 60 years of age resigns, and the employer recognizes the resignation as retirement.

(e) The client leaves a job to follow a type of employment that moves from one area to another, such as migrant labor or construction.

(f) The client accepts a job that, for reasons beyond the control of the client, does not materialize or results in fewer work hours or a lower wage than the client's previous job.

(g) Work demands or conditions, such as not being paid for work or not being paid on schedule, make employment unreasonable.

(h) The wage for the client's current or potential job is less than applicable minimum wage or, if minimum wage laws do not apply, the wage (rate for piece work) is less than that normally paid for similar work.

(i) The work schedule for the job in question does not conform to hours customary to the occupation or the hours worked each week are more than those customary to the occupation.

(j) The client is not obligated to accept a job during the first 30 days of registration for employment if the job is not in the client's field of experience.

(k) The client has no means of transportation and would have to walk an unreasonable distance to meet the participation requirement. An "unreasonable distance" is a distance that requires a commute of more than two hours each day. The client must make a good-faith effort to secure the needed transportation.

(l) Lack of adequate child care for a child who is six years of age or older and less than 12 years of age.

Stat. Auth.: ORS 411.060, 411.816, 412.006, 412.009, 412.049

Stats. Implemented: ORS 411.060, 411.117, 411.816, 412.006, 412.009, 412.049

Hist.: AFS 17-1998, f. & cert. ef. 10-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 18-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

### 461-135-0070

#### Specific Requirements; MAA, MAF, and TANF

(1) To be eligible for MAA, MAF, or TANF program benefits, a client must be one of the following:

(a) A dependent child (see OAR 461-001-0000). However, a dependent child for whom foster care payments are made for more than 30 days is not eligible while the payments are being made for the dependent child.

(b) A caretaker relative (see OAR 461-001-0000) of an eligible dependent child. However, a caretaker relative to whom foster care payments are made for more than 30 days is not eligible while the payments are being made to the caretaker relative.

(c) A caretaker relative of a dependent child, when the dependent child is ineligible for MAA, MAF, or TANF program benefits because of one of the following reasons:

(A) The child is receiving SSI.

(B) The child is in foster care, but is expected to return home within 30 days.

(C) The child is ineligible for MAA or MAF program benefits because citizenship has not been documented (see OAR 461-115-0705).

(d) An essential person. An essential person is a member of the household group (see OAR 461-110-0210) who ---

(A) Is not required to be in the filing group;

(B) Provides a service necessary to the health or protection of a member of the benefit group (see OAR 461-110-0750) who has a mental or physical disability; and

(C) Is less expensive to include in the benefit group than the cost of purchasing this service from another source.

(e) A parent of an unborn, as follows:

(A) For the TANF and MAA programs, any parent whose only child is an unborn child once the mother's pregnancy has reached the calendar month before the month in which the due date falls.

(B) For the TANF and MAA programs, the father of an unborn child, if there is another dependent child in the filing group.

(C) For the MAF program, a mother whose only child is an unborn once the mother's pregnancy has reached the calendar month immediately before the month in which the due date falls.

(2) A client is eligible for MAA or MAF program benefits if the client is:

(a) Eligible for MAA or MAF program benefits under OAR 461-135-0010; or

(b) A minor parent (see OAR 461-001-0000) ineligible for TANF program benefits only because:

(A) The minor refuses to live with a parent or legal guardian as required by OAR 461-135-0080; or

(B) The income of the minor exceeds the income standards because the Department required the minor to return to live with a parent, if the minor parent meets the conditions in OAR 461 135 0080(2).

(3) As used in this rule and OAR 461-125-0170:

(a) "Good cause" means a reasonable person of normal sensitivity, exercising ordinary common sense, would leave work. For an individual with a physical or mental impairment (as defined at 29 CFR 1630.2(h)), "good cause" for voluntarily leaving work is such that a reasonable person with the characteristics and qualities of such individual would leave work.

(b) "Misconduct" means willful or wantonly negligent violation of the standards of behavior which an employer has the right to expect of an employee, including an act or series of actions that amount to a willful or wantonly negligent disregard of an employer's interest.

(c) "Most recent employment" means the last job held within the previous 60 days from the date of request (see OAR 461-115-0030) for TANF program benefits and for which the individual was hired to work 100 or more hours per month or worked or was scheduled to work 100 or more hours in the last full calendar month of employment.

(4) Except as provided under section (5) of this rule, a need group (see OAR 461-110-0630) is not eligible for TANF program benefits if a caretaker relative in the need group was separated from his or her most recent employment for any of the following reasons:

(a) Discharged or fired, without good cause for:

(A) Misconduct; or

(B) Felony or theft.

(b) Labor dispute; or

(c) Voluntary quit:

(A) In anticipation of discharge; or

(B) Without good cause.

(5) A need group (see OAR 461-110-0630) may not be denied TANF program benefits based on section (4) of this rule if the caretaker relative is one of the following:

(a) A Parents as Scholars (PAS) participant who temporarily becomes ineligible for TANF program benefits for four months or less due to income from a paid work experience (see OAR 461-190-0199).

(b) A teen parent returning to high school or equivalent.

(c) An individual fleeing from or at risk of domestic violence.

(d) An individual in the ninth month of pregnancy or experiencing a medical complication due to the pregnancy which is documented by a qualified and appropriate professional.

(e) An individual unable to work due to a disability or medical condition documented by a qualified and appropriate professional, and which is expected to last for 30 days or more from the date of request for TANF program benefits.

(f) An individual who is separated from his or her most recent employment for a reason the Department determines is good cause.

(6) If the need group is not eligible for TANF program benefits solely under section (4) of this rule, the need group is eligible for MAA or MAF program benefits as long as the need group meets all other eligibility (see OAR 461-001-0000) requirements.

(7) A client is eligible for MAF program benefits even while ineligible for TANF program benefits if the client is ineligible for TANF program benefits only because the client is:

(a) A family who would be eligible for the TANF program benefits if allowed the following deductions from income:

(A) The earned income deductions authorized by OAR 461 160 0190.

(B) The unearned income support deduction authorized by OAR 461 160 0200.

(b) A self-employed family who would be eligible for TANF program benefits if the cost of producing the self employment income was subtracted from the gross sales or receipts under OAR 461 145 0920.



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(c) A family that includes an ineligible non citizen or the father of an unborn who would be eligible for TANF program benefits if the ineligible non citizen's or father's income is counted under OAR 461-160-0120.

(d) An individual who would be eligible for TANF program benefits if the assets of the following household members were not counted:

(A) An unmarried parent of a dependent child or unborn in the eligibility group.

(B) A child in common of parents in the eligibility group.

(C) The spouse and each child of a caretaker relative in the need group.

(e) The spouse of a caretaker relative, but only if the spouse is the parent of a dependent child.

(8) A family is ineligible for TANF program benefits if the family meets the requirements of all of the following subsections:

(a) The family lives in Klamath County.

(b) The family meets any of the following conditions:

(A) The family has a single custodial parent who is a member of the Klamath Tribes, or the single custodial parent is not a Klamath Tribes member and at least 50 percent of the dependent children are Klamath Tribes members;

(B) The family has two custodial parents (see OAR 461-001-0000) who are members of the Klamath Tribes, or only one of the two custodial parents is a Klamath Tribes member and at least 50 percent of the dependent children are Klamath Tribes members; or

(C) The family has a caretaker relative who is not the custodial parent and at least 50 percent of the dependent children are Klamath Tribes members.

(c) The family is eligible for the Klamath Tribes TANF program or would be eligible for the Klamath Tribes TANF program if not for the failure of the family to cooperate with program requirements.

(9) A family is ineligible for TANF program benefits if all of the following subsections apply to the family:

(a) A parent, caretaker relative, or child is a member of the Siletz Tribe (Confederated Tribes of Siletz Indians of Oregon) and lives in one of the eleven service area counties: Benton, Clackamas, Lane, Lincoln, Linn, Marion, Multnomah, Polk, Tillamook, Washington, or Yamhill counties.

(b) The family includes members who are living in the same household and at least one of the following paragraphs applies:

(A) A two-parent family with one enrolled Siletz tribal member with a shared dependent.

(B) A single-parent family with one enrolled Siletz tribal member.

(C) A non-needy caretaker relative or essential person with one enrolled Siletz tribal member who is a minor.

(D) A pregnant enrolled Siletz tribal member in her eighth month of pregnancy.

(c) The family is eligible for the Siletz Tribes TANF program or would be eligible for the Siletz Tribes TANF program if not for the failure of the family to cooperate with Siletz TANF program requirements.

(10) If a parent or caretaker relative covered by section (8) or (9) of this rule fails to follow through with a Department referral to the Klamath or Siletz Tribal TANF program, the entire filing group is ineligible for TANF program benefits.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 412.006, 412.049, 412.064, 412.124 & 414.042  
Stats. Implemented: ORS 411.060, 414.047, 412.049 & 2009 OR Laws Ch. 827

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 26-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 25-1997(Temp), f. 12-31-97, cert. ef. 1-1-98 thru 4-30-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 26-1998(Temp), f. 12-30-98, cert. ef. 1-1-99 thru 3-31-99; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; 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 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 8-2009(Temp), f. 4-20-09, cert. ef. 5-1-09 thru 10-28-09; SSP 19-2009(Temp), f. 7-29-09, cert. ef. 8-1-09 thru 10-28-09; SSP 33-2009, f. & cert. ef. 10-29-09; SSP 18-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

## 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 \$5,274 for the 2010-2011 or 2011-2012 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; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 18-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

## 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. \$1,839 is added to the amount over \$552 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:

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(A) For a case with a community spouse, a deduction is permitted only if the monthly income of the eligible dependent is below \$1,839. To determine the income allowance of each eligible dependent:

(i) The monthly income of the eligible dependent is deducted from \$1,839.

(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 13-2009, f. & cert. ef. 7-1-09; SSP 18-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

## 461-190-0199

### Parents as Scholars

(1) Notwithstanding any other provision in Chapter 461 of the Oregon Administrative Rules, effective July 1, 2011, participation in Parents as Scholars (PAS) is limited to clients approved for PAS as of June 30, 2011. Any other PAS applicant is not eligible for enrollment in PAS, including a client on the PAS wait list after June 30, 2011. The Department does not process any application for PAS received after June 30, 2011.

(2) PAS is a JOBS program component that assists TANF parents who are or will be undergraduates to begin or continue their education at a two- or four-year educational institution.

(3) The following definitions apply to PAS:

(a) "Educational institution" means any post-secondary educational institution approved or accredited by the Northwest Commission on Colleges and Universities, by its regional equivalent, or by the appropriate official, department, or agency of the state or nation in which the institution is located and that is:

(A) A four-year college or university;

(B) A junior college or community college; or

(C) A technical, professional or career school.

(b) "Participant" refers to a participant in the PAS component of the JOBS program.

(c) "PAS" means the Parents as Scholars component of the JOBS program.

(4) The number of participants in PAS in a calendar year is limited as follows:

(a) The number of participants in PAS in a calendar year may not exceed one percent of the number of households receiving TANF on January 1 of that calendar year.

(b) If one percent of the number of households receiving TANF on January 1 of the current calendar year is less than one percent of the number of households receiving TANF on January 1 of the previous calendar year, the Department will not fill PAS slots vacated on or after January 1 of the current calendar year until the total number of slots is equal to one percent of the households receiving TANF for the current calendar year.

(5) A PAS participant receives TANF cash assistance as well as necessary support services provided through the JOBS program. JOBS support services:

(a) May not be used to pay for the cost of tuition and fees associated with enrollment by a participant at an educational institution.

(b) Subject to the limitations of OAR 461-190-0211, may be used to pay for books and supplies associated with enrollment by a participant at an educational institution subject to the following provisions:

(A) The books and supplies are required for completion of the participant's coursework at an educational institution;

(B) There is no other funding available to the PAS participant for books and supplies; and

(C) No more than \$100 per academic term or semester may be paid per PAS participant for books and supplies.

(6) Applying for PAS. A parent who is applying for or receiving TANF may apply for PAS by completing and signing the PAS application and submitting it to the Department. The application and other documentation required by this rule must be submitted to Department of Human Services JOBS Unit (PAS), 2nd Floor, 500 Summer Street NE E48, Salem, Oregon 97301.

(7) PAS Selection Process; Wait List.

(a) PAS applications received from PAS applicants will be processed in the order in which the Department receives the applications.

(b) If the maximum number of PAS slots for a calendar year has not been filled, the Department will notify an applicant when he or she has been approved.

(c) When the maximum number of PAS slots for a calendar year has been filled and there is a wait list, the Department will notify an applicant when he or she has been added to the wait list.

(d) Once each year, the Department will contact PAS applicants on the wait list to determine if the PAS applicant's name should be removed from the wait list.

(e) When the maximum number of PAS slots for a calendar year has been filled and there is a wait list and a PAS slot becomes available, the Department will notify the next applicant on the wait list that an opening has become available.

(f) The Department will inform an applicant for PAS who does not qualify or no longer qualifies for placement on the wait list because the applicant becomes ineligible for TANF or no longer meets the requirements of this rule.

(8) Selection Requirements.

(a) A PAS applicant must meet the financial and nonfinancial eligibility requirements for TANF.

(b) A PAS applicant who is not applying for or receiving TANF at the time of selection may not participate in PAS or remain on the wait list.

(c) A PAS applicant must include documentation that the PAS applicant is an undergraduate who has been accepted for full-time attendance into or is enrolled full-time at an educational institution.

(d) A PAS applicant must demonstrate as part of the PAS application that completion of the educational program is likely to result in employment that provides the wages and benefits necessary for the applicant to support the applicant's family without TANF.

(9) Requirements of Participants; Limitations.

(a) A participant must provide documentation to the Department quarterly, or following completion of each academic term at the educational institution, that the participant is making satisfactory academic progress, as defined by the educational institution, toward a degree.

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(b) A participant must provide documentation to the Department, prior to the start of each new academic term or semester, that the PAS applicant is an undergraduate who is enrolled full-time at an educational institution.

(c) A participant must attend classes full-time as defined by the educational institution, unless there is good cause (see OAR 461-130-0327) to limit attendance to less than full-time.

(d) Unless there is good cause for not attending year round, a participant must either:

(A) Attend classes year round, including during the summer if classes are offered by the educational institution; or

(B) If not attending classes year round, participate in work experience related to the field of study of the participant when not attending classes. If a work experience related to the participant's field of study is not available, participate in another appropriate work experience.

(e) During the first twelve months of participation in PAS, a participant must record attendance and homework time weekly and must provide this information to the Department no less frequently than monthly.

(f) Except as provided in subsection (g) of this section, a participant must remain eligible for TANF.

(g) If a participant becomes temporarily ineligible for TANF during a period of four or fewer months due to income from a paid work experience, the applicant may retain their PAS slot when school resumes if:

- (A) The participant regains TANF eligibility; and
- (B) PAS is still an appropriate activity for the participant.

(10) Ending PAS. PAS is ended for a PAS participant when:

(a) The PAS participant completes his or her degree program;

(b) Except as provided in subsection (8)(g) of this rule, the PAS participant becomes ineligible for TANF; or

(c) All of the following are true:

(A) The PAS participant fails to meet one or more of the requirements of subsections (8)(a) through (8)(e) of this rule;

(B) Attempts to re-engage the PAS participant pursuant to OAR 461-190-0231 are unsuccessful; and

(C) There is a determination that the PAS participant does not have good cause (see OAR 461-130-0327) for failure to meet one or more requirements of subsections (8)(a) through (8)(e) of this rule.

Stat. Auth.: ORS 411.060, 412.016, 412.049, 12.124

Stats. Implemented: ORS 411.060, 412.016, 412.017, 412.049 & 412.124

Hist.: SSP 20-2008(Temp), f. & cert. ef. 9-5-08 thru 3-4-09; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 18-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

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

**Adm. Order No.:** SSP 19-2011(Temp)

**Filed with Sec. of State:** 7-1-2011

**Certified to be Effective:** 7-1-11 thru 12-28-11

**Notice Publication Date:**

**Rules Amended:** 461-190-0211

**Subject:** OAR 461-190-0211 about case plan activities and standards for support service payments in the JOBS, Post-TANF, Pre-TANF, REF, SFPSS, TA-DVS, and TANF programs is being amended to set limits to who can participate in a case plan activity, identify available activities and support services for those activities, describe how the Department determines employability in order to place participants into appropriate activities and support services, describe the activities that qualify for support services and the amount of support services available. This rule sets up a more limited JOBS program, consistent with budget constraints, following earlier Department actions that closed most activities and support services set up under earlier eligibility criteria.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 461-190-0211

### Standards for Support Service Payments

(1) Notwithstanding any other administrative rule in Chapter 461, for the period beginning July 1, 2011 and subject to the limitations of state funding, the following special provisions apply:

(2) Participation in a *case plan* (see OAR 461-001-0025) activity (see OAR 461-001-0025) is limited to:

(a) An individual who is determined to be a work-eligible individual according to federal definition (45 CFR 261.2(n)(1)). No individual may

volunteer to participate in an *activity* of a case plan if not otherwise determined to be a work-eligible individual.

(b) An individual who is an applicant in the Pre-TANF program or a recipient of TANF program benefits.

(c) The minimum number of hours to meet federally required participation rates (see OAR 461-001-0025).

(3) For eligible individuals, subject to the requirements and limitations in sections (2), (6), (7), and (8) of this rule, the following activities will be available and include support service payments:

(a) Job search (see OAR 461-001-0025).

(b) JOBS Plus (see OAR 461-001-0025 and OAR 461-101-0010) is limited to six months per individual.

(c) Work experience (see OAR 461-001-0025) is limited to 60 days per individual.

(d) Sheltered or supported work (see OAR 461-001-0025) is limited to 60 days per individual.

(e) High School or GED (see OAR 461-001-0025).

(f) Parents as Scholars (see OAR 461-001-0025).

(4) The following activities will be available but will not include support services (see OAR 461-001-0025) payments:

(a) Domestic Violence Intervention.

(b) Family Stability (see OAR 461-001-0000).

(c) Family Support & Connection.

(d) Post-TANF.

(e) Program entry (see OAR 461-001-0025).

(f) Self Initiated Training (see OAR 461-001-0025).

(g) SSI Application Process.

(5) Participation in an activity is based on employability, based on whether an individual is Job Ready, Near Job Ready, or Not Job Ready.

(a) Job Ready means the individual has no barriers (see OAR 461-001-0025) or current barriers do not impact participation or employment. In addition, the individual has all of the following:

(A) Prior stable work history, either paid or unpaid.

(B) Had not voluntarily quit or been dismissed from their most recent employment (see OAR 461-135-0070), without good cause (see OAR 461-135-0070).

(C) Reliable or available transportation.

(D) No outstanding legal issues that would impact or prevent employment.

(E) Access to reliable child care within support service limits, or does not need help to pay for child care or does not need child care.

(b) Near Job Ready means the individual has minimal barriers to participation or employment and the individual is addressing the barriers. In addition, the individual has all of the following:

(A) Limited or no work history, either paid or unpaid.

(B) Reliable or available transportation.

(C) No outstanding legal issues that would impact or prevent employment or legal issues are identified and are being addressed.

(D) Access to reliable child care within support service limits, or does not need help to pay for child care or does not need child care.

(c) Not Job Ready means the individual has one or more barriers to participation or employment or is in crisis, and the individual is not addressing the barriers. For example, the individual has one or more of the following:

(A) Lack of stable housing that is preventing participation in an activity or employment.

(B) Domestic violence, mental health or alcohol and drug issues, and the individual is not addressing the issue.

(C) Medical issues that prevent participation in an activity or employment.

(D) Outstanding legal issues that would impact or prevent employment.

(E) Literacy issues that impact the ability for the individual to participate in an activity or obtain employment.

(6) In approving JOBS program support service payments, the Department must consider lower cost alternatives. It is not the intent of the Department or of this rule to supplant Department funding with other funding that is available in the community. It is the Department's expectation that case managers and clients will work collaboratively to seek resources that are reasonably available to the client in order to participate in activities.

(7) Payments for support services are only provided when:

(a) Necessary to participate in activities in a signed case plan;

(b) They were authorized in advance; and

(c) All other provisions of this rule are met.



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(8) Payments for support services are subject to the following limitations:

(a) Job Ready individuals may be eligible for child care, transportation, or other support services.

(b) Near Job Ready individuals may be eligible for child care, transportation, or other support services.

(c) Not Job Ready individuals are not eligible for support services.

(d) A teen parent (see OAR 461-001-0000) may be eligible for child care, transportation, or other support services, for participation in a basic education (see OAR 461-001-0025) component (see OAR 461-001-0025).

(e) \$450 maximum per filing group, per month, for a filing group who resides in the District 2, 4, 5, 9, 10, 15 or 16 service area.

(f) \$375 maximum per filing group, per month, for a filing group who resides in the District 1, 3, 6, 7 or 8 service area.

(g) \$300 maximum per filing group, per month, for a filing group who resides in the District 11, 12, 13 or 14 service area.

(h) Child Care. Payments for child care may be authorized, as limited by OAR 461-160-0040, if necessary to enable a single-parent Job Ready or Near Job Ready individual or single teen parent to participate in an approved JOBS program activity specified in the individual's case plan. If authorized, payment for child care will be made for the lesser of:

(A) The maximum monthly support service amount based on District service area under this section of the rule.

(B) The lesser of the actual rate charged by the care provider and the rate established in OAR 461-155-0150. The Department rate for children in care less than 158 hours in a month is limited by OAR 461-155-0150, except that the cost of child care may be paid up to the monthly maximum when children are in care less than 158 hours per month and the individual is a teen parent using on-site care while attending education activities.

(C) The minimum hours necessary, including meal and commute time, for the individual to participate in an approved JOBS program activity.

(i) Transportation. The department may provide payments for a Job Ready or Near Job Ready individual or teen parent for transportation costs incurred in travel to and from an approved JOBS program activity. Payment is made only for the cost of public transportation or the cost of fuel for a vehicle personally owned by a member of the TANF filing group (see OAR 461-110-0330). Payments are subject to the following considerations:

(A) Payment for transportation may not exceed \$50 per month, per family.

(B) Payment for public transportation is a priority over payment for a privately owned vehicle.

(C) Payment for a privately-owned vehicle is provided if the Job Ready or Near Job Ready individual or teen parent has a valid driver's license and vehicle insurance and either of the following is true:

(i) No public transportation is available or the Job Ready or Near Job Ready individual or teen parent is unable to use public transportation because of a verifiable medical condition or disability for which no accommodations is available.

(ii) Public transportation is available but is more costly than the cost of fuel.

(j) Housing and Utilities. Payments for housing and utilities are not allowed.

(k) Other Payments. The Department may provide payments for a Job Ready individual for costs necessary to obtain unsubsidized employment. Payments under this section may be authorized for items, such as:

(A) Clothing and grooming for job interviews and employment.

(B) Tools, bonding, and licensing required to accept employment.

(9) The Department may require an individual to provide verification of a need for, or costs associated with, the support service prior to approval and issuance of payment if verification is reasonably available.

(10) The Department may reduce, close, or deny in whole or in part an individual's request for a support service payment in the following circumstances:

(a) The individual is disqualified for failing to comply with a case plan, unless the payment in question is necessary for the individual to comply with his or her case plan.

(b) The purpose for the payment is not related to the individual's case plan.

(c) The individual disagrees with a support service payment offered or made by the Department as outlined in the individual's case plan.

(d) The individual is not determined to be a Job Ready or Near Job Ready individual or teen parent.

Stat. Auth.: ORS 411.060, 412.001, 412.006, 412.009, 412.014, 412.049, 412.124

Stat. Implemented: ORS 411.060, 412.001, 412.006, 412.009, 412.014, 412.049, 412.124

Hist.: AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 26-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 18-1998, f. & cert. ef. 10-2-98; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 21-2004, f. & cert. ef. 10-1-04; SSP 11-2005(Temp), f. & cert. ef. 9-1-05 thru 12-31-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 42-2010(Temp), f. 12-30-10, cert. ef. 1-1-11 thru 6-30-11; SSP 10-2011, f. 3-31-11, cert. ef. 4-1-11; SSP 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

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

**Adm. Order No.:** SSP 20-2011(Temp)

**Filed with Sec. of State:** 7-1-2011

**Certified to be Effective:** 7-1-11 thru 12-28-11

**Notice Publication Date:**

**Rules Amended:** 461-135-0475

**Subject:** OAR 461-135-0475 about the Pre-Temporary Assistance for Needy Families (Pre-TANF) program is being amended to indicate that the Department will no longer be providing basic living expenses payments for shelter, utility and household supplies in the Pre-TANF program. This rule is also being amended to change the basic living expenses payment from 200 percent of the TANF payment standard for the benefit group to 100 percent of the payment standard. This rule is also being amended to remove mandatory language about the availability of support services payments for Pre-TANF clients.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 461-135-0475

### Specific Requirements; Pre-TANF Program

(1) This rule explains specific requirements for the Pre-TANF program. The eligibility criteria of the Pre-TANF program are the same as the TANF program. The purposes of the Pre-TANF program are:

(a) To help individuals find employment or other alternatives;

(b) To assess the employment potential of clients;

(c) To help clients determine the services needed to enhance their employability and their likelihood of becoming self sufficient;

(d) To determine if a needy caretaker relative (see OAR 461-001-0000) has or may have a barrier to employment or to family stability.

(e) To develop an individualized case plan (see OAR 461-001-0025) that establishes goals and identifies suitable activities (see OAR 461-001-0025) that promote family stability and financial independence.

(f) To provide basic living expenses immediately to families in need.

(2) Applicants for the TANF program whose unverified application indicates the client meets the TANF eligibility requirements participate in the Pre-TANF program. Their applications for the TANF program are also considered applications for the Pre-TANF program. The Pre-TANF program is open for not longer than 45 days following the date of request (see OAR 461-115-0030).

(3) Clients in the Pre-TANF program are subject to the requirements of the JOBS program, described in divisions 130 and 190 of this chapter of rules, and they are subject to the requirements of OAR 461-135-0085 pertaining to substance abuse and mental health.

(4) Once a client is found eligible for the Pre-TANF program, the client participates in initial screenings to determine the client's employment strengths and to determine if the client has any barriers to employment or family stability. If the screening indicates that there is or may be a barrier, the needy caretaker relative is referred for an in-depth evaluation by a person with relevant expertise or specialized training. The client and the Department prepare a case plan that specifies the basic living expenses and support service payments the client will receive through the Pre-TANF program and lists the activities of the client. The case plan may be adjusted at any time while the client is in the Pre-TANF program to reflect changing needs.

(5) Clients in the Pre-TANF program receive assistance, listed in the case plan, for basic living expenses, and the Department makes support service payments listed in the case plan, as follows:

(a) The Department will provide the client with basic living expenses necessary to stabilize the household so the client can accomplish the activities in the case plan. Basic living expenses covered by this section are limited to the current need of the client for personal incidentals that the client cannot meet with other, immediately available resources. Payments under

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this subsection are limited to 100 percent of the payment standard for the benefit group (see OAR 461-155-0030(2)(b)). Payment for “past expenses” is made only when the need of the client cannot be adequately met by a less expensive alternative.

(b) Other support service payments may be available to clients in the Pre-TANF program through the JOBS program (see OAR 461-190-0211 and 461-190-0241) in the same manner they are available to a TANF client.

(6) The Pre-TANF program is closed in any of the following circumstances:

(a) The client is unlikely to become employed within 45 days following the date of request, whether due to the employability of the client, the circumstances affecting the family, or other causes.

(b) The client fails without good cause (see OAR 461-130-0327) to comply with a requirement of an employment program or the case plan.

(c) In any circumstance that would make a client ineligible for TANF.

(d) Upon starting a JOBS Plus assignment.

(e) Upon employment and enrollment in the Post-TANF program.

(7) If Pre-TANF benefits are closed pursuant to subsection (6)(a) or (b) of this rule, TANF benefits may be opened if all TANF eligibility requirements are met.

Stat. Auth.: ORS 411.060, 411.070, 418.040, 412.049

Stats. Implemented: ORS 411.060, 411.070, 418.040, 412.049

Hist.: AFS 9-1997, f. & cert. ef. 7-1-97; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 6-2009(Temp), f. & cert. ef. 4-1-09 thru 9-28-09; SSP 16 2009(Temp), f. & cert. ef. 7-1-09 thru 9-28-09; Administrative correction 10-22-09; SSP 20-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

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

**Adm. Order No.:** SSP 21-2011(Temp)

**Filed with Sec. of State:** 7-15-2011

**Certified to be Effective:** 7-15-11 thru 1-11-12

**Notice Publication Date:**

**Rules Amended:** 461-155-0575, 461-155-0693

**Subject:** OAR 461-155-0575 about in-home supplementation payments and OAR 461-155-0693 about transportation services payments, in the Oregon Supplemental Income Program Medical (OSIPM) are amended to suspend all payments August 1, 2011. All current payments will end July 31, and no payments will be approved after that date.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 461-155-0575

### Special Need; In-home Supplement; OSIPM

In the OSIPM program, payments authorized under this rule are suspended effective August 1, 2011; current payments end on July 31, 2011; and no payments will be authorized after July 31, 2011. Except as provided above:

(1) The Department may provide a monthly supplementary payment for a client who meets the requirements of all of the following subsections:

(a) The client must receive SSI as his or her only source of income.

(b) The client must receive in-home services authorized by:

(A) The Independent Choices Program (covered under the State Medicaid Plan);

(B) A 1915(c) Home and Community-Based Service Waiver; or

(C) State Plan Personal Care Services authorized under chapter 411, division 034 of Oregon Administrative Rules.

(2) The amount and duration of payments authorized under this rule are subject to availability of funding as determined by the Department and are considered reimbursement for uncovered assistance needs.

(3) All eligible clients will receive the same monthly payment amount.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.706

Stats. Implemented: ORS 411.060, 411.070, 411.083, 411.404, 411.704, 411.706

Hist.: SSP 11-2011(Temp), f. 3-31-11, cert. ef. 4-1-11 thru 9-28-11; SSP 17-2011, f. & cert. ef. 7-1-11; SSP 21-2011(Temp), f. & cert. ef. 7-15-11 thru 1-11-12

## 461-155-0693

### Special Need; Transportation Services Payment; OSIPM

In the OSIPM program, payments authorized under this rule are suspended effective August 1, 2011; current payments end on July 31, 2011; and no payments will be authorized after July 31, 2011. Except as provided above:

(1) The following individuals may be eligible for a transportation services payment:

(a) A client who receives SSI; 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 \$50 per month.

(5) Service costs must be verified annually or when questionable.

Stat. Auth.: ORS 411.060, 411.070, 411.083, 411.404, 411.706

Stats. Implemented: ORS 411.060, 411.070, 411.083, 411.404, 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; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 33-2010(Temp), f. & cert. ef. 10-1-10 thru 3-30-11; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 3-2011(Temp), f. & cert. ef. 2-1-11 thru 7-31-11; SSP 17-2011, f. & cert. ef. 7-1-11; SSP 21-2011(Temp), f. & cert. ef. 7-15-11 thru 1-11-12

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

**Rule Caption:** Developmental Disability Certification and Endorsement.

**Adm. Order No.:** SPD 12-2011

**Filed with Sec. of State:** 7-1-2011

**Certified to be Effective:** 7-1-11

**Notice Publication Date:** 6-1-2011

**Rules Adopted:** 411-323-0010, 411-323-0020, 411-323-0030, 411-323-0040, 411-323-0050, 411-323-0060, 411-323-0070

**Subject:** The Department of Human Services is adopting rules relating to developmental disability certification in OAR chapter 411, division 323. These rules prescribe standards, responsibilities, and procedures for agencies to obtain certification to provide person-centered services to individuals with developmental disabilities.

**Rules Coordinator:** Christina Hartman—(503) 945-6398

## 411-323-0010

### Statement of Purpose

These rules prescribe standards, responsibilities, and procedures for agencies to obtain:

(1) Certification and a Medicaid agency identification number, in order to provide person-centered services to individuals with developmental disabilities.

(2) Endorsements to provide the following services:

(a) 24-hour residential as described in OAR chapter 411, division 325;

(b) Supported living as described in OAR chapter 411, division 328;

(c) Proctor care as described in OAR chapter 411, division 335; or

(d) Employment and alternatives to employment as described in OAR chapter 411, division 345.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 409.050 & 410.070

Hist.: SPD 12-2011, f. & cert. ef. 7-1-11

## 411-323-0020

### Definitions

(1) “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.

(2) “Abuse Investigation and Protective Services” means reporting and investigation activities as required by OAR 407-045-0300 and any sub-

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sequent services or supports necessary to prevent further abuse as required in OAR 407-045-0310.

(3) "Administrator" means the Administrator of the Division's Office of Licensing and Quality of Care, or that person's designee.

(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) "Agency" means a public or private community agency or organization that provides recognized developmental disability services and is approved by the Department or other appropriate Divisions to provide these services. For the purposes of these rules, "provider", "service provider", "program", "applicant", or "licensee" is synonymous with "agency".

(7) "Appeal" means the process under ORS chapter 183 that the certified agency may use to petition the suspension, denial, or revocation of their certificate or application.

(8) "Applicant" means a person, agency, corporation, or governmental unit, who applies for certification to operate an agency providing services to individuals with developmental disabilities.

(9) "Assessment" means an evaluation of an individual's needs.

(10) "Board of Directors" means a group of persons formed to set policy and give directions to an agency designed to provide services to individuals with developmental disabilities. A board of directors includes local advisory boards used by multi-state organizations.

(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. 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".

(12) "Certificate" means a document issued by the Division to an agency that certifies the agency is eligible to receive state funds for the provision of services and identifies the authorized endorsements.

(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 is 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) "Complaint Investigation" means an investigation of any complaint that has been made to a proper authority that is not covered by an abuse investigation.

(17) "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 certified agency.

(18) "Denial" means the refusal of the Division to issue a certificate to operate an agency because the Division has determined the agency is not in compliance with one or more of these rules.

(19) "Department" means the Department of Human Services (DHS).

(20) "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.

(21) "Division" means the Department of Human Services, Seniors and People with Disabilities Division (SPD).

(22) "Endorsement" means authorization issued by the Division to an agency allowing the agency to provide program services.

(23) "Executive Director" means the person designated by a board of directors or corporate owner that is responsible for the administration of the agency's services for individuals.

(24) "Founded Reports" means the Department's Children, Adults, and Families Division or Law Enforcement Authority 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) "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.

(26) "Independence" means the extent to which individuals with developmental disabilities exert control and choice over their own lives.

(27) "Individual" means an adult or a child 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 ISP is developed at minimum annually 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.

(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 ISP.

(30) "Integration" means:

(a) The use by individuals with developmental disabilities of the same community resources 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.

(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:

(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.

(33) "Medicaid Agency Identification Number" means the Medicaid identification number assigned to an agency once the Division has determined the agency meets the qualification criteria outlined in these rules.

(34) "Medicaid Performing Provider Number" means the Medicaid identification number assigned to an agency for each licensed site or geographic location where program services are delivered once the Division has determined the agency meets the qualification criteria outlined in these rules for endorsement.

(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) "Ownership Interest" means, as defined in 42 CFR 455.101, the possession of equity in the capital, the stock, or the profits of the disclosing entity as determined by 42 CFR 455.102. Person with an ownership or control interest means a person or corporation that:



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(a) Has an ownership interest totaling 5 percent or more in a disclosing entity;

(b) Has an indirect ownership interest equal to 5 percent or more in a disclosing entity;

(c) Has a combination of direct and indirect ownership interests equal to 5 percent or more in a disclosing entity;

(d) Owns an interest of 5 percent or more in any mortgage, deed of trust, note, or other obligation secured by the disclosing agency if that interest equals at least 5 percent of the value of the property or assets of the disclosing entity;

(e) Is an officer or director of a disclosing agency that is organized as a corporation; or

(f) Is a partner in a disclosing entity that is organized as a partnership.

(37) "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.

(38) "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.

(39) "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.

(40) "Program Services" means, for the purpose of these rules, the services described in:

(a) OAR chapter 411, division 325, 24-hour Residential Services for Children and Adults with Developmental Disabilities;

(b) OAR chapter 411, division 335, Proctor Care Residential Services for Individuals with Developmental Disabilities;

(c) OAR chapter 411, division 328, Supported Living Services for Individuals with Developmental Disabilities; and

(d) OAR chapter 411, division 345, Employment and Alternatives to Employment Services for Individuals with Developmental Disabilities.

(41) "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.

(42) "Revocation" means the action taken by the Division to rescind an agency certificate after the Division has determined that the agency is not in compliance with these rules or the rules for the program services endorsed by the Division.

(43) "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.

(44) "Staff" means a paid employee responsible for providing services to individuals and whose wages are paid in part or in full with funds sub-contracted with the community developmental disability program or contracted directly through the Division.

(45) "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.

(46) "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.

(47) "Suspension" means an immediate temporary withdrawal of the approval to operate an agency after the Division determines that the agency is not in compliance with these rules or the rules for the program services endorsed by the Division.

(48) "These Rules" mean the rules in OAR chapter 411, division 323.

(49) "Unacceptable Background Check" means a check that precludes the agency from being certified for the following reasons:

(a) The agency or any person holding 5 percent or greater ownership interest in the agency has been disqualified under OAR 407-007-0275; or

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

(50) "Variance" means a temporary exception from a regulation or provision of these rules or the rules for the program services endorsed by the Division that may be granted by the Division upon written application by the agency.

(51) "Volunteer" means any person assisting in an agency without pay to support the care provided to individuals residing in the home or facility.

Stat. Auth. ORS 409.050 & 410.070

Stats. Implemented: ORS 409.050 & 410.070

Hist.: SPD 12-2011, f. & cert. ef. 7-1-11

## 411-323-0030

### Certification and Endorsement

(1) CERTIFICATE REQUIRED.

(a) No person, agency, or governmental unit acting individually or jointly with any other person, agency, or governmental unit shall establish, conduct, maintain, manage, or operate an agency without being certified by the Division under this rule.

(b) Certificates are not transferable or applicable to any location, home or facility, agency, management agent, or ownership other than that indicated on the application and certificate.

(c) The Division shall issue a certificate to an applicant found to be in compliance with these rules. The certificate shall be in effect for five years from the date issued unless revoked or suspended.

(2) CURRENT AGENCY CERTIFICATION/ENDORSEMENT. All agencies providing program services as of July 1, 2011 shall be issued a certificate that expires in five years unless sooner revoked or suspended that includes endorsements for the following program services:

(a) 24-hour residential as described in OAR chapter 411, division 325;

(b) Supported living as described in OAR chapter 411, division 328;

(c) Proctor care as described in OAR chapter 411, division 335; or

(d) Employment and alternatives to employment as described in OAR chapter 411, division 345.

(3) CERTIFICATION. An agency requiring certification must apply for an initial certificate and for a certificate renewal except as set forth in section (2) of this rule.

(a) INITIAL APPLICATION.

(A) The applicant must submit an application at least 30 days prior to anticipated certification. The completed 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 an agency must identify the agency's business plan. At a minimum, the agency's business plan must include:

(i) A copy of any management agreements or contracts, relative to the operation and ownership of the agency;

(ii) A financial plan that includes:

(I) If an existing agency, the last two years audits, as directed by the Office of Management and Budget circular A-133, completed by an outside firm; or

(II) If applying as a new firm, financial statements indicating capital and the financial plan developed to assure sustainability, partnerships, loans, and any other financial assistance.

(iii) The names of those serving as the agency's Board of Directors;

(C) The applicant must develop a plan identifying the scope of program services the applicant intends to provide and request endorsement for those program services; and

(D) Liability and operational insurance coverage as described in subsection (b) of this section.

(b) LIABILITY AND OPERATIONAL INSURANCE COVERAGE.

(A) At a minimum, the agency must demonstrate proof, at the agencies expense, and maintain in effect with respect to all occurrences taking place during the certification period:

(i) Automobile liability insurance with a combined single limit per occurrence of not less than \$500,000.

(ii) Comprehensive or commercial general liability insurance covering bodily injury and property damage including personal injury coverage and contractual liability coverage for the agency. The combined single limit per occurrence may not be less than \$500,000 or the equivalent. Each annual aggregate limit may not be less than \$500,000 when applicable.

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(B) The agency, the agency's subcontractors if any, and all employers providing work, labor, or materials under the agency are subject employers under the Oregon Workers' Compensation Law and must comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers including employers' liability insurance with coverage limits of not less than \$100,000 each accident. Agencies who perform the work without the assistance of labor or any employee need not obtain such coverage.

(C) The agency must name the State of Oregon, Department of Human Services, and their divisions, officers, and employees as additional insured's on any insurance policies required by these rules with respect to agency activities being performed under the agency's certification. Such insurance must be issued by an insurance company licensed to do business in the state of Oregon and must contain a 30 day notice of cancellation endorsement.

(D) The agency must forward to the Division certificates of insurance indicating coverage as required by this rule prior to certification.

(E) In the event of unilateral cancellation or restriction by the agency's insurance company of any insurance coverage required by this rule, the agency must immediately notify the Division orally of the cancellation or restriction and must confirm the oral notification in writing within three days of notification by the insurance company to the agency.

(c) RENEWAL.

(A) The Division shall conduct a certification review of the agency prior to the renewal of the certificate. The review shall be conducted 30 to 120 days prior to expiration of the certificate.

(B) An application for renewal filed with the Division before the date of expiration extends the effective date of the existing certificate until the Division takes action upon the application for renewal.

(C) If the renewal application is not submitted prior to the expiration date, the agency shall be treated as a non-certified Medicaid agency subject to termination of their Medicaid agency identification number.

(D) The Division may not renew a certificate if the agency is not in substantial compliance with these rules.

(E) Renewal of endorsements for program services is contingent upon the successful renewal of the agency's certificate.

(d) If an applicant fails to provide complete, accurate, and truthful information during the application or renewal process, the Division may delay initial certification, deny the application, or revoke or refuse to renew the application for certification.

(e) Any applicant or person with an ownership interest in an agency shall be considered responsible for acts occurring during, and relating to, the operation of the agency for purpose of certification.

(f) The Division may consider the background and operating history of the applicant and each person with an ownership interest when determining whether to issue or renew a certificate.

(g) Prior to issuance or renewal of the certificate, the applicant must demonstrate to the satisfaction of the Division that the applicant is in compliance with these rules.

(4) EXPIRATION. Unless revoked, suspended, or terminated earlier, each certificate to operate as a Medicaid agency shall expire five years following the date of issuance.

(5) TERMINATION. The certificate shall automatically terminate on the date agency operation is discontinued or if there is a change in ownership.

(6) RETURN OF CERTIFICATE. The certificate must be returned to the Division immediately upon suspension or revocation of the certificate or when agency operation is discontinued.

(7) CHANGE OF OWNERSHIP, LEGAL ENTITY, LEGAL STATUS, OR MANAGEMENT CORPORATION.

(a) The agency must notify the Division in writing of any pending change in the agency's ownership or legal entity, legal status, or management corporation.

(b) A new certificate is required upon change in an agency's ownership or legal entity, legal status, or management corporation. The agency must submit a certificate application at least 30 days prior to change in ownership or legal entity, legal status, or management corporation.

(8) ENDORSEMENT.

(a) To provide program services, an agency must have:

(A) A certificate to provide Medicaid services in the state of Oregon;

(B) A Medicaid agency identification number;

(C) Approved endorsement for the program services; and

(D) A Medicaid performing provider number for each licensed site or geographic location where direct services shall be delivered.

(b) The applicant must comply with the corresponding program services rules for the Division to endorse the program services.

(9) CONDITIONS.

(a) The Division may attach conditions to a certificate upon a finding that:

(A) Information on the application or initial inspection requires a condition to protect the health and safety of individuals;

(B) A threat to the health, safety, and welfare of an individual exists;

(C) There is reliable evidence of abuse, neglect, or exploitation; or

(D) The agency is not being operated in compliance with these rules.

(b) Conditions that the Division may impose on a certificate include:

(A) Restricting the total number of individuals that may be served;

(B) Restricting the number and support level of individuals allowed within program services based upon the capacity of the agency and staff to meet the health and safety needs of all individuals;

(C) Reclassifying the level of individuals that may be served;

(D) Requiring additional staff or staff qualifications;

(E) Requiring additional training;

(F) Requiring additional documentation; or

(G) Restricting admissions.

(c) The Division shall notify the agency in writing of any conditions imposed and the reason for the conditions. The agency shall be given an opportunity to request a hearing as described in section (13) of this rule.

(d) Conditions may be imposed for the extent of the certification period or limited to some other shorter period of time. If the condition corresponds to the certifying period, the reasons for the condition shall be considered at the time of renewal to determine if the conditions are still appropriate. Conditions take effect immediately upon issuance of the notice, or at such later date as indicated on the notice, and shall continue until the expiration date of the condition indicated on the notice.

(10) CERTIFICATE DENIAL, SUSPENSION, REVOCATION, OR REFUSAL TO RENEW. The Division may deny, revoke, or refuse to renew a certificate when the Division finds the agency, or any person holding 5 percent or greater ownership interest in the agency:

(a) Demonstrates substantial failure to comply with these rules such that the health, safety, or welfare of individuals is jeopardized and the agency fails to correct the non-compliance within 30 calendar days of receipt of written notice of non-compliance;

(b) Has demonstrated a substantial failure to comply with these rules such that the health, safety, or welfare of individuals is jeopardized;

(c) Has been convicted of any crime that would have resulted in an unacceptable background check upon hiring or authorization of service;

(d) Has been convicted of a misdemeanor associated with the operation of an agency or program services;

(e) Falsifies information required by the Division to be maintained or submitted regarding care of individuals, employment and alternatives to employment services finances, or individuals' funds; or

(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.

(g) Has been placed on the current Centers for Medicare and Medicaid Services list of excluded or debarred providers.

(11) 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 (10) of this rule has occurred, the Division may issue a notice of certificate revocation, denial, or refusal to renew.

(12) 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 agency may not continue operation.

(13) HEARING. An applicant for a certificate or a certificate holder, as applicable, may request a contested case hearing in accordance with ORS chapter 183 and this rule upon written notice from the Division of imposition of conditions, denial or refusal to renew a certificate, or the suspension or revocation of the certificate.

(a) DENIAL. The applicant must request a hearing within 60 days of receipt of the Division's written notice of denial.

(b) REFUSAL TO RENEW. The certificate holder must request a hearing within 60 days of receipt of the Division's written notice of refusal to renew.

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(c) **SUSPENSION, REVOCATION, AND CERTIFICATE CONDITIONS.** Notwithstanding subsection (d) below, the certificate holder must request a hearing within 21 days of receipt of the Division's written notice of suspension, revocation, or certificate conditions.

(d) **ADMINISTRATIVE REVIEW.** In the case of a notice of suspension or imposition of conditions where a condition is to be effective prior to a hearing, the certificate holder, in addition to the right to a contested case hearing, may request an administrative review by the Division's Administrator or designee.

(A) The request for administrative review must be received by the Division within 10 days from the date of the Division's notice of suspension or imposition of conditions. The certificate holder may submit, along with the request for administrative review, any additional written materials the certificate holder wishes to have considered during the administrative review.

(B) The Division shall conduct the administrative review and issue a decision within 10 days from the date of receipt of the request for administrative review, or by a later date as agreed to by a certificate holder.

(C) If the decision of the Division is to affirm the suspension or condition, the certificate holder may appeal the decision to a contested case hearing as long as the request for a contested case hearing was received by the Division within 21 days of the original written notice of suspension or imposition of conditions.

(e) **INFORMAL CONFERENCE.** After the Division has received a request for hearing, the Division shall offer the applicant or certificate holder an opportunity for an informal conference unless an administrative review has been completed as described in subsection (d) of this section.

Stat. Auth. ORS 409.050 & 410.070  
Stats. Implemented: ORS 409.050 & 410.070  
Hist.: SPD 12-2011, f. & cert. ef. 7-1-11

## 411-323-0040

### Inspections and Investigations

(1) Entities certified under these rules must allow the following types of investigations and inspections:

- (a) Quality assurance and certificate renewal;
- (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, the Department, or the Department's designee has determined to initiate an investigation, the agency 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) The Department or the Department's designee shall conduct abuse investigations as described in OAR 407-045-0250 to 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, the Department's designee, or a law enforcement agency, the agency may conduct an investigation without further Department approval to determine if any personnel actions are necessary.

(8) 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 agency. The agency must imple-

ment the actions necessary within the deadlines listed, to prevent further abuse as stated in the report.

(9) The agency must submit a plan of correction to the Division for any noncompliance found during an inspection under this rule.

Stat. Auth. ORS 409.050 & 410.070  
Stats. Implemented: ORS 409.050 & 410.070  
Hist.: SPD 12-2011, f. & cert. ef. 7-1-11

## 411-323-0050

### Agency Management and Personnel Practices

(1) **NON-DISCRIMINATION.** The agency must comply with all applicable state and federal statutes, rules, and regulations in regard to non-discrimination in employment policies and practices.

(2) **BASIC PERSONNEL POLICIES AND PROCEDURES.** The agency must have in place and implement personnel policies and procedures that address suspension, increased supervision, or other appropriate disciplinary employment procedures when a staff member has been identified as an accused person in an abuse investigation or when the allegation of abuse has been substantiated.

(3) **PROHIBITION AGAINST RETALIATION.** The agency or 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 agency, 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 agency or the individuals served by the agencies.

(4) **MANDATORY ABUSE REPORTING PERSONNEL POLICIES AND PROCEDURES.** Any employee of an agency is a mandatory reporter. The agency must notify all employees of mandatory reporting status at least annually on forms provided by the Department. The agency must provide all employees with a Department produced card regarding abuse reporting status and abuse reporting. For reporting purposes the following shall apply:

(a) Agencies 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) Agencies providing services to children must report to the Department or law enforcement in the county where the child resides.

(5) **APPLICATION FOR EMPLOYMENT.** An application for employment at the agency must inquire whether an applicant has had any founded reports of child abuse or substantiated abuse.

(6) **BACKGROUND 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 an individual in services must have an approved background 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 above in section (6) of this rule in any capacity who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(b) Subsection (6)(a) of this section does not apply to agency employees 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.

(7) **EXECUTIVE DIRECTOR QUALIFICATIONS.** The 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



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a related field. Six years of experience in the identified fields may be substituted for a degree.

(8) **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 background checks in OAR 407-007-0200 to 407-007-0370 and section (6) of this rule;
- (c) If hired on or after July 28, 2009, not have been convicted of any of the disqualifying crimes listed in OAR 407-007-0275;
- (d) Be 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; and
- (g) Have clear job responsibilities as described in a current signed and dated job description.

(9) **PERSONNEL FILES AND QUALIFICATION RECORDS.** The agency must maintain up-to-date written job descriptions for all employees as well as a file available to the Department or the Department's designee for inspection that includes written documentation of the following for each employee:

- (a) Written documentation that references and qualifications were checked;
- (b) Written documentation by the Department of an approved background check as defined in OAR 407-007-0210;
- (c) Written documentation of 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; and
- (e) Written documentation of required training and hours of training received.

(10) **DISSOLUTION OF AN AGENCY.** Prior to the dissolution of an agency, a representative of the governing body or owner of the agency must notify the Division 30 days in advance in writing and make appropriate arrangements for the transfer of individual's records.

Stat. Auth. ORS 409.050 & 410.070  
Stats. Implemented: ORS 409.050 & 410.070  
Hist.: SPD 12-2011, f. & cert. ef. 7-1-11

## 411-323-0060

### Policies and Procedures

(1) **INDIVIDUAL RIGHTS.** The agency must have and implement written policies and procedures that protect an individual's rights that address the following:

(a) **ABUSE.** Individuals as defined in OAR 411-323-0020 must not be abused nor shall abuse be tolerated by any employee, staff, or volunteer of the agency.

(b) **PROTECTION AND WELLBEING.** The agency must ensure the health and safety of individuals from abuse including the protection of individual rights, as well as, encourage and assist individuals through the ISP process to understand and exercise these rights. Except for children under the age of 18, where reasonable limitations have been placed by a parent or guardian, these rights must at a minimum provide for:

(A) Assurance that each individual has the same civil and human rights accorded to other citizens of the same age except when limited by a court order;

(B) Adequate food, housing, clothing, medical and health care, supportive services, and training;

(C) Visits with family members, guardians, friends, advocates and others of the individual's choosing, and legal and medical professionals;

(D) Confidential communication including personal mail and telephone;

(E) Personal property and fostering of personal control and freedom regarding that property;

(F) Privacy in all matters that do not constitute a documented health and safety risk to the individual;

(G) Protection from abuse and neglect, including freedom from unauthorized training, treatment, and chemical, mechanical, or physical restraints;

(H) Freedom to choose whether or not to participate in religious activity;

(I) The opportunity to vote for individuals over the age of 18 and training in the voting process;

(J) Expression of sexuality within the framework of state and federal laws, and for adults over the age of 18, freedom to marry and to have children;

(K) Access to community resources, including recreation, agency services, employment and community inclusion services, school, educational opportunities, and health care resources;

(L) Individual choice for children and adults that allows for decision making and control of personal affairs appropriate to age;

(M) Services that promote independence, dignity, and self-esteem and reflect the age and preferences of the individual;

(N) Individual choice for adults to consent to or refuse treatment, unless incapable, and then an alternative decision maker must be allowed to consent or refuse for the individual. For children, the child's parent or guardian must be allowed to consent to or refuse treatment except as described in ORS 109.610 or limited by court order;

(O) Individual choice to participate in community activities; and

(P) Access to a free and appropriate education for children and individuals under the age of 21 including a procedure for school attendance or refusal to attend.

(2) **HEALTH.** The agency must have and implement policies and procedures that maintain and protect the health of individuals.

(3) **INDIVIDUAL AND FAMILY INVOLVEMENT.** The agency must have and implement a written policy that addresses:

(a) Opportunities for the individual to participate in decisions regarding the operations of the agency;

(b) Opportunities for families, guardians, legal representatives, and significant others of the individuals served by the agency to interact; and

(c) Opportunities for individuals, families, guardians, legal representatives, and significant others to participate on the Board or on committees or to review policies of the agency that directly affect the individuals served by the agency.

(4) **CONFIDENTIALITY OF RECORDS.** The agency must have and implement written policies and procedures that ensure all individuals' records are confidential except as otherwise provided by applicable state and federal rule or laws.

(a) For the purpose of disclosure from individual medical records under this rule, an agency is considered a "public provider" as defined in ORS 179.505.

(b) For the purpose 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.

(5) **BEHAVIOR SUPPORT.** The agency must have and implement a written policy for behavior support that utilizes individualized positive behavior support techniques and prohibits abusive practices.

(6) **PHYSICAL INTERVENTION.** The agency must have and implement written policies and procedures for physical interventions that address the following:

(a) Circumstances allowing the use of physical intervention. The agency must only employ physical intervention techniques that are included in the OIS curriculum approved by the Division or the OIS Steering Committee.

(b) Physical intervention techniques must only be applied:

(A) When the health and safety of the individual and others are at risk, and the ISP team has authorized the procedures in a documented ISP team decision that is included in the ISP and uses procedures that are intended to lead to less restrictive intervention strategies; or

(B) As an emergency measure, if absolutely necessary to protect the individual or others from immediate injury; or

(C) As a health related protection ordered by a physician, if absolutely necessary during the conduct of a specific medical or surgical procedure, or for the individual's protection during the time that a medical condition exists.

(7) **HANDLING AND MANAGING INDIVIDUALS' MONEY.** The agency must have written policies and procedures for the handling and management of individuals' money. Such policies and procedures must provide for:

(a) The individual to manage his or her own funds unless the ISP documents and justifies limitations to self-management;

(b) Safeguarding of an individual's funds;

(c) Individuals receiving and spending their money; and

(d) Taking into account the individual's interests and preferences.

(8) **INFORMAL COMPLAINTS AND GRIEVANCES.** The agency must develop and implement written policies and procedures regarding

# ADMINISTRATIVE RULES

individual informal complaints and formal grievances. These policies and procedures must at minimum address:

(a) **INFORMAL COMPLAINT RESOLUTION.** An individual or someone acting on behalf of the individual must be given the opportunity to informally discuss and resolve any allegation that an agency has taken action which is contrary to law, rule, or policy and that does not meet the criteria for an abuse investigation. Choosing this opportunity does not preclude the individual or someone acting on behalf of the individual to pursue resolution through formal grievance processes.

(b) **FORMAL GRIEVANCE AND GRIEVANCE LOG.**

(A) The agency's formal grievance policies and procedures must include:

(i) A description of how the agency receives and documents grievances from individuals and others acting on the individuals' behalf; and  
(ii) Investigation of the facts supporting or disproving the grievance.

(B) The Executive Director or designee must provide a formal written response to the grievant within 15 days of receipt of the grievance, unless the grievance is informally resolved to the grievant's satisfaction prior to that time. The formal written response of the Executive Director or designee must clearly inform the grievant of the availability of assistance in appealing the grievance and how to access that assistance.

(C) The Executive Director or designee must submit to the Department for review grievances that have not been resolved to the satisfaction of the grievant, where the Executive Director or designee believes that the grievant may not have the capability to appeal an adverse decision to the Division.

(D) Documentation of each grievance and its resolution must be filed or noted in the complainant's record. In addition, the agency must maintain a grievance log, which must, at a minimum, identify the person making the complaint, the date of the grievance, the nature of the grievance, the resolution, and the date of the resolution.

(c) If a grievance is associated in any way with abuse, the recipient of the grievance must immediately report the issue to the appropriate authority, the CDDP, the Department, and notify the Executive Director or designee.

(9) **AGENCY DOCUMENTATION REQUIREMENTS.** The agency must have and implement policies and procedures that address agency documentation requirements. Documentation must:

(a) Be prepared at the time, or immediately following the event being recorded;

(b) Be accurate and contain no willful falsifications;

(c) Be legible, dated, and signed by the person making the entry; and

(d) Be maintained for no less than three years.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 409.050 & 410.070

Hist.: SPD 12-2011, f. & cert. ef. 7-1-11

## 411-323-0070

### Variations

(1) The Division may grant a variance to these rules based upon a demonstration by the agency that an alternative method or different approach provides equal or greater agency effectiveness and does not adversely impact the welfare, health, safety, or rights of individuals.

(2) The agency requesting a variance must submit, in writing, an application to the Division that contains the following:

(a) The section of the rule from which the variance is sought;

(b) The reason for the proposed variance; and

(c) The alternative practice, service, method, concept, or procedure proposed.

(3) The Division shall approve or deny the request for a variance.

(4) The Division's decision shall be sent to the agency and to all relevant Department programs or offices within 30 calendar days of the receipt of the variance request.

(5) The agency may appeal the denial of a variance request by sending a written request for review to the Administrator, whose decision is final.

(6) The Division shall determine the duration of the variance.

(7) The agency may implement a variance only after written approval from the Division.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 409.050 & 410.070

Hist.: SPD 12-2011, f. & cert. ef. 7-1-11

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**Rule Caption:** Certification change for supported living and proctor care residential services.

**Adm. Order No.:** SPD 13-2011

**Filed with Sec. of State:** 7-1-2011

**Certified to be Effective:** 7-1-11

**Notice Publication Date:** 6-1-2011

**Rules Amended:** 411-328-0570, 411-328-0810, 411-335-0030, 411-335-0050, 411-335-0380

**Rules Repealed:** 411-328-0570(T), 411-328-0810(T), 411-335-0030(T), 411-335-0050(T), 411-335-0380(T)

**Subject:** The Department of Human Services is permanently changing the certification period to five years for:

- OAR chapter 411, division 328, Supported Living Services; and
- OAR chapter 411, division 335, Proctor Care Residential Services.

**Rules Coordinator:** Christina Hartman—(503) 945-6398

## 411-328-0570

### Issuance of Certificate

(1) No person or governmental unit acting individually or jointly with any other person or governmental unit shall establish, conduct, maintain, manage, or operate a supported living program without being certified.

(2) Each certificate is issued only for the supported living program and persons or governmental units named in the application and is not transferable or assignable.

(3) A certificate issued on or before February 1, 2009 shall be valid for a maximum of five years unless revoked or suspended.

(4) As part of the certificate renewal process, the service provider must conduct a self-evaluation based upon the requirements of this rule.

(a) The service provider must document the self-evaluation information on forms provided by the Division;

(b) The service provider must develop and implement a plan of improvement based upon the findings of the self-evaluation; and

(c) The service provider must submit these documents to the local CDDP with a copy to the Division.

(5) The Division shall conduct a review of the service provider prior to the issuance of a certificate.

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 309-041-0570 by SPD 17-2009, f. & cert. ef. 12-9-09; SPD 5-

2011(Temp), f. & cert. ef. 2-7-11 thru 8-1-11; SPD 13-2011, f. & cert. ef. 7-1-11

## 411-328-0810

### Program Management

(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) **PROHIBITION AGAINST RETALIATION.** A community program or service provider may not retaliate against any staff who reports in good faith suspected abuse or retaliate against the adult with respect to any report. An alleged perpetrator 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 residents served by the program.

(3) **DOCUMENTATION REQUIREMENTS.** All entries required by this rule, 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

# ADMINISTRATIVE RULES

(d) Be maintained for no less than five years.

(4) **DISSOLUTION.** Prior to the dissolution of a program, a representative of the governing body or owner must notify the Division 30 days in advance in writing and make appropriate arrangements for the transfer of individuals' records.

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 309-041-0810 by SPD 17-2009, f. & cert. ef. 12-9-09; SPD 5-2011(Temp), f. & cert. ef. 2-7-11 thru 8-1-11; SPD 13-2011, f. & cert. ef. 7-1-11

## 411-335-0030

### Agency Management and Personnel Practices

(1) **NON-DISCRIMINATION.** The agency must comply with all applicable state and federal statutes, rules, and regulations in regard to non-discrimination in employment 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 background 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) **BACKGROUND 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 background 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 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 at the certification renewal 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.



# ADMINISTRATIVE RULES

(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 background check requirements in OAR 407-007-0200 to 407-007-0370.

(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 background 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.

(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 background 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.

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(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 Department policies and a background 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 background 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 five 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; SPD 5-2011(Temp), f. & cert. ef. 2-7-11 thru 8-1-11; SPD 13-2011, f. & cert. ef. 7-1-11

## 411-335-0050

### Issuance of Proctor Care Agency Certificate

(1) No person, agency, or governmental unit acting individually or jointly with any other person, agency, or governmental unit shall establish, conduct, maintain, manage, or operate Department funded proctor services in proctor provider homes for individuals with developmental disabilities without being certified by the Department for each home or facility.

(2) No certificate is transferable or applicable to any other agency, management agent, or ownership other than that indicated on the application and certificate.

(3) The Department shall issue a certificate to an agency found to be in compliance with these rules. A certificate issued on or before February 1, 2009 shall be valid for five years unless revoked or suspended.

(4) Any home managed and contracted to serve children with developmental disabilities by a proctor care agency under this certificate must be certified by the Department in accordance with the Division's rules for children's foster provider homes: OAR chapter 411, division 346.

(5) Any home managed and contracted to serve adults with developmental disabilities must be licensed as an adult foster home for adults with developmental disabilities (AFH-DD) in accordance with OAR chapter 411, division 360.

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 5-2011(Temp), f. & cert. ef. 2-7-11 thru 8-1-11; SPD 13-2011, f. & cert. ef. 7-1-11

## 411-335-0380

### Conditions

(1) Conditions may be attached to a certificate 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 individuals;

(c) There is reliable evidence of abuse, neglect, or exploitation;

(d) The home or agency is not being operated in compliance with these rules; or

(e) The proctor provider is certified to care for a specific person only and further placements may not be made into that home or facility.

(2) Conditions that may be imposed on a certificate include but are not limited to:

- (a) Restricting the total number of individuals;
- (b) Restricting the number and support level of individuals allowed within a certified classification level based upon the capacity of the proctor provider and agency staff to meet the health and safety needs of all individuals;
- (c) Reclassifying the level of individuals that can be served;
- (d) Requiring additional agency staff or agency staff qualifications;
- (e) Requiring additional training of proctor providers and agency staff;

(f) Requiring additional documentation; or

(g) Restriction of admissions.

(3) The agency shall be notified in writing of any conditions imposed, the reason for the conditions, and be given an opportunity to request a hearing under ORS 183.310 to 183.502.

(4) In addition to, or in lieu of, a contested case hearing, an agency may request a review by the Administrator or designee of conditions imposed by the Department. The review does not diminish the agency's right to a hearing.

(5) Conditions may be imposed for the duration of the certificate period (five years) or limited to some other shorter period of time. If the condition corresponds to the certification period, the reasons for the condition shall be considered at the time of renewal to determine if the conditions are still appropriate. The effective date and expiration date of the condition shall be indicated on an attachment to the certificate.

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 5-2011(Temp), f. & cert. ef. 2-7-11 thru 8-1-11; SPD 13-2011, f. & cert. ef. 7-1-11

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**Rule Caption:** Employment and Alternatives to Employment Services for Individuals with Developmental Disabilities.

**Adm. Order No.:** SPD 14-2011

**Filed with Sec. of State:** 7-1-2011

**Certified to be Effective:** 7-1-11

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**Rules Adopted:** 411-345-0025, 411-345-0095

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**Rules Repealed:** 411-345-0040, 411-345-0060, 411-345-0070, 411-345-0120, 411-345-0150, 411-345-0210, 411-345-0220, 411-345-

# ADMINISTRATIVE RULES

0280, 411-345-0290, 411-345-0300, 411-345-0030(T), 411-345-0100(T), 411-345-0260(T)

**Subject:** The Department of Human Services is permanently updating the employment and alternatives to employment services for individuals with developmental disabilities rules in OAR chapter 411, division 345 to clarify service requirements, eliminate outdated and unnecessary requirements, and change the recertification period to five years in response to legislatively required budget reductions.

**Rules Coordinator:** Christina Hartman—(503) 945-6398

## 411-345-0010

### Statement of Purpose

These rules prescribe standards for providing employment and alternatives to employment services for individuals with developmental disabilities receiving residential services. These rules also prescribe the standards and procedures by which the Division certifies service providers to provide employment and alternatives to employment services.

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 309-047-0000, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 14-2011, f. & cert. ef. 7-1-11

## 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) "Administrator" means the Administrators of the Department of Human Services, Seniors and People with Disabilities Division, or that person's designee.

(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, facilitated by a services coordinator of the community developmental disability program and attended by the ISP team members and other persons, as appropriate. The purpose of the meeting is to determine needs, coordinate services and training, and develop an ISP.

(9) "Certificate" means a document issued by the Department to a provider of employment and alternatives to employment services that certifies that the service provider is eligible to receive state funds for the provision of these services.

(10) "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.

(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 Department.

(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 to 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.

(16) "Director" means the person responsible for administration of the employment and alternatives to employment services and provision of support services for individuals.

(17) "Discovery" is a focused time-limited service engaging a participant in identifying their strengths, needs, and interests to prepare for integrated employment.

(18) "Division" means the Department of Human Services, Seniors and People with Disabilities Division (SPD).

(19) "Employment Services" means any service that has as its primary goal the employment of individuals, including job assessment, job development, training, and ongoing supports.

(20) "Entry" means admission to a Department-funded developmental disability service.

(21) "Exit" means either termination from a Department-funded developmental disability service provider or transfer from one Department-funded program or service to another.

(22) "Facility Based Service" means any service or program operated by a service provider that occurs in a location supporting more than eight individuals as a group.

(23) "Founded Reports" means the Department's Children, Adults, and Families Division or Law Enforcement Authority 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.

(24) "Important for an Individual" means the areas of life that relate to being healthy, safe, and a valued member of the community.

(25) "Important to an Individual" means the individual's perspective on the people, places, and things they like, personal values, spirituality, and a sense of self. This is learned by listening to what is being said by words or actions. When there is a conflict between words and actions, actions are considered first.

(26) "Incident Report" means a written report of any injury, accident, acts of physical aggression, or unusual incident involving an individual.

(27) "Independence" means the extent to which individuals exert control and choice over their own lives.

(28) "Individual" means a person with developmental disabilities for whom services are planned and provided.

(29) "Individual Support Plan (ISP) Action Plan" means the written documentation of the ISP team's commitment in supporting an individual to resolve or improve particular aspects of their life. An ISP Action Plan identifies the necessary measurable steps to be taken, who is accountable for assuring implementation, and timelines for completion.

(30) "Individual Support Plan (ISP) Team" means a team composed of the individual served, agency representatives who provide service to the individual (as appropriate), the guardian (if any), the services coordinator, and family or other persons requested to develop the ISP.

(31) "Integration" means the use by individuals of the same community resources used by and available to other persons in the community, including participation in community activities and having contact with persons in their community.

(32) "Job Development" means assistance and support for individuals to pursue employment and obtain job placement.

(33) "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.

(34) "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.

(35) "OIS" means Oregon Intervention System.

(36) "Path to Employment" means a concept that identifies an individual's preferences in moving toward employment using principles of self-determination and a set of questions and strategies that assist the Individual Support Plan team when planning.

(37) "Person-Centered Planning" means:

(a) A process, either formal or informal, for gathering and organizing information that helps an individual:



# ADMINISTRATIVE RULES

(A) Determine and describe choices about employment or personal goals, activities, and lifestyle preferences; and

(B) Identify, use, and strengthen naturally occurring opportunities for support in the community.

(b) The methods for gathering information vary, but all are consistent with individual needs and preferences.

(38) "Person-Centered Process" means a practice of identifying what is important to and for an individual, and the supports necessary to address issues of health, safety, behavior, and financial support.

(39) "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.

(40) "Physical Restraint" means any manual physical holding of or contact with an individual that restricts the individual's freedom of movement.

(41) "Productivity" as defined in ORS 427.005 means:

(a) Engagement in income producing work by an individual that is measured through improvements in income level, employment status, or job advancement; or

(b) Engagement by an individual in work contributing to a household or community.

(42) "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.

(43) "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.

(44) "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.

(45) "Self-Determination" means for the purpose of these rules, a philosophy and process by which individuals are empowered to gain control over the selection of services that meet their needs. The basic principles of self-determination are:

(a) Freedom. The ability for an individual, together with freely chosen family, friends, and professionals, to plan for employment beyond the parameters of a predefined program;

(b) Authority. The ability for an individual, together with the Individual Support Plan team, to declare a chosen employment path and to plan supports accordingly.

(c) Autonomy. Planning for and accessing resources that support an individual to seek employment; and

(d) Responsibility. The acceptance of a valued role in an individual's community through employment, organizational affiliations, personal development, and general caring for others in the community, as well as accountability for spending public dollars in ways that are life-enhancing for individuals.

(46) "Service Provider" or "Service" means a public or private community agency or organization that provides recognized developmental disability services and is approved by the Division or other appropriate agency, to provide services under these rules.

(47) "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, and monitor Individual Support Plan services and to act as a proponent for individuals.

(48) "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.

(49) "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.

(50) "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 subject to change with time and circumstances.

(51) "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. The individual is compensated in accordance with the Fair Labor Standards Act.

(52) "These Rules" mean the rules in OAR chapter 411, division 345.

(53) "Transfer" means movement of an individual from one site to another site administered by the same service provider within the same county.

(54) "Unacceptable Background Check" means a background check as defined in OAR 407-007-0210 that precludes the service from being certified for the following reasons:

(a) The service or any person holding 5 percent or greater ownership interest in the agency has been disqualified under OAR 407-007-0275; or

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

(55) "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.

(56) "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.

(57) "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; SPD 14-2011, f. & cert. ef. 7-1-11

## 411-345-0025

### Services Provided

(1) Employment and alternatives to employment services must be designed to increase an individual's independence, integration, and productivity and offered to eligible adult individuals in accordance with OAR 411-345-0140.

(2) Employment is the preferred activity for individuals receiving services. Individuals must be provided opportunity to move forward on a path to employment.

(3) All services, with the exception of individual employment supports, must be provided in a non-residential setting. Employment and alternatives to employment businesses operating as a service provider from a facility base must provide training and skill-building for all individuals served.

(4) Service providers operating under these rules must provide one or more of the following services:

(a) Individual employment supports provided to assist an individual to:

(A) Maintain employment in the community; or

(B) Pursue self-employment.

(b) Support and supervision of two to eight individuals working in the community as a crew, enclave, or small business unit;

(c) Job development, when not available under the Rehabilitation Act of 1973 or P.L. 94-142 (Individuals with Disabilities Education Act);

(d) Facility-based sheltered employment programs providing training and skill development for individuals. Group employment of nine or more individuals in a crew or enclave is considered sheltered employment;

(e) Activities preparing individuals for employment, including discovery activities, volunteer positions, and work-experience positions; or

(f) Alternatives to employment services providing support for individuals to participate in:

(A) Community inclusion activities based upon individuals' interests;

(B) Volunteer positions; or

(C) Other non-paid activities.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 430.610, 430.630, & 430.670

Hist.: SPD 14-2011, f. & cert. ef. 7-1-11

## 411-345-0030

### Certification

(1) No person or governmental unit acting individually or jointly with any other person or governmental unit shall establish, conduct, maintain,

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manage, or operate an employment or alternative to employment service without being certified.

(2) Each certificate is issued only for the service and persons or governmental units named in the application. No certificate is transferable or assignable to any location, service, facility, agency, management agent, or ownership other than that indicated on the application and certificate.

(3) A certificate issued on or after February 1, 2008 shall be valid for a maximum of five years unless revoked or suspended.

(4) As part of the certificate renewal process the service provider must conduct a self-assessment based upon the requirements of these rules. The service provider must:

(a) Document the self-assessment on forms provided by the Division;

(b) Develop and implement a plan of improvement based upon the findings of the self-assessment; and

(c) Submit these documents to the local CDDP with a copy to the Division.

(5) The Division shall conduct a review of the service provider prior to the issuance of a certificate.

(6) APPLICATION FOR INITIAL CERTIFICATE AND CERTIFICATE RENEWAL. The application must be on a form provided by the Division and must include all information requested by the Division.

(a) The applicant's initial application must identify the number and types of units of service that shall be provided.

(b) To renew certification, the service provider must make application at least 30 days but not more than 120 days prior to the expiration date of the existing certificate. On renewal, no increase in the number of units of service shall be certified unless specifically approved by the Division.

(c) Filing of an application for renewal at least 30 days but not more than 120 days prior to the expiration date of the existing certificate extends the effective date until the Division or its designee takes action upon such application.

(d) Failure to disclose requested information on the application, or provision of incomplete or incorrect information on the application, may result in denial, revocation, or refusal to renew the certificate

(e) 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 the types of services identified in a manner consistent with the requirements of these rules.

(f) Separate certificates are required when the service provider delivers services in multiple counties to the extent that contracts with each different county are required.

(7) EXPIRATION. Unless revoked or terminated earlier, each certificate to operate shall expire on the expiration date specified on the certificate.

(8) TERMINATION OF OPERATION. If the service provider discontinues operation of the certified service, the certificate terminates automatically.

(9) RETURN OF CERTIFICATE. Each certificate in the possession of the service must be returned to the Division immediately upon suspension or revocation of the certificate, or when operation is discontinued by the holder of the certificate.

(10) CHANGE OF OWNERSHIP, LEGAL ENTITY, LEGAL STATUS, OR MANAGEMENT CORPORATION.

(a) The service provider must notify the Division in writing of any pending change in the service provider's ownership or legal entity, legal status, or management corporation.

(b) A new certificate is required upon change in a service provider's ownership or legal entity, legal status, or management corporation. The service provider must submit a certificate application at least 30 days prior to change in ownership or legal entity, legal status, or management corporation.

(11) CERTIFICATE DENIAL, SUSPENSION, REVOCATION, OR REFUSAL TO RENEW. The Division may deny, revoke, or refuse to renew a certificate when the Division finds the service, or any person holding 5 percent or greater ownership 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 the agency fails to correct the noncompliance within 30 calendar days of receipt of written notice of non-compliance;

(b) Has demonstrated during two inspections within a six year period a substantial failure to comply with these rules such that the health, safety, or welfare of individuals is jeopardized. For the purpose of this subsection, "inspection" means an onsite review of the service site by the Division 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 background check as defined in OAR 407-007-0210 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 Division 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.

(12) 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 (11) of this rule has occurred, the Division may issue a notice of certificate revocation, denial, or refusal to renew.

(13) 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 service may not continue operation.

(14) 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.

(a) The Division shall provide the certificate holder an opportunity for an informal conference within 10 calendar days from the date of the notice of denial, suspension, revocation, or refusal to renew issued pursuant to this rule.

(b) 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.

(c) The issue at a hearing on certification denial, revocation, or refusal to renew a certificate is limited to whether the service was or is in compliance at the end of the 30-calendar days following written notice of non-compliance.

(d) In the event of a suspension of a certificate pursuant to section (13) of this rule and during the first 30 days after the suspension of a certificate, the certified service provider may submit a written request to the Division for an administrative review. The Division shall conduct the administrative review within 10 days after receipt of the request for an administrative review. Any administrative review requested after the end of the 30-day period following certificate suspension shall be treated as a request for hearing under this section of the rule.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 26-1982(Temp), f. & ef. 12-3-82; MHD 9-1983, f. & ef. 6-7-83; MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0010, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 5-2011(Temp), f. & cert. ef. 2-7-11 thru 8-1-11; SPD 14-2011, f. & cert. ef. 7-1-11

## 411-345-0050

### Reciprocal Compliance

(1) The Division may accept compliance with other formally recognized standards as assurance of compliance with all or part of these rules.

(2) An employment or alternative to employment service seeking a certificate based on compliance with other standards must provide the Division with a copy of the complete detailed report from the reviewing group. Where there are differences between other standards and Oregon Administrative Rules, the Oregon Administrative Rules shall take precedence.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 13-1990, f. & cert. ef. 12-7-90; Renumbered from 309-047-0018, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 14-2011, f. & cert. ef. 7-1-11

# ADMINISTRATIVE RULES

## 411-345-0080

### 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 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.

(6) When an abuse investigation has been initiated, the CDDP must provide notice to the service provider according to 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 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; SPD 14-2011, f. & cert. ef. 7-1-11

## 411-345-0090

### Variations

(1) The Division may grant a variance to these rules based upon a demonstration by the service provider that an alternative method or different approach provides equal or greater program effectiveness and does not adversely impact the welfare, health, safety, or rights of individuals.

(2) The service provider requesting a variance must submit, in writing, an application to the CDDP that contains the following:

(a) The section of the rule from which the variance is sought;

(b) The reason for the proposed variance;

(c) The alternative practice, service, method, concept, or procedure proposed; and

(d) A plan and timetable for compliance with the section of the rule from which the variance is sought.

(3) The CDDP must forward signed documentation to the Division within 30 days of the receipt of the request for variance indicating the CDDP's position on the proposed variance.

(4) The Administrator for the Division shall approve or deny the request for a variance.

(5) The Division's decision shall be sent to the service provider and the CDDP and to all relevant Department programs or offices within 30 calendar days of the receipt of the variance request.

(6) The service provider may appeal the denial of a variance request by sending a written request to the Administrator, whose decision is final.

(7) The Division shall determine the duration of the variance.

(8) The service provider may implement a variance only after written approval from the Division.

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 309-047-0040, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 14-2011, f. & cert. ef. 7-1-11

## 411-345-0095

### Provider Service Payment Limitation

(1) Effective July 1, 2011, 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 service providers for delivering employment or alternatives to employment services as described in these rules, shall be limited to a maximum of \$1,728 per month.

(2) 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 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 rate cap and there is continued risk to health and safety of self or others, regardless of setting.

(3) Special conditions shall be required in the service provider's contract. The Division or the Division's designee shall monitor services to assure their delivery and the continued need for additional funds.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 430.610, 430.630, & 430.670

Hist.: SPD 14-2011, f. & cert. ef. 7-1-11

## 411-345-0100

### Management, Personnel Practices, and Staffing

(1) INDEPENDENCE, PRODUCTIVITY, AND INTEGRATION. As stated in ORS 427.007, the service provider must have a written policy that states that each individual's ISP is developed to meet employment and activities that address each individual's level of independence, productivity, and integration into the local community.

(2) INDIVIDUAL AND FAMILY INVOLVEMENT. The service provider must have and implement a written policy that addresses:

(a) Opportunities for the individual to participate in decisions regarding the operations of the services;

(b) Opportunities for families, guardians, and significant others of the individuals served by the service provider to interact; or

(c) Opportunities for individuals, families, guardians, and significant others to participate on the Board or on committees of the service provider or to review policies of the services that directly affect the individuals supported by the service provider.

(3) DOCUMENTATION REQUIREMENTS. All documentation 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 five years.

(4) DISSOLUTION OF SERVICE. Prior to the dissolution of a service, a representative of the governing body or owner of the service must notify the Division in writing 30 days in advance and make appropriate arrangements for the transfer of individual records.

(5) NONDISCRIMINATION. The service provider must comply with all applicable state and federal statutes, rules, and regulations in regard to nondiscrimination in employment practices.



# ADMINISTRATIVE RULES

## (6) STAFFING REQUIREMENTS.

(a) Each service provider must provide direct service staff appropriate to the number and level of individuals served as follows:

(A) Supported employment and community based service providers must provide adequate direct services staff to ensure initial service and site development, training, and ongoing support to ensure that individual's rights, basic health, and safety are met. A staff member must contact individual's receiving services through supported employment or community based sites two times per month at minimum.

(B) Facility based service providers must provide adequate direct services staff to ensure that individual's rights, basic health, and safety are met. When individuals are present, the service must provide and document that there are staff trained in the following areas:

(i) At least one staff member on duty with CPR certification at all times;

(ii) At least one staff member on duty with current First Aid certification at all times;

(iii) At least one staff member on duty with training to meet other specific medical needs as determined through the ISP process; and

(iv) At least one staff member on duty with training to meet other specific behavior intervention needs as determined through the ISP process.

(b) Each service provider must meet all additional requirements for direct service staff ratios and specialized training as specified by contract requirements.

(7) BASIC PERSONNEL POLICIES AND PROCEDURES. The service provider 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.

(8) MANDATORY ABUSE REPORTING. 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.

(9) 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. For purposes of this subsection, "adverse action" means any action arising solely from the filing of an abuse report taken by a community facility, community program, or 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 community program or service, 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 service or the individuals served by the program or service.

(10) 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.

(11) BACKGROUND 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 background check in accordance with OAR 407-007-0200 to 407-007-0370 and under ORS 181.534.

(a) Effective July 28, 2009, the service provider may not use public funds to support, in whole or in part, any person as described in section (9) of this rule in any capacity who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(b) Subsection (a) of this section does not apply to 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 407-007-0290. The person must notify the Department or designee within 24 hours.

(12) 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, social services, or mental health field may be substituted for a degree.

(13) GENERAL STAFF QUALIFICATIONS. Any staff supervising 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

(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.

(14) PERSONNEL FILES. The service provider must maintain a personnel file available to the Department or the Department's designee 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 six hours of pre-service training prior to supervising individuals including mandatory abuse reporting training, training to work with individuals with developmental disabilities, and training on the support needs of the individual to whom they will provide support;

(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 section (4) of this rule;

(d) Written documentation of 12 hours of annual job-related in-service training;

(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 Department background check per OAR 407-007-0200 to 407-007-0370; 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 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; SPD 5-2011(Temp), f. & cert. ef. 2-7-11 thru 8-1-11; SPD 14-2011, f. & cert. ef. 7-1-11

## 411-345-0110

### Individual Rights

(1) ABUSE. Any individual as defined in OAR 411-345-0020 must not be abused nor shall abuse be tolerated by any employee, staff, or volunteer of the service provider.

### (2) PROTECTION AND WELLBEING.

(a) The service provider must have and implement written policies and procedures that protect individuals' rights during the hours the individual is receiving services. The service provider must encourage and assist individuals to understand and exercise their rights. The policies and procedures must at a minimum provide for:

(A) Assurance that each individual has the same civil and human rights accorded to other citizens;

(B) Adherence to all applicable state and federal labor rules and regulations;

(C) Opportunities for individuals to be productive;

(D) Services that promote independence and that are appropriate to the age and preferences of the individual;

(E) Confidentiality of personal information regarding the individual;

(F) Adequate medical and health care, supportive services, and training;

(G) Opportunities for visits to legal and medical professionals when necessary;

(H) Private communication, including personal mail and access to a telephone, consistent with the service provider's policies for all employees;

(I) Fostering of personal control and freedom regarding personal property;

# ADMINISTRATIVE RULES

(J) Protection from abuse and neglect, including freedom from unauthorized training, treatment, and chemical or mechanical restraints;

(K) Freedom from unauthorized personal restraints; and

(L) Transfer of individuals within a service as described in OAR 411-345-0140.

(b) At entry to service and in a timely manner as changes occur, the service provider must inform each individual and parent, guardian, or advocate orally and in writing of the service provider's policy and procedures and a description of how the individual may exercise their rights.

(3) CONFIDENTIALITY OF RECORDS. All individuals' records are confidential except as otherwise provided by applicable rule or laws.

(a) For the purpose of disclosure from individual medical records under this rule, service providers under these rules are considered a "public provider" as defined in ORS 179.505.

(b) For the purpose of disclosure from non-medical individual records, all or portions of the information contained in those records may be exempt from public inspection under the personal privacy information exemption to the public records law set forth in ORS 192.502.

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 309-047-0050, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 14-2011, f. & cert. ef. 7-1-11

## 411-345-0130

### Grievances

(1) The service provider must implement written policies and procedures for individuals' grievances. These policies and procedures must at a minimum provide for:

(a) Receipt of grievances from an individual or others acting on behalf of the individual. If the grievance is associated in any way with abuse or the violation of the individual's rights, the recipient of the grievance must immediately report the issue to the service provider's director or designee and the CDDP;

(b) Investigation of the facts supporting or disproving the grievance; and

(c) Taking appropriate actions on grievances within five working days following receipt of the grievance.

(2) The service provider's director or designee must provide a formal written response to the grievant within 15 days of receipt of the grievance unless the grievance is informally resolved to the satisfaction of the grievant prior to that time.

(3) If the grievance is not resolved by the service provider's director, the grievance may be submitted to the CDDP for review. The CDDP must complete a review and provide a written response to the grievant and service provider within 30 days.

(4) If the grievance is not resolved by the CDDP, it may be submitted to the Administrator of the Division for review. The Administrator shall complete the review and provide a written response within 45 days of submission. The decision of the Administrator or designee is final.

(5) The service provider must document each grievance and the resolution in the grievant's record. If a grievance resulted in disciplinary action against a staff member, the documentation must include a statement that disciplinary action was taken.

(6) At entry to service and as changes occur, the service provider must inform each individual and parent, guardian, or advocate orally and in writing of the service provider's grievance policy and procedures and a description of how to utilize them.

Stat. Auth.: ORS 409.050 & 410.070

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 309-047-0060, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 14-2011, f. & cert. ef. 7-1-11

## 411-345-0140

### Entry, Exit and Transfer

(1) QUALIFICATIONS. All individuals considered for Division-funded services must:

(a) Be referred by the CDDP;

(b) Be determined to have a developmental disability by the Division or the Division's designee;

(c) Not be discriminated against because of race, color, creed, age, disability, national origin, gender, religion, duration of Oregon residence, method of payment, or other forms of discrimination under applicable state or federal law;

(d) Be 18 years of age or older and not eligible to receive public education services under Public Law 94-142;

(e) Be an individual also receiving residential services that are paid or regulated by the Division including but not limited to:

(A) Comprehensive residential services regulated by OAR chapter 411, division 325;

(B) An adult foster home regulated by OAR chapter 411, division 360;

(C) A supported living program regulated by OAR chapter 411, division 328; or

(D) An individual's own or family home when the individual receives comprehensive in-home support services that are provided according to OAR chapter 411, division 330.

(2) ENTRY. An entry ISP team meeting must be conducted prior to the initiation of services to the individual.

(a) The service provider must acquire the following information prior to an entry ISP team meeting:

(A) Written documentation the individual has been determined to have a developmental disability;

(B) A statement indicating the individual's safety skills including ability to evacuate from a building when warned by a signal device;

(C) A brief written history of any behavioral challenges;

(D) Documentation of the individual's current physical condition, including any physical limitations that would affect employment;

(E) Documentation of any guardian or conservator, or any other legal restriction on the rights of the individual, if applicable; and

(F) A copy of the individual's most recent ISP, if applicable.

(b) The findings of the entry meeting must be recorded in the individual's file and include at a minimum:

(A) The name of the individual proposed for services;

(B) The date of the meeting;

(C) The date determined to be the date of entry;

(D) Documentation of the participants at the meeting;

(E) Documentation as required by OAR 411-345-0190 and 411-345-0200;

(F) Documentation of the pre-entry information required by subsection (a) of this section;

(G) Documentation of the proposed transition plan as defined in OAR 411-320-0020 (CDDP) for services to be provided;

(H) Documentation of any deviation from the unit of service

(I) Documentation of the type of employment or alternatives to employment service the individual will receive; and

(J) Documentation of the decision to serve or not serve the individual requesting service, with reasons.

(3) EXIT.

(a) 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 the strategies to prevent an exit from service (unless the individual 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.

(b) Requirements for an exit meeting may be waived if an individual is immediately removed from the service under the following conditions:

(A) The individual and the individual's guardian requests an immediate removal from the service; or

(B) The individual is removed by a legal authority acting pursuant to civil or criminal proceedings.

(4) TRANSFER. A decision to transfer an individual within a service provider may be made by the ISP team. Findings of the ISP team must be recorded in the individual's file and include at a minimum:

(a) The name of the individual considered for transfer;

(b) The date of the meeting or telephone call;

(c) Documentation of the participants included in the meeting or telephone call;

(d) Documentation of the circumstances leading to the proposed transfer;

(e) Documentation of the alternatives considered, including transfer;

(f) Documentation of the reasons why any preferences of the individual, legal representative, or family members cannot be honored;

# ADMINISTRATIVE RULES

(g) Documentation of a majority agreement of the participants regarding the decision; and

(h) The written plan for services to the individual after transfer.

(5) **APPEAL.** Any member of the ISP team may file an appeal in cases where the individual and the individual's parent, guardian, or advocate object to, or the ISP team cannot reach majority agreement regarding an admission refusal, a request to exit the service, or a transfer within a service. In the case of a request to exit or transfer, the individual shall continue to receive the same services received prior to the appeal until the appeal is resolved.

(a) All appeals must be made in writing to the CDDP Director or designee for decision using the county's appeal process. The CDDP Director must make a decision within 30 working days of receipt of the appeal and notify the appellant of the decision in writing.

(b) The decision of the CDDP Director may be appealed by the individual, the individual's parent, guardian, advocate, or the service provider by notifying the Division in writing within 10 working days of receipt of the county's decision.

(A) The Administrator of the Division shall appoint a committee composed of a Division representative, a service representative, and a Services Coordinator.

(B) In case of a conflict of interest, as determined by the Administrator, alternative representatives shall be temporarily appointed by the Administrator to the committee.

(C) The committee must review the appealed decision and make a written recommendation to the Administrator within 45 working days of receipt of the notice of appeal.

(D) The Administrator shall make a decision on the appeal within 10 working days after receipt of the recommendation from the committee.

(E) If the decision is for admission or continued placement and the service refuses admission or continued placement, the funding for that unit of service may be withdrawn by the contractor.

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; MHD 2-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-047-0065, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 14-2011, f. & cert. ef. 7-1-11

## 411-345-0160

### Individual Support Plan

The ISP is an annual agreement made between an individual receiving services and the team of people supporting the individual that describes what is important to and for the individual receiving services, The ISP explains the balance of, and any conflicts between, what is important to and for the individual and documents commitments made by service providers and other team members to support the individual working toward their goals.

(1) An individual has the right to participate in their ISP meeting and must be afforded every opportunity to develop their ISP with the ISP team.

(2) The ISP must be implemented and a copy of each individual's ISP must be available at the service site within 60 days of entry and updated at least annually or as changes occur.

(3) The service provider must:

(a) Assign a staff member to participate as a team member in the development of an ISP for each individual served;

(b) Follow any required process and format as described in this rule;

(c) Train staff to understand each individual's ISP and supporting documents and to provide individual services; and

(d) Comply with Department or Division rules and policies regarding the ISP.

(4) A face-to-face meeting must be conducted annually with all ISP team members. An exception is made when the individual chooses not to participate in the meeting.

(5) In preparation for the ISP meeting, the service provider must:

(a) Gather person-centered information regarding preferences, interests, and desires of the individual supported;

(b) Review the current ISP to determine the ongoing appropriateness and adequacy of the services and supports identified in the plan; and

(c) Share all materials drafted in preparation for the ISP meeting with all team members one week in advance of the ISP meeting.

(6) The ISP must:

(a) Address an individual's interest in pursuing a path to employment;

(b) Include action plans that further an individual's achievement of employment or their goals for other types of day activities;

(c) Reflect decisions and agreements made by the team during planning;

(d) Include documentation of the commitments made by team members to support the individual's accomplishment of personal goals;

(e) Identify the type of services needed, how services are delivered, and the frequency of provided services;

(f) Identify timeframes for completion of goals or activities; and

(g) Contain signature of all ISP team members.

(7) The format for the ISP is based on the residential service being provided.

(a) For adults residing in 24-hour residential services, the ISP must be in accordance with OAR 411-325-0430 and this rule.

(b) For adults residing in foster care, the ISP must be in accordance with OAR 411-360-0170 and this rule.

(c) For adults residing in supported living services, the ISP must be in accordance with OAR 411-328-0750, 411-320-0120, and this rule.

(d) For adults residing in in-home comprehensive services, the ISP must be in accordance with OAR 411-330-0050 and this rule.

(8) Any deviation from the unit of service must be agreed to and documented by the ISP team.

(9) To meet the changing needs of the individual throughout the authorized ISP period:

(a) The ISP and supporting documents must be amended with ISP team approval; and

(b) The documentation must be kept current and be available for review by the individual, guardian, CDDP, and Department representatives.

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 309-047-0075, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 14-2011, f. & cert. ef. 7-1-11

## 411-345-0170

### Behavior Support

(1) The service provider must have and implement a written policy for behavior support utilizing individualized positive support techniques and prohibiting abusive practices.

(2) The service provider must inform the individual and the individual's legal guardian of the behavior support policy, and any applicable procedures, at the time of entry to services and as changes to the behavior policy occur.

(3) Prior to the development of a Behavior Support Plan, the service provider must conduct a functional behavioral assessment of the behavior, 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 that includes (as applicable) frequency, duration, and intensity of the behavior;

(b) A clear description and justification of the need to alter the behavior;

(c) An assessment of the meaning of the behavior that includes the possibility that the behavior is one or more of the following:

(A) An effort to communicate;

(B) The result of 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.

(4) The Behavior Support Plan must include:

(a) An individualized summary of the individual's needs, preferences, and relationships;

(b) A summary of the functions of the behavior, as derived from the functional behavioral assessment;

(c) Strategies that are related to the functions of the behavior and are expected to be effective in reducing problem behaviors;

(d) Prevention strategies including environmental modifications and arrangements;

(e) Early warning signals or predictors that may indicate a potential behavioral episode and a clearly defined plan of response;

(f) A general crisis response plan that is consistent with OIS;

(g) A plan to address post crisis issues;

(h) A procedure for evaluating the effectiveness of the Behavior Support Plan that includes a method of collecting and reviewing data on frequency, duration, and intensity of the behavior;

(i) Specific instructions for staff who provide support to follow regarding the implementation of the Behavior Support Plan; and

(j) Positive behavior supports that includes the least intrusive intervention possible.



# ADMINISTRATIVE RULES

(5) Service providers must maintain the following additional documentation for implementation of Behavior Support Plans:

(a) 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;

(b) Written evidence of the ISP team decision for approval of the implementation of the Behavior Support Plan; and

(c) Written evidence of all informal and positive strategies used to develop an alternative behavior.

Stat. Auth.: ORS 409.050 & 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 309-047-0080, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 14-2011, f. & cert. ef. 7-1-11

## 411-345-0180

### Physical Intervention

(1) The service provider must only employ physical intervention techniques that are included in the approved OIS curriculum or as approved by the OIS Steering Committee. Physical intervention techniques must only be applied:

(a) When the health and safety of the individual and others are at risk and the ISP team has authorized the procedures in a documented ISP team decision that is included in the ISP and uses procedures that are intended to lead to less restrictive intervention strategies;

(b) As an emergency measure, if absolutely necessary to protect the individual or others from immediate injury; or

(c) As a health related protection ordered by a physician if absolutely necessary during the conduct of a specific medical or surgical procedure, or for the individual's protection during the time that a medical condition exists.

(2) Staff supporting an individual must be trained by an instructor certified in OIS when the individual has a history of behavior requiring physical intervention and the ISP team has determined there is probable cause for future application of physical intervention. Documentation verifying OIS training for staff must be maintained in their personnel file.

(3) The service provider must obtain the approval of the OIS Steering Committee for any modification of standard OIS physical intervention techniques. The request for modification of physical intervention techniques must be submitted to the OIS Steering Committee and must be approved in writing by the OIS Steering Committee prior to the implementation of the modification. Documentation of the approval must be maintained in the individual's record.

(4) Use of physical intervention techniques in emergency situations that are not part of an approved Behavior Support Plan must:

(a) Be reviewed by the services director or designee within one hour of application;

(b) Be used only until the individual is no longer an immediate threat to self or others;

(c) Be documented as an incident report and submitted to the services coordinator, or other Department designee (if applicable), and the individual's legal guardian (if applicable), no later than one working day after the incident has occurred; and

(d) Prompt an ISP team meeting if an emergency intervention is used more than three times in a six-month period.

(5) Any use of physical interventions must be documented in an incident report excluding circumstances defined in section (8) of this rule. The incident report must include:

(a) The name of the individual to whom the physical intervention was applied;

(b) The date, type, and length of time the physical intervention was applied;

(c) A description of the incident precipitating the need for the use of the physical intervention;

(d) Documentation of any injury;

(e) The name and position of the staff member applying the physical intervention;

(f) The name and position of the staff witnessing the physical intervention;

(g) The name and position of the person providing the initial review of the use of the physical intervention; and

(h) Documentation of an administrative review that includes the follow-up to be taken to prevent a recurrence of the incident by the director or designee who is knowledgeable in OIS, as evident by a job description that reflects this responsibility.

(6) The service provider must forward a copy of the incident report within five working days of the incident, to the services coordinator and when applicable to the individual's legal guardian.

(a) The services coordinator, or when applicable the Department designee, shall receive complete copies of incident reports.

(b) Copies of incident reports may not be provided to a legal guardian or other service provider when the report is part of an abuse or neglect investigation.

(c) Copies provided to a legal guardian or other service provider must have confidential information about other individuals removed or redacted as required by federal and state privacy laws.

(7) All interventions resulting in injuries must be documented in an incident report and forwarded to the services coordinator, or other Department designee (if applicable), within one working day of the incident.

(8) The service provider may substitute a behavior data summary in lieu of individual incident reports when:

(a) There is no injury to the individual or others;

(b) The intervention utilized is not a physical restraint;

(c) There is a formal written functional assessment and a written Behavior Support Plan;

(d) The individual's Behavior Support Plan defines and documents the parameters of the baseline level of behavior;

(e) The physical intervention techniques and the behaviors for which they are applied remain within the parameters outlined in the individual's Behavior Support Plan and the OIS curriculum;

(f) The behavior data collection system for recording observation, intervention, and other support information critical to the analysis of the efficacy of the Behavior Support Plan, is also designed to record items as required in section (5) of this rule; and

(g) There is written documentation of an ISP team decision that a behavior data summary had been authorized for substitution in lieu of incident reports.

(9) A copy of the behavior data summary must be forwarded every 30 days to the services coordinator or other Department designee (if applicable), and the individual's legal guardian (if applicable).

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 309-047-0085, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 14-2011, f. & cert. ef. 7-1-11

## 411-345-0190

### Medical Services

(1) All individuals' records must be kept confidential as described in OAR 411-345-0100.

(2) The service provider must have and implement written policies and procedures that describe the medical management system including medication administration, early detection and prevention of infectious disease, self-administration of medication, drug disposal, emergency medical procedures including the handling of bodily fluids, and confidentiality of medical records.

(3) Individuals must receive care that promotes their health and well being, as follows:

(a) The service provider must observe the health and physical condition of individuals and take action in a timely manner in response to identified changes in condition that could lead to deterioration or harm;

(b) The service provider must assist individuals with the use and maintenance of prosthetic devices as necessary for the activities of the service;

(c) The service provider, with the individual's knowledge, must share information regarding medical conditions with the individual's residential contact and the Services Coordinator; and

(d) The service provider must provide rest and lunch periods at least as required by applicable law unless the individual's needs dictate additional time.

(4) The service provider must maintain records on each individual to aid physicians, medical professionals, and the service provider in understanding the individual's medical history and current treatment program. These records must be kept current and organized in a manner that permits staff and medical persons to follow easily the individual's course of treatment. Such documentation must include:

(a) A medical history obtained prior to entry to services including where available:

(A) A copy of a record of immunizations; and

(B) A list of known communicable diseases and allergies.

(b) A record of the individual's current medical condition including:

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(A) A copy of all current orders for medication administered, maintained at the service provider's site;

(B) A list of all current medications; and

(C) A record of visits to medical professionals, consultants, or therapists if facilitated or provided by the service provider.

(5) The administration of medication at the service site must be avoided whenever possible. When medications, treatments, equipment, or special diets must be administered or monitored for self-administration, the service provider must:

(a) Obtain a copy of a written order, signed by a physician, physician's designee, or a medical practitioner prescribing the medication, treatment, special diet, equipment or other medical service; and

(b) Follow written orders.

(6) PRN orders are not accepted for psychotropic medication.

(7) All medications administered or monitored in the case of self-administration must be:

(a) Kept in their original containers;

(b) Labeled by the dispensing pharmacy, product manufacturer, or physician, as specified per the physician's or licensed health care practitioner's written order;

(c) Kept in a secured locked container and stored as indicated by the product manufacturer; and

(d) Recorded on an individualized Medication Administration Record (MAR), including treatments and PRN orders.

(8) The MAR must include:

(a) The name of the individual;

(b) The brand or generic name of the medication including the prescribed dosage and frequency of administration as contained on physician order and medication;

(c) For topical medications and basic first aid treatments utilized without a physician's order, a transcription of the printed instructions from the package or the description of the basic first aid treatment provided;

(d) Times and dates of administration or self-administration of the medication;

(e) The signature of the staff administering the medication or monitoring the self-administration of the medication;

(f) Method of administration;

(g) Documentation of any known allergies or adverse reactions to a medication;

(h) Documentation and an explanation of why a PRN medication was administered and the results of such administration; and

(i) An explanation of any medication administration irregularity with documentation of administrative review by the service provider's executive director or designee.

(9) Safeguards to prevent adverse medication reactions shall be utilized to include:

(a) Maintaining information about each prescribed medication's effects and side-effects;

(b) Communicating any concerns regarding any medication usage, effectiveness, or effects to the residential contact and the services coordinator; and

(c) Prohibiting the use of one individual's medications by another.

(10) The service site or service provider may not keep unused, discontinued, outdated, or recalled drugs, or drug containers with worn, illegible, or missing labels. All unused, discontinued, outdated, or recalled drugs, or drug containers with worn, illegible, or missing labels must be promptly disposed of in a manner consistent with federal statutes and designed to prevent illegal diversion of the substances into the possession of people other than for whom it was prescribed. A written record must be maintained by the service provider of all disposed drugs and must include:

(a) Date of disposal;

(b) A description of the medication including amount;

(c) The individual for whom the medication was prescribed;

(d) The reason for disposal;

(e) The method of disposal;

(f) Signature of staff disposing; and

(g) For controlled medications, the signature of a witness to the disposal.

(11) For any individual who is self-administering medication the service provider must:

(a) Have documentation that a training program was initiated with approval of the individual's ISP team or that training for the individual is unnecessary;

(b) If necessary, have a training program that is consistent with the self-administration training program in place at the individual's residence;

(c) If necessary, have a training program that provides for retraining when there is a change in dosage, medication, or time of delivery;

(d) Have specific supports identified and documented for the individual when training has been deemed unnecessary; and

(e) Provide for an annual review, at a minimum, as part of the ISP process, upon completion of the training program or when training for the individual has been deemed necessary by the ISP team.

(12) The service provider must ensure that individuals able to self-administer medications keep them secured, unavailable to any other person, and stored as recommended by the product manufacturer.

(13) The service provider must immediately contact the services coordinator when the individual's medical, behavioral, or physical needs change to a point that the individual's needs may not be met by the service provider. The ISP team must determine alternative placement or arrangement if necessary.

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 309-047-0090, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 14-2011, f. & cert. ef. 7-1-11

## 411-345-0200

### Individual Summary Sheets and Emergency Information

(1) INDIVIDUAL SUMMARY SHEETS. A current one to two page summary sheet record must be maintained at the service provider's primary place of business for each individual receiving services. The record must include:

(a) The individual's name, current address, telephone number, date of entry into services, date of birth, gender, preferred hospital, medical prime and private insurance number where applicable, guardianship status; and

(b) The name, address, and telephone number of:

(A) The individual's legal representative, family, advocate, and other significant person;

(B) The individual's preferred physician, secondary physician, and clinic;

(C) The individual's preferred dentist;

(D) The individual's services coordinator; and

(E) Other agencies and representatives providing services and supports to the individual.

(2) EMERGENCY INFORMATION. A service provider must maintain emergency information for each individual receiving supports and services from the service provider in addition to an individual summary sheet identified in section (1) of this rule.

(a) The emergency information must be kept current and must include:

(A) The individual's name;

(B) The service provider's name, address, and telephone number;

(C) The address and telephone number of the residence where the individual lives;

(D) The individual's physical description, which may include a picture and the date 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 may the need arise, such as marks or scars, tattoos, or body piercing.

(E) Information on the individual's abilities and characteristics including:

(i) How the individual communicates;

(ii) The language the individual uses or understands;

(iii) The ability of the individual to know and take care of bodily functions; and

(iv) Any additional information that may assist a person not familiar with the individual to understand what the individual may 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 the 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;

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(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 service provider has that may assist in the care and support of the individual in the event of a natural or man-made disaster.

Stat. Auth.: ORS 409.050 & 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 309-047-0095, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 14-2011, f. & cert. ef. 7-1-11

## 411-345-0230

### Incident Reports and Emergency Notifications

(1) A written incident report describing any injury, accident, act of physical aggression, or unusual incident involving an individual must be placed in the individual's record. 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) 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) The program must notify the CDDP immediately of an incident or allegation of abuse falling within the scope of OAR 407-045-0260.

(4) 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 contact; and

(d) Any other agency responsible for the individual.

(5) In the case of an individual who is missing or absent without supervision beyond the time frames established by the ISP team, the service 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 contact;

(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; SPD 14-2011, f. & cert. ef. 7-1-11

## 411-345-0240

### Emergency Plan and Safety Review

(1) Service providers must develop, keep current, and implement a written emergency plan for the protection of all individuals in the event of an emergency or disaster.

(a) The emergency plan must:

(A) Be practiced at least annually.

(B) Consider the needs of the individuals being supported and address all natural and human-caused events identified as a potential significant risk to the individuals such as a pandemic or an earthquake.

(C) Coordinate with each residential provider or residential contact to address the possibility of emergency or disaster resulting in the following:

(i) Extended utility outage;

(ii) No running water;

(iii) Inability to provide food or supplies; and

(iv) Staff unable to report as scheduled.

(D) Include provisions for evacuation and relocation that identifies:

(i) The duties of staff during evacuation, transport, and housing of individuals;

(ii) The requirement for staff to notify the Division and the local CDDP office of the plan to evacuate or the evacuation of the facility, as soon as the emergency or disaster reasonably allows;

(iii) The method and source of transportation;

(iv) Planned relocation sites that are reasonably anticipated to meet the needs of the individuals;

(v) 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

(vi) A method for tracking and reporting to the Division, local CDDP office, or designee, the physical location of each individual until a different entity resumes responsibility for the individual,

(E) Address the needs of the individual including medical needs.

(F) Be submitted to the Division as a summary, per Division format, at least annually and upon revision and change of ownership.

(2) Service providers must post the following emergency telephone numbers in close proximity to all phones used by staff:

(a) The telephone numbers of the local fire, police department, and ambulance service, if not served by a 911 emergency services; and

(b) The telephone number of the service provider's executive director and additional persons to be contacted in the case of an emergency.

(3) If an individual regularly accesses the community independently, the service provider must provide to the individual information about appropriate steps to take in an emergency, such as emergency contact telephone numbers, contacting police or fire personnel, or other strategies to obtain assistance.

(4) A documented safety review must be conducted quarterly to ensure the service site is free of hazards. The service provider must keep the quarterly safety review reports for five years and must make them available upon request by the CDDP or the Department.

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 309-047-0115, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 14-2011, f. & cert. ef. 7-1-11

## 411-345-0250

### Evacuation

(1) The service provider must train all individuals immediately upon entry to each service site to leave the site in response to an alarm or other emergency signal to exit.

(2) The service provider must document the level of assistance needed by each individual to safely evacuate and such documentation must be maintained in the individual's entry records.

(3) Facility-based service providers must conduct unannounced evacuation drills one per quarter each year when individuals are present, unless required more often by the Oregon Occupational Safety and Health Division.

(a) Drills must occur at different times of the day.

(b) Exit routes must vary based on the location of a simulated emergency.

(c) Any individual failing to evacuate the service site unassisted within three minutes, or an amount of time set by the local fire authority for the site, must be provided specialized training and support in evacuation procedures.

(4) Facility-based service providers must make written documentation at the time of each drill and keep the documentation for at least two years following the drill. Documentation must include:

(a) The date and time of the drill;

(b) The location of the simulated emergency and exit route;

(c) The last names of all individuals and staff present in the service area at the time of the drill;

(d) The type of evacuation assistance provided by staff to individuals' that need more than three minutes to evacuate as specified in an individual's safety plan;

(e) The amount of time required by each individual to evacuate if the individual needs more than three minutes to evacuate;

(f) The amount of time for all individuals to evacuate exclusive of individuals with specialized support per section (3)(c) of this rule; and

(g) The signature of the staff conducting the drill.

(5) The service provider must develop a written safety plan for individuals who are unable to evacuate the site within the required evacuation time or who, with concurrence of the ISP team, request not to participate in evacuation drills. The safety plan must include:



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- (a) Documentation of the risk to the individual's medical, physical condition, and behavioral status;
  - (b) Identification of how the individual must evacuate the site including level of support needed;
  - (c) The routes to be used to evacuate the individual to a point of safety;
  - (d) Identification of assistive devices required for evacuation;
  - (e) The frequency the plan shall be practiced and reviewed by the individual and staff;
  - (f) The alternative practices;
  - (g) Approval of the plan by the individual's guardian, services coordinator, and the service provider's director; and
  - (h) A plan to encourage future participation in evacuation drills.
- (6) The service provider must provide necessary adaptations or accommodations to ensure evacuation safety for individuals with sensory and physically impairments.

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 309-047-0120, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 14-2011, f. & cert. ef. 7-1-11

## 411-345-0260

### Physical Environment

(1) All supported employment and community based services must ensure that the service site has no known health or safety hazards in its immediate environment and that individuals are trained to avoid recognizable hazards.

(2) The service provider must assure that at least once every five years a health and safety inspection is conducted of owned, leased, or rented buildings and property.

(a) The inspection must cover all areas and buildings where services are delivered to individuals, administrative offices, and storage areas.

(b) The inspection may be performed by:

(A) Oregon Occupational Safety and Health Division;

(B) The service's workers compensation insurance carrier; or

(C) An appropriate expert such as a licensed safety engineer or consultant approved by the Division; and

(D) The Oregon Public Health Division, when necessary.

(c) The inspection must cover:

(A) Hazardous material handling and storage;

(B) Machinery and equipment used by the service;

(C) Safety equipment;

(D) Physical environment; and

(E) Food handling, when necessary.

(d) The documented results of the inspection, including recommended modifications or changes, and documentation of any resulting action taken must be kept by the service provider for five years.

(3) The service provider must ensure buildings and property at each owned, leased, or rented service site has annual fire and life safety inspections performed by the local fire authority or a Deputy State Fire Marshal. The documented results of the inspection, including documentation of recommended modifications or changes, and documentation of any resulting action taken must be kept by the service provider for five years.

Stat. Auth.: ORS 409.050 & 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 309-047-0125, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 5-2011(Temp), f. & cert. ef. 2-7-11 thru 8-1-11; SPD 14-2011, f. & cert. ef. 7-1-11

## 411-345-0270

### Vehicles and Drivers

(1) Services that own or operate vehicles that transport individuals must:

(a) Maintain the vehicles in safe operating condition;

(b) Comply with Oregon Driver and Motor Vehicle Services Division laws;

(c) Maintain insurance coverage; and

(d) Carry a first-aid kit in vehicles.

(2) Drivers operating vehicles to transport individuals must meet applicable Oregon Driver and Motor Vehicle Services Division requirements.

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 309-047-0130, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 14-2011, f. & cert. ef. 7-1-11

**Rule Caption:** Foster Homes for Children with Developmental Disabilities.

**Adm. Order No.:** SPD 15-2011

**Filed with Sec. of State:** 7-1-2011

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**Rules Adopted:** 411-346-0110, 411-346-0150, 411-346-0160, 411-346-0165, 411-346-0190, 411-346-0200, 411-346-0220

**Rules Repealed:** 411-346-0110(T), 411-346-0150(T), 411-346-0160(T), 411-346-0165(T), 411-346-0190(T), 411-346-0200(T), 411-346-0220(T)

**Subject:** In response to legislatively required budget reductions, the Department of Human Services is permanently amending various rules relating to foster homes for children with developmental disabilities in OAR chapter 411, division 346 to change the annual certification period to two years. Language associated with the certification timeframe and provider expectations for chimney inspection, emergency preparedness, and inactive referral status have also been changed to comply with the two year cycle.

**Rules Coordinator:** Christina Hartman—(503) 945-6398

## 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 Department, 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 Department that notes approval to operate a child foster home for a period not to exceed two years.

(12) "Certifier" or "Certifying Agency" means the Department, Community Developmental Disability Program, or an agency approved by the Department 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 Department 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 Department 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 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 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 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.

# ADMINISTRATIVE RULES

(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 Department, 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 Department, 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 Department 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; SDP 6-2011(Temp), f. & cert. ef. 2-10-11 thru 8-1-11; SPD 15-2011, f. & cert. ef. 7-1-11

## 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 Department 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.



## ADMINISTRATIVE RULES

(3) The applicant seeking certification from the Department must complete the Department application forms. When two or more adults living in the home share foster provider responsibilities to any degree, 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 Department 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 Department, that each applicant is physically and mentally capable of providing care;

(k) A floor plan of the house showing the location of:

(A) Rooms, indicating the bedrooms for the child in foster care, caregiver, and other occupants of the home;

(B) Windows;

(C) Exit doors;

(D) Smoke 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 background check by the Department, in accordance with OAR 407-007-0200 to 407-007-0370 (Background Check Rules) and under ORS 181.534. The Department may require a background check as defined in OAR 407-007-0210 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 background check as defined in OAR 407-007-0210 are required to complete an Oregon background check and a national background check, as described in OAR 407-007-0200 to 407-007-0370, including the use of fingerprint cards.

(a) 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 OAR 407-007-0290. The person must notify the Department or designee within 24 hours.

(9) The Department may not issue or renew a certificate if an applicant or member of the household:

(a) Has, after completing the Department's background check as defined in OAR 407-007-0210, a fitness determination of "denied."

(b) Has, at any time, been convicted of a felony in Oregon or any jurisdiction that involves:

(A) Child abuse or neglect;

(B) Spousal abuse;

(C) Criminal activity against children, including child pornography;

or

(D) Rape, sexual assault, or homicide.

(c) Has, within the past five years from the date the background check as defined in OAR 407-007-0210 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 Department 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 Department 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 Department. The written approval must be on file with the Assistant Director of the Department and in the Department's certification file.

(14) An application is incomplete and void unless all supporting materials are submitted to the Department within 90 days from the date of the application.

(15) An application may not be considered complete until all required information is received and verified by the Department. Within 60 days upon receipt of the completed application, a decision shall be made by the Department to approve or deny certification.

(16) The Department 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 issued on or after February 1, 2010 shall be valid for a maximum of two years, unless revoked or suspended.

(17) The Department 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.

# ADMINISTRATIVE RULES

(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 Department'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; SDP 6-2011(Temp), f. & cert. ef. 2-10-11 thru 8-1-11; SPD 15-2011, f. & cert. ef. 7-1-11

## 411-346-0160

### Renewal of Certificate

(1) At least 90 days prior to the expiration of a certificate, the Department 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 Department takes action. If the renewal application is not submitted prior to the expiration date, the child foster home 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 Department or the certifier reasonably assumes this information has not changed or is not necessary.

(5) The Department 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 background check as defined in OAR 407-007-0210 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 Department approved training per year prior to the 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; SDP 6-2011(Temp), f. & cert. ef. 2-10-11 thru 8-1-11; SPD 15-2011, f. & cert. ef. 7-1-11

## 411-346-0165

### Emergency Certification

(1) An emergency certificate may be issued by the Department for up to 30 days, provided the following conditions are met:

(a) An Oregon background check as defined in OAR 407-007-0210 indicates no immediate need for fingerprinting for all persons living in the home;

(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 Department'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 the 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; SDP 6-2011(Temp), f. & cert. ef. 2-10-11 thru 8-1-11; SPD 15-2011, f. & cert. ef. 7-1-11

## 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.

## ADMINISTRATIVE RULES

(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.

### (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 Department, the CDDP, or DHS-CW before it is implemented. When a child is cared for by a child care provider or child care center, the provider or center must be certified as required by the State Child Care Division (ORS 657A.280) or be a certified foster provider.

(c) The foster provider must have a Respite Plan approved by the certifier or the Department when using alternate caregivers.

(d) The foster provider must assure the alternate caregivers, consultants, and volunteers are:

(A) 18 years of age or older;

(B) Capable of assuming foster care responsibilities;

(C) Present in the home;

(D) Physically and mentally capable to perform the duties of the foster provider as described in these rules;

(E) Cleared by a background 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



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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 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.

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(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.

(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 Department'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

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(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

(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 Department 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 Department or the Department'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 provider must complete the Emergency Plan Summary, on the form supplied by the Department, and must send it to the Department annually and upon change of licensee or location of the child foster home.

(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.



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(i) Child records must be available to representatives of the Department, 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; SPD 6-2011(Temp), f. & cert. ef. 2-10-11 thru 8-1-11; SPD 15-2011, f. & cert. ef. 7-1-11

## 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.

(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 Department 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.

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(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 2A:10B: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.

(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 certification period and may not be used in the future. Required annual chimney inspections are to be made available to the certifier during certification renewal processes.

(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 Department 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; SDP 6-2011(Temp), f. & cert. ef. 2-10-11 thru 8-1-11; SPD 15-2011, f. & cert. ef. 7-1-11

## 411-346-0220

### Inactive Referral Status; Denial, Suspension, Revocation, Refusal to Renew

(1) INACTIVE REFERRAL STATUS. The Department may require that a foster provider go on inactive referral status. Inactive referral status is a period, not to exceed 24 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 Department initiate inactive referral status.

(a) The Department may place a foster provider on inactive referral status for reasons including but not limited to the following:

(A) The Department 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 Department 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 Department shall notify the foster provider immediately upon placing them on inactive referral.

(c) Within 30 days of initiating inactive referral status, the Department 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.

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(d) When the foster provider initiates inactive referral status, the inactive status ends at the request of the foster provider and when the Department 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 Department 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 Department 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 Department.

(d) Failure to comply with OAR 411-346-0200(5) may constitute grounds for denial, revocation, or refusal to renew.

(e) The Department 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 Department 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 background check as defined in OAR 407-007-0210 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 Department 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 Department 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; SDP 6-2011(Temp), f. & cert. ef. 2-10-11 thru 8-1-11; SPD 15-2011, f. & cert. ef. 7-1-11

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**Rule Caption:** Community Services Programs – Provider Enrollment, Service Billings, and Service Payments.

**Adm. Order No.:** SPD 16-2011

**Filed with Sec. of State:** 7-1-2011

**Certified to be Effective:** 7-1-11

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**Rules Adopted:** 411-370-0010, 411-370-0020, 411-370-0030, 411-370-0040

**Subject:** In response to the Department of Human Services transformation efforts and the need to generally streamline operations in order to meet and address current and future budget needs, the Department is permanently adopting provider enrollment, service billing, and service payment rules for community services programs in OAR chapter 411, division 370.

The rules change the current contracting practices so that it is no longer necessary for local service providers to have service contracts with community developmental disability programs (CDDPs). Instead, service providers will have a provider enrollment agreement with the Department and will receive direct payments. CDDPs will continue to authorize services delivered by providers and paid directly by the Department.

**Rules Coordinator:** Christina Hartman—(503) 945-6398

## 411-370-0010

### Definitions

(1) “Administrator” means the administrators of the Department of Human Services or that person’s designee.

(2) “Appropriate Service” means services that are required by a recipient’s approved individual service or support plan that are:

(a) Consistent with the recipient’s identified needs, goals, and desired outcomes;

(b) Appropriate with regard to standards of generally recognized practice, evidence based practice, and professional standards of service as effective;

(c) Not solely for the convenience of a provider of the service;

(d) The most cost effective of the alternative services that may be effectively provided to a recipient; and

(e) Coordinated with the recipient’s local community developmental disability program.

(3) “Authorization” means either service or payment authorization for specified covered services given prior to services being rendered by Department staff, or the Department’s designee including community developmental disability programs.

(4) “Benefit Package” means the array and type of services, as described by program-specific rules, for which the recipient is eligible.

(5) “Billing Provider” means an individual, agent, business, corporation, or other entity who, in connection with submission of claims to the Department, receives or directs payment from the Department on behalf of a performing provider and has been delegated the authority to obligate or act on behalf of the performing provider.

(6) “Claim” means a bill for services, a line item of a service, or all services for one recipient within a specified billing period. Claims include a bill submission, an invoice, or an encounter associated with requesting payment whether submitted on paper or electronically. Claim also includes any other methodology for requesting payment or as verification of an expenditure of an advanced payment that may be established in contract, provider enrollment agreement, or program-specific rules.

(7) “Client Process Monitoring System (CPMS)” means the Department’s information system that tracks and documents service delivery of claims funded by the Department.

(8) “Community Developmental Disability Program (CDDP)” as defined in OAR 411-320-0020.

(9) “Community Services Programs” are services provided for recipients under the following program names, service element numbers, or descriptions:

(a) Nursing facility specialized services (DD45) as described in OAR chapter 411, division 070.

(b) Residential facilities (DD50) as described in OAR chapter 411, division 325.

(c) Supported living services (DD51) as described in OAR chapter 411, division 328.

(d) Transportation services (DD 53) as described in the applicable service element standards and procedures.

(e) Employment and community inclusion services (DD54) as described in OAR chapter 411, division 345.

(f) Rent subsidies (DD 56) as described in the applicable service element standards and procedures.

(g) Developmental disabilities special projects (DD 57) as described in the applicable service element standards and procedures.

(h) Children’s residential facilities (DD142) as described in OAR chapter 411, division 325.

(i) Children’s proctor foster homes (DD143) as described in OAR chapter 411, division 335.

(j) Room and board (DD 156) as described in the applicable service element standards and procedures.

(10) “Covered Services” mean appropriate services that are funded by the legislature and applicable Department rules describing the benefit packages of community services programs provided to eligible recipients under service element standards and procedures, program-specific requirements, provider enrollment agreements, or contracts by providers required to enroll with the Department under these rules.

(11) “Date of Service” means the date the recipient receives community services program services, unless otherwise specified in the appropriate program-specific rules.

(12) “Department” means the Department of Human Services. For the purpose of these rules, Department also includes its role as a delegated designee of the Oregon Health Authority (OHA) in carrying out the OHA responsibilities as the designated single Medicaid state agency.



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(13) “Express Payment and Reporting System (eXPRS)” means the Department’s information system for managing the disbursement and tracking of Department funding for certain developmental disability programs.

(14) “False Claim” means a claim or encounter that a provider knowingly submits or causes to be submitted that contains inaccurate or misleading information, and that information would result, or has resulted, in an overpayment or other improper payment.

(15) “Fraud” means an intentional deception or misrepresentation made by a recipient or provider with the knowledge that the deception may result in some unauthorized benefit to himself or herself, or some other recipient or provider. Fraud includes any act that constitutes fraud or false claim under applicable federal or state law.

(16) “Medicaid” means a federal and state funded program established by Title XIX of the Social Security Act, as amended, and administered in Oregon by the Department.

(17) “Medicaid Agency Identification Number” means the numeric identifier assigned by the Department to an enrolled provider once enrollment of that provider is completed as described in these rules.

(18) “Medicaid Performing Provider Number” means the numeric identifier assigned to an entity or person by the Department, following enrollment to deliver Medicaid funded services as described in these rules. The Medicaid Performing Provider Number is used by the rendering provider for identification and billing purposes associated with service authorizations and payments.

(19) “Medicaid Fraud Control Unit (MFCU)” means the unit of the Oregon Department of Justice that investigates and prosecutes billing fraud committed by Medicaid providers. MFCU also may investigate and prosecute physical, sexual, or financial abuse and neglect of residents who reside in Medicaid-funded facilities.

(20) “Medicaid Management Information System (MMIS)” means the automated claims processing and information retrieval system for handling all Medicaid transactions. The objectives of MMIS include verifying provider enrollment and client eligibility, managing health care provider claims and benefit package maintenance, and addressing a variety of Medicaid business needs.

(21) “Medicare” means the federal health insurance program for the aged and disabled administered by the Centers for Medicare and Medicaid Services under Title XVIII of the Social Security Act.

(22) “Provider” or “Performing Provider” means an individual, agency, corporate entity, or other organization that provides community services program services that is enrolled with the Department in accordance with these rules to seek payment from the Department.

(23) “Quality Improvement” means the effort to improve the level of performance of key processes, practices, or outcomes in service provision. A quality improvement program measures the level of current performance of the processes and practices, finds ways to improve the performance or outcomes, and implements new and better methods for the processes or practices. Quality improvement includes the goals of quality assurance, quality control, quality planning, and quality management.

(24) “Recipient” means an individual found eligible by the community developmental disability program and the Department to receive community services program services for individuals with developmental disabilities under OAR chapter 411, division 320.

(25) “Service Element Standards and Procedures” means the standard for a particular service element number that further describes the applicable service and details the purpose, performance requirements, special reporting requirements, and applicable rules to adhere to when providing that particular service element.

(26) “SFMA” means the Oregon Statewide Financial Management Services.

(27) “Suspension” means a sanction prohibiting a provider’s participation in the Department’s community services programs by deactivation of the assigned provider number for a specified period of time or until the occurrence of a specified event.

(28) “These Rules” mean the rules in OAR chapter 411, division 370.

(29) “Third Party Resource (TPR)” means a service or financial resource that, by law, is available and applicable to pay for covered services for community services programs.

(30) “United States Department of Health & Human Services (USDHHS)” means the Cabinet department of the United States government with the goal of protecting the health of all Americans and providing essential human services.

Stat. Auth.: ORS 409.050, 410.070, 411.060 & 430.640  
Stats. Implemented: ORS 427.005, 427.007, 430.215, 430.610 to 430.695 & 443.400 to 443.455  
Hist.: SPD 16-2011, f. & cert. ef. 7-1-11

## 411-370-0020

### Provider Requirements

(1) These rules cover all programs and services of the Department’s community services programs for recipients with developmental disabilities (hereinafter referred to as community services programs). All providers seeking payment from the Department for the provision of covered services to eligible service recipients of community services programs must comply with these rules and the applicable rules, standards, and procedures of the specific programs or services defined as community services programs in OAR 411-370-0010.

(2) COVERED PROVIDER AGREEMENTS. Agreements with providers for community services programs may include:

- (a) Direct contracts with the Department;
- (b) Contracts with Department designees, including CDDPs; or
- (c) Provider enrollment agreements with the Department.

(3) Covered services paid for with state, Medicaid (Title XIX), or other funds by the Department for community services programs are also subject to federal and state Medicaid rules and requirements. In interpreting these rules and program-specific rules, the Department shall construe them as much as possible in a manner that shall comply with federal and state laws and regulations, and the terms and conditions of federal waivers and the state plans.

(4) A provider paid with state or Medicaid funds for community services programs must comply with all applicable federal and state laws and regulations pertaining to the provision of Medicaid services under the Medicaid Act, Title XIX, 42 United States Code (USC)1396 et seq.

(5) Payment for any service by a provider of community services programs may not be made by or through (directly or by power of attorney) any individual or organization, such as a collection agency or service bureau, that advances money to a provider for accounts receivable that the provider has assigned, sold, or transferred to the person or organization for an added fee or a deduction of a portion of the accounts receivable.

(6) The Department shall make community services programs provider payments to only the following:

- (a) The provider who actually performed the service;
- (b) In accordance with a reassignment from the provider a government agency or reassignment by a court order;
- (c) An organization operating as an organized health care delivery system, if the provider has a contract under which the organization submits the claim and the organization is enrolled with the Department as a billing provider; or
- (d) To an enrolled billing provider, such as a billing service or an accounting firm that, in connection with the submission of claims, receives or directs payments in the name of the provider, if the billing provider’s compensation for this service is:

- (A) Related to the cost of processing the billing; and
  - (B) Not related on percentage or other basis to the amount that is billed or collected and not dependent upon the collection of the payment.
- (7) Providers must comply with TPR requirements in Department policies, program-specific rules, provider enrollment agreements, or contracts.

(8) PROGRAM INTEGRITY.

(a) The Department shall use several approaches to promote integrity of the community services programs. This section of the rule describes integrity actions related to:

(A) Provider billings and payments, including actions and expectations contained within service element standards and procedures, program-specific rules, or contracts with Department representatives including CDDPS. The program integrity goal is to pay the correct amount to a properly enrolled provider for covered services provided to an eligible recipient according to these rules and the program-specific services in effect on the date of the service; and

(B) Provider performance in the delivery of services to recipients as well as general program practices. The program integrity goal includes approaches to assure the provision of appropriate services for which payment is to be made as well as compliance with these rules, service element standards and procedures, program-specific rules, provider enrollment agreements, or contracts.

(b) Program integrity activities include but are not limited to the following:

(A) Review, including but not limited to the evaluation of services in accordance with appropriate service or process, error identification, and prior authorization processes including all actions taken to determine the provision of services in accordance with service element standards and pro-

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cedures, program-specific rules, provider enrollment agreements, or contract;

(B) Onsite visits to verify compliance with service element standards and procedures, program-specific rules, provider enrollment agreements, or contracts;

(C) Quality improvement activities;

(D) Coordination with the Department of Justice MFCU and other oversight authorities including law enforcement; and

(E) For provider billings and payments:

(i) Implementation of transaction standards to improve accuracy and timeliness of claims processing;

(ii) Cost report settlement processes;

(iii) Audits; and

(iv) Investigation of false claims, fraud, or prohibited business relationships.

(F) For provider service delivery:

(i) Provider licensing or certification required responsibilities and activities; and

(ii) Specific service monitoring and evaluation activities provided in program-specific rules or Department policy.

(c) The following may engage in program integrity activities including but not limited to general monitoring of the provider's performance in service delivery, reviewing a request for services, or auditing a claim of services, before or after payment, for assurance that the specific care or service was provided in accordance with the program-specific rules and the generally accepted standards of performance:

(A) Department staff or designees, including staff of a CDDP; and

(B) Federal or state oversight authority.

(d) Payment may be denied or may be subject to recovery if the review or audit determines the service was not provided in accordance with provider rules, program-specific rules, provider enrollment agreements or contracts, or does not meet the criteria for quality or appropriateness of the service or payment.

(e) If the Department or other federal or state oversight authorities determine that an overpayment has been made to a provider, the amount of overpayment is subject to recovery.

(f) The provider may face other sanctions or penalties, including termination of provider enrollment agreements or contracts as allowed by program-specific or Department rules.

(g) The Department may communicate with and coordinate any program integrity actions with the MFCU, USDHHS, other federal or state oversight authorities including law enforcement, or Department designees including CDDPs.

Stat. Auth.: ORS 409.050, 410.070, 411.060 & 430.640

Stats. Implemented: ORS 427.005, 427.007, 430.215, 430.610 to 430.695 & 443.400 to 443.455

Hist.: SPD 16-2011, f. & cert. ef. 7-1-11

## 411-370-0030

### Provider Enrollment

(1) For the purpose of this rule, all providers of community services programs, authorized to utilize the eXPRS, SFMA, MMIS, or CPMS systems, and licensed or certified by Department rules, or otherwise qualified by program-specific rules, prior to July 1, 2011 shall be deemed to be an enrolled provider as of July 1, 2011, subject to all provisions of these rules.

(2) Being an enrolled provider is a condition of eligibility for a Department payment for claims in community services programs. The Department requires billing providers to be enrolled as providers consistent with the provider enrollment processes set forth in this rule. If payment for community services program services shall be made under a contract with the Department or the Department's designees, including CDDPs, the provider must also meet the contract requirements. Contract requirements are separate from the requirements of these provider enrollment rules.

(3) Enrollment as a provider with the Department is not a promise that the enrolled provider shall receive any minimum amount of work from the Department, or the Department's designees, including CDDPs.

(4) **RELATION TO SERVICE ELEMENT STANDARDS AND PROCEDURES, PROGRAM-SPECIFIC RULES, PROVIDER ENROLLMENT AGREEMENT, OR CONTRACT REQUIREMENTS.** Provider enrollment establishes essential provider participation requirements for becoming an enrolled provider for the Department. The details of provider qualification requirements, recipient eligibility, covered services, how to obtain service authorization, documentation requirements, claims submission, available electronic access instructions, and other pertinent instructions and requirements are contained in the service element standards and

procedures, program-specific rules, or provider enrollment agreement or contract.

(5) **CRITERIA FOR ENROLLMENT.** To be enrolled after July 1, 2011 providers must:

(a) Meet the requirements, if applicable, of the statewide agency certification process as prescribed in OAR chapter 411, division 323.

(b) Meet all program-specific requirements identified in service element standards and procedures, program-specific rules, provider enrollment agreements, or contracts in addition to the requirements identified in these rules;

(c) Meet Department licensing, certification, or service endorsement requirements for the type of community services programs the provider shall deliver as described in the program-specific rules, provider enrollment agreements, or contracts; and

(d) Obtain a Medicaid Agency Identification Number and applicable Medicaid Performing Provider Number from the Department for the specific services for which the provider is enrolling.

(6) **PARTICIPATION AS AN ENROLLED PROVIDER.** Participation with the Department as an enrolled provider is open to qualified providers that:

(a) Meet the qualification requirements established in these rules and program-specific rules, provider enrollment agreements, or contracts;

(b) Enroll as a provider with the Department in accordance with these rules;

(c) Provide or shall provide a covered service within their scope of licensure, certification, or service endorsement, if applicable, to an eligible recipient in accordance with service element standards and procedures, program-specific rules, provider enrollment agreements, or contracts; and

(d) Accept the payment amounts established in accordance with the Department's program-specific payment structures, service element standards and procedures, program-specific rules, provider enrollment agreements, or contracts for services providers.

(7) **ENROLLMENT PROCESS.** To be enrolled as a provider with the Department, an individual or organization must submit a complete and accurate provider enrollment form, provider disclosure form, and provider enrollment agreement, available from the Department.

(a) **PROVIDER ENROLLMENT REQUEST FORM.** The provider enrollment form requests basic demographic information about the provider that shall be permanently associated with the provider or organization until changed on an updated form. For the purpose of provider enrollment, the Department may use, instead of the provider enrollment form required under these rules, the application for certification required under OAR chapter 411, division 323 if such an application is applicable to the provider.

(b) **PROVIDER DISCLOSURE FORM.** All individuals and entities are required to disclose information used by the Department to determine whether an exclusion applies that would prevent the Department from enrolling the provider. Individual performing providers must submit a disclosure statement. All providers that are enrolling as an entity (corporation, non-profit, partnership, sole proprietorship, governmental) must submit a disclosure of ownership and control interest statement. For the purpose of provider enrollment, the Department may use, instead of the provider disclosure form required under these rules, the application for certification required under OAR chapter 411, division 323 if such an application is applicable to the provider.

(A) Entities must disclose all the information required on the disclosure of ownership and control interest statement.

(B) Payment may not be made to any individual or entity that has been excluded from participation in federal or state programs or that employs or is managed by excluded individuals or entities.

(C) The Department may refuse to enter into or may suspend or terminate a provider enrollment agreement if the individual performing provider or any individual who has an ownership or control interest in the entity, or who is an agent or managing employee of the provider, has been sanctioned or convicted of a criminal offense related to that individual's involvement in any program established under Medicare, Medicaid, Title XIX services, or other public assistance program.

(D) The Department may refuse to enter into or may suspend or terminate a provider enrollment agreement or contract for provider services, if the Department determines that the provider did not fully and accurately make any disclosure required under this rule.

(8) **PROVIDER ENROLLMENT AGREEMENT.** The provider must sign the provider enrollment agreement and submit it to the Department for review at the time the provider submits the provider enrollment form and related documentation. Signing the provider enrollment agreement consti-

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tutes agreement by a provider to comply with all applicable Department service element standards and procedures, provider and program rules, and applicable federal and state laws and regulations in effect on the date of service. The provider enrollment agreement must be submitted even if alternatives to submitting the provider enrollment form and provider disclosure form are used, as provided in sections (7)(a) and (7)(b) of this rule.

(9) **ENROLLMENT OF PROVIDERS.** A provider shall be enrolled, assigned, and issued a Medicaid Agency Identification Number and Medicaid Performing Provider Number upon the following criteria:

(a) Provider submission, consistent with Department procedures, of a completed and signed provider enrollment form, provider disclosure form, provider enrollment agreement, any applicable provider licensure, certification, or service endorsement materials, and all other required documents to the Department.

(b) Provider signature on required forms must be the provider or an individual with actual authority for the provider to legally bind the provider to attest and certify to the accuracy and completeness of the information submitted.

(c) The provisions of this rule, OAR chapter 411, division 323 if applicable, program-specific rules, service element standards and procedures, provider enrollment agreements, or contracts relating to provider qualifications, certification, licensure, and service endorsement are completed.

(10) Provider enrollment is not complete until all required information has been submitted, verified, and the Medicaid Agency Identification Number and the Medicaid Performing Provider Number are issued.

(11) **CLAIM OR ENCOUNTER SUBMISSION.** Submission of a claim or encounter or other payment request document constitutes the enrolled provider's agreement that:

(a) The service was provided in compliance with all applicable rules and requirements in effect on the date of service;

(b) The provider has created and maintained all records necessary to disclose the extent of services provided and provider's compliance with applicable program and financial requirements, and that the provider agrees to make such information available upon request to the Department or the Department's designees including CDDPs, the MFCU (for Medicaid-funded services), the Oregon Secretary of State, and (for federally-funded services) the federal funding authority and the Comptroller General of the United States;

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

(d) The provider understands that payment of the claim or encounter or other payment document shall be from federal or state funds, or a combination of federal and state funds, and that any falsification, or concealment of a material fact, may result in prosecution under federal and state laws.

(12) Medicaid Agency Identification Numbers and Medicaid Performing Provider Numbers shall be specific to the provider, and the service sites, locations, or type of service authorized by the Department or the Department's designee including CDDPs. Issuance of a Department-assigned Medicaid Agency Identification Number and Medicaid Performing Provider Number establishes enrollment of an individual or organization as a provider for community services programs.

(13) Providers must provide the following updates:

(a) An enrolled provider must notify the Department in writing of a material change in any status or condition on any element of their provider enrollment form. Providers must notify the Department of the following changes in writing within 30 calendar days:

(A) Business affiliation;

(B) Ownership;

(C) Federal tax identification number;

(D) Ownership and control information; or

(E) Criminal convictions.

(b) Claims submitted by, or payments made to, providers who have not timely furnished the notification of changes or have not submitted any of the items that are required due to a change may be denied payment or payment may be subject to recovery.

(14) The provider enrollment agreement may be terminated as follows:

(a) **PROVIDER TERMINATION REQUEST.**

(A) The provider may ask the Department to terminate the provider enrollment agreement upon the following conditions and timelines unless otherwise required by service element standards and procedures, program-specific rules, or provider enrollment agreement or contract.

(i) Upon the provider's convenience with at least 90 days advance written notice; or

(ii) Upon a minimum of 30 days advance written notice if the Department does not meet the obligations under these rules and such dispute remains unresolved at the end of the 30 day period or such longer period, if any, as specified by the provider in the notice.

(B) The request must be in writing, signed by the provider, and mailed or delivered to the Department. The notice must specify the Department-assigned Medicaid Agency Identification Number and Medicaid Performing Provider Number, if known.

(C) When accepted, the Department shall assign the Medicaid Agency Identification Number and Medicaid Performing Provider Number a termination status and the effective date of the termination status.

(D) Termination of the provider enrollment agreement does not relieve the provider of any obligations for covered services provided under these rules in effect for dates of services during which the provider enrollment agreement was in effect.

(b) **DEPARTMENT TERMINATION.** Pursuant to the provisions of OAR chapter 407, division 120, the Department may terminate the provider enrollment agreement immediately upon notice to the provider, or a later date as the Department may establish in the notice, upon the occurrence of any of the following events:

(A) The Department fails to receive funding, appropriations, limitations, or other expenditure authority at levels that the Department or the specific program determines to be sufficient to pay for the services covered under the agreement;

(B) Federal or state laws, regulations, or guidelines are modified or interpreted by the Department in a such a way that either providing the services under the agreement is prohibited or the Department is prohibited from paying for such services from the planned funding source;

(C) The Department has issued a final order revoking the Department-assigned Medicaid Agency Identification Number, service endorsement, or Medicaid Performing Provider Number based on a sanction;

(D) The provider no longer holds a required license, certificate, service endorsement, or other authority to qualify as a provider. The termination shall be effective on the date the license, certificate, service endorsement, or other authority is no longer valid.

(c) In the event of any termination of the provider enrollment agreement, the provider's sole monetary remedy is limited to covered services the Department determines to be compensable under the provider agreement, a claim for unpaid invoices, hours worked within any limits set forth in the agreement but not yet billed, and Department-authorized expenses incurred prior to termination. Providers are not entitled to recover indirect or consequential damages. Providers are not entitled to attorney fees, costs, or other expenses of any kind.

(15) **IMMEDIATE SUSPENSION.** When a provider fails to meet one or more of the requirements governing participation as a Department enrolled provider, the provider's Department-assigned Medicaid Agency Identification Number or Medicaid Performing Provider Number may be immediately suspended consistent with the provisions of OAR chapter 407, division 120. The provider may not provide services to recipients during a period of suspension. The Department shall deny claims for payment or other payment requests for dates of service during a period of suspension.

(16) The provision of a program-specific provider enrollment agreement or contract covered services to eligible recipients is voluntary on the part of the provider. Providers are not required to serve all recipients seeking service.

(17) The provider performs all services as an independent contractor. The provider is not an officer, employee, or agent of the Department.

(18) The provider is responsible for its employees and for providing employment-related benefits and deductions that are required by law. The provider is solely responsible for its acts or omissions including the acts or omissions of its own officers, employees, or agents. The Department's responsibility shall be limited to the Department's authorization and payment obligations for covered services provided in accordance with these rules.

Stat. Auth.: ORS 409.050, 410.070, 411.060 & 430.640

Stats. Implemented: ORS 427.005, 427.007, 430.215, 430.610 to 430.695 & 443.400 to 443.455

Hist.: SPD 16-2011, f. & cert. ef. 7-1-11

### 411-370-0040

#### Variances

(1) The Department may grant a variance to these rules based upon a demonstration by the provider that an alternative method or different



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approach provides equal or greater effectiveness and does not adversely impact the welfare, health, safety, or rights of individuals.

(2) The provider requesting a variance must submit, in writing, an application on a Department approved form that contains the following:

- (a) The section of the rule from which the variance is sought;
- (b) The reason for the proposed variance; and
- (c) The alternative practice, service, method, concept, or procedure proposed.

(3) The Department shall approve or deny the request for a variance. In reviewing the variance request, the Department may seek input or information from the Department's designees, including CDDPs.

(4) The Department's decision shall be sent to the provider and to all relevant Department programs or offices within 30 calendar days of the receipt of the variance request.

(5) The provider may appeal the denial of a variance request by sending a written request for review to the Administrator, whose decision is final.

(6) The Department shall determine the duration of the variance.

(7) The provider may implement a variance only after written approval from the Department.

Stat. Auth.: ORS 409.050, 411.060, 410.070 & 430.640  
Stats. Implemented: ORS 427.005, 427.007, 430.215, 430.610-695 & 443.400-443.455  
Hist.: SPD 16-2011, f. & cert. ef. 7-1-11

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**Rule Caption:** Medicaid Nursing Facilities.

**Adm. Order No.:** SPD 17-2011(Temp)

**Filed with Sec. of State:** 7-1-2011

**Certified to be Effective:** 7-1-11 thru 12-28-11

**Notice Publication Date:**

**Rules Amended:** 411-070-0442, 411-070-0452

**Subject:** To implement Senate Bill 939 (2011), the Department of Human Services (Department) is temporarily amending OAR 411-070-0442 and 411-070-0452 to maintain Medicaid-certified long term care facility reimbursement rates at their current level as of June 30, 2011 in accordance with the legislatively adopted budget.

**Rules Coordinator:** Christina Hartman—(503) 945-6398

## 411-070-0442

### Per Diem Rate Setting For the Rate Period Beginning July 1, 2003 Calculation of the Basic Rate and Complex Medical Add-on Rate

(1) The rates are determined for the first year of each biennium, the rebasing year, and the second year of each biennium, the non-rebasing year.

(a) The Rebasing Year.

(A) The basic rate is based on the statements received by the Department by September (or postmarked by October 31, if an extension of filing has been approved by the Department) for the fiscal reporting period ending on June 30 of the previous even-numbered year. For example, for the biennium beginning July 1, 2003, statements for the period ending June 30, 2002 are used. The Department desk reviews or field audits these statements and determines the allowable costs for each nursing facility. The costs include both direct and indirect costs. The costs and days relating to pediatric beds are excluded from this calculation. The Department shall only use financial reports of facilities that have been in operation for at least 180 days and are in operation as of June 30 of even numbered years for biennial rebasing.

(B) For the 2009 rebasing period only, the Department shall limit the administrative and property cost components as follows:

(i) Administrative and general costs per facility, less provider tax and employee benefits, equals the lesser of the facility's allowable cost or the 50th percentile over all facilities; and

(ii) Allowable property expenses shall be limited by the Medicaid occupancy percentage when the facility has an occupancy rate of less than 60 percent.

(C) For each facility, its allowable costs after any limitations as set forth in subsection (1)(a)(B) of this section are applied, less the costs of its self-contained pediatric unit (if any) is inflated from the mid-point of its fiscal reporting period to the mid-point of the first year of the biennium, hereafter referred to as the base year (e.g., for the biennium beginning July 1, 2003, the base year is the fiscal period ending June 30, 2004) by the annual change in the DRI Index, or its successor index, as measured in the previous 4th quarter.

(D) For each facility, its allowable costs after any limitations as set forth in subsection (1)(a)(B) of this section are applied, per Medicaid day is determined using the allowable costs as inflated and resident days, excluding pediatric days as reported in the statement.

(E) The facilities are ranked from highest to lowest by the facility's allowable costs after any limitations as set forth in subsection (1)(a)(B) of this section are applied, per Medicaid day.

(F) The basic rate will be determined by ranking the allowable costs after any limitations as set forth in subsection (1)(a)(B) of this section are applied, per Medicaid day by facility and identifying the allowable cost per day at the applicable percentage. If there is no allowable cost per day at the applicable percentage, the basic rate is determined by interpolating the difference between the allowable costs per day that are just above and just below the applicable percentage to arrive at a basic rate at the applicable percentage.

(i) The applicable percentage for the period beginning July 1, 2003 through June 30, 2005 is at the 63rd percentile.

(ii) The applicable percentage for the period beginning July 1, 2005 through June 30, 2007 is at the 70th percentile.

(iii) The applicable percentage for the period beginning July 1, 2007 is at the 63rd percentile.

(b) The Non-Rebasing Year. On July 1 of each non-rebasing year, the basic flat rate shall be inflated by the annual change in the DRI Index, or its successor index, as measured in the previous 4th quarter.

(2) The complex medical add-on rate is 40 percent of the basic rate for the rebasing year and the non-rebasing year.

(3) The Department shall add a standard payment to fund implementation of certified nursing assistant staffing requirements contained in OAR 411-086-0100 in accordance with the Legislatively Adopted Budget.

(4) For services rendered between July 1, 2011 and June 30, 2012, the Department shall pay a daily rate equal to the following:

(a) Basic rate: \$212.12 per day;

(b) Complex medical rate: \$295.59 per day; and

(c) Pediatric rate: \$358.38 per day.

Stat. Auth.: ORS 410.070 & 414.065

Stats. Implemented: ORS 410.070, 414.065, OL 2003 Ch. 736, OL 2007 Ch. 780, OL 2009 Ch. 827 & 2011 SB 939

Hist.: SPD 36-2004, f. 12-23-04, cert. ef. 12-28-04; SPD 15-2007(Temp), f. & cert. ef. 9-10-07 thru 3-8-08; SPD 2-2008, f. 2-29-08, cert. ef. 3-1-08; SPD 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; SPD 15-2009, f. 11-30-09, cert. ef. 12-1-09; SPD 17-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

## 411-070-0452

### Pediatric Nursing Facilities

(1) PEDIATRIC NURSING FACILITY.

(a) A pediatric nursing facility is a licensed nursing facility at least 50 percent of whose residents entered the facility before the age of 14 and all of whose residents are under the age of 21.

(b) A nursing facility that meets the criteria of subsection (1)(a) of this section shall be reimbursed as follows:

(A) The pediatric rate is a prospective rate and is not subject to settlement. The Department shall only use financial reports of facilities that have been in operation for at least 180 days and are in operation as of June 30 of even numbered years for biennial rebasing.

(B) The facility specific pediatric cost per resident day shall be inflated by the annual change in the DRI Index as measured in the previous 4th quarter. The Oregon Medicaid pediatric days are multiplied by the inflated facility specific cost per resident day for each pediatric facility. The totals are summed and divided by total Oregon Medicaid days to establish the weighted average cost per pediatric resident day. The rebase relationship percentage (90.18%), determined in the implementation of the flat rate system in 1997, is applied to the weighted average cost to determine the pediatric rate.

(C) On July 1 of each non-rebasing year after 1999, the pediatric rate shall be increased by the annual change in the DRI Index, as measured in the previous 4th quarter. Beginning in 2001 rate rebasing shall occur in alternate years. Rebasing of pediatric nursing facility rates shall be calculated using the method described in subsection (1)(b)(B) of this section.

(D) For services rendered between July 1, 2011 and June 30, 2012, the Department shall pay the pediatric rate of \$358.38 per day.

(e) Even though pediatric facilities shall be reimbursed in accordance with subsection (1)(b) of this section, pediatric facilities must comply with all requirements relating to the timely submission of Nursing Facility Financial Statements.

(2) LICENSED NURSING FACILITY WITH A SELF-CONTAINED PEDIATRIC UNIT.

(a) A nursing facility with a self-contained pediatric unit is a licensed nursing facility that provides services for pediatric residents (individuals under the age of 21) in a separate and distinct unit within or attached to the facility with staffing costs separate and distinct from the rest of the nursing facility. All space within the pediatric unit must be used primarily for pur-

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poses related to the services of pediatric residents and alternate uses must not interfere with the primary use.

(b) A nursing facility that meets the criteria of subsection (2)(a) of this section shall be reimbursed for its pediatric residents served in the pediatric unit at the per diem rate described in section (1)(b) of this rule commencing on July 1, 1999 or at the per diem rate described in section (1)(b)(D) of this rule commencing on July 1, 2011.

(c) Licensed nursing facilities with a self-contained pediatric unit must comply with all requirements relating to the timely submission of Nursing Facility Financial Statements and must file a separate attachment, on forms prescribed by the Department, related to the costs of the self-contained pediatric unit.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070 & 2011 SB 939

Hist.: SSD 4-1988, f. & cert. ef. 6-1-88; SSD 8-1991, f. & cert. ef. 4-1-91; SSD 14-1991(Temp), f. 6-28-91, cert. ef. 7-1-91; SSD 18-1991, f. 9-27-91, cert. ef. 10-1-91; SSD 6-1993, f. 6-30-93, cert. ef. 7-1-93; SSD 6-1995, f. 6-30-95, cert. ef. 7-1-95; SSD 6-1996, f. & cert. ef. 7-1-96; SDDS 10-1999, f. 11-30-99, cert. ef. 12-1-99; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06; SPD 15-2007(Temp), f. & cert. ef. 9-10-07 thru 3-8-08; SPD 2-2008, f. 2-29-08, cert. ef. 3-1-08; SPD 15-2009, f. 11-30-09, cert. ef. 12-1-09; SPD 17-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

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**Rule Caption:** Eligibility for Support Services for Adults with Developmental Disabilities.

**Adm. Order No.:** SPD 18-2011(Temp)

**Filed with Sec. of State:** 7-1-2011

**Certified to be Effective:** 7-1-11 thru 12-28-11

**Notice Publication Date:**

**Rules Amended:** 411-320-0090, 411-320-0110, 411-340-0100

**Subject:** The Department of Human Services (Department) is temporarily amending the rules relating to support services for adults with developmental disabilities and community developmental disability programs (CDDPs) to revise the eligibility criteria for support services to include a requirement for the receipt of support services to be contingent on eligibility for the federally approved Support Services Waiver. Prior to this, eligibility for the Waiver was not a requirement for support services.

**Rules Coordinator:** Christina Hartman—(503) 945-6398

## 411-320-0090

### Developmental Disabilities Case Management Program Responsibilities

(1) AVAILABILITY. As required by these rules, the CDDP must assure the availability of a services coordinator to meet the service needs of an individual and any emergencies or crisis. The assignment of the services coordinator must be appropriately documented in individual service records and the CDDP must accurately report enrollment in the Department's payment and reporting systems.

(2) POLICIES AND PROCEDURES. The CDDP must adopt written procedures to assure that the delivery of services meet the standards in section (4) of this rule.

(a) The CDDP must have procedures for ongoing involvement of individuals and family members in the planning and review of consumer satisfaction with the delivery of case management or direct services provided by the CDDP.

(b) Copies of the procedures for planning and review of case management services, consumer satisfaction, and complaints must be maintained on file at the CDDP offices. The procedures must be available to:

(A) CDDP employees who work with individuals;

(B) Individuals who are receiving services from the CDDP and the individuals' families;

(C) Individuals' legal representatives, advocates, and service providers; and

(D) The Department.

(3) NOTICE OF SERVICES. The CDDP must inform the individuals, family members, legal representatives, and advocates of the minimum case management services that are set out in section (4) of this rule.

(4) MINIMUM STANDARDS FOR CASE MANAGEMENT SERVICES.

(a) The CDDP must ensure that eligibility for services is determined by a trained eligibility specialist in accordance with OAR 411-320-0030.

(b) An Annual Plan for an individual must be developed and reviewed in accordance with OAR 411-320-0120(1).

(A) The services coordinator must assure that there is an Annual Plan. The services coordinator must attend the annual plan meeting and participate in the development of the plan for individuals enrolled in comprehen-

sive services. The services coordinator is responsible for the development of the Annual Plan, on the form provided by the Department, for children receiving family support services in coordination with the child and the family.

(B) An Annual Plan must be completed for each individual that is not enrolled in any Department-funded service other than case management.

(c) Program services must be authorized in accordance with OAR 411-320-0120(3).

(d) Services coordinators must monitor services and supports for all individuals enrolled in case management in accordance with the standards described in OAR 411-320-0130.

(e) Entry, exit, and transfers from comprehensive program services must be in accordance with OAR 411-320-0110.

(f) Crisis diversion services must be assessed, identified, planned, monitored, and evaluated by the services coordinator in accordance with OAR 411-320-0160.

(g) Abuse investigations and provision of protective services for adults must be provided as described in OAR 407-045-0250 to 407-045-0360 and include investigating complaints of abuse, writing investigation reports, and monitoring for implementation of report recommendations.

(h) Civil commitment services must be provided in accordance with ORS 427.215 to 427.306.

(i) The services coordinator must provide information and timely referral for individuals and their families regarding developmental disability services available within the county and services available from other agencies or organizations within the county.

(A) For individuals 18 years and older, information and referral must specifically include information necessary to inform the individual of the comprehensive services wait list and support services. When more than one support services brokerage is available within the CDDP's geographic service area, the CDDP must also provide impartial information about the brokerages available to the individual.

(B) For individuals 18 years and older, information and referral must be provided initially and at minimum annually thereafter if the individual declines the comprehensive services wait list or support services. Documentation of the initial referral and subsequent annual discussion must be documented in the individual's CDDP file.

(C) For individuals enrolled in the support services brokerage but not enrolled in the comprehensive services wait list, the CDDP must coordinate with the support services brokerage to ensure that wait list information is provided annually.

(j) The services coordinator must assist individuals and their families in accessing services and resources.

(A) For individuals 18 years and older who decline support services, annual information and referral about support services must include informing the individual of the individual's right to access support services at any time.

(B) For individuals 18 years and older who decline support services and meet eligibility for support services as described in OAR 411-340-0100, the services coordinator must ensure access to support services within 90 days of the individual's request for support services and selecting a support services brokerage from those available as per OAR 411-340-0110.

(C) For individuals 18 years and older who decline the comprehensive services wait list and who are not enrolled in a support services brokerage, annual information and referral about the comprehensive services wait list must include informing the individual of the individual's right to access the wait list at any time.

(D) For individuals 18 years and older who decline the comprehensive services wait list, the services coordinator must ensure access at any time to the comprehensive services wait list upon the individual's request to be enrolled on the wait list.

(k) The services coordinator must enroll individuals in the comprehensive services wait list who meet the following criteria:

(A) The individual is age 18 or older;

(B) The individual is enrolled in case management services or a support services brokerage;

(C) The individual has requested to be enrolled in the comprehensive services wait list; and

(D) The individual is not enrolled in comprehensive services as an adult.

(l) An individual who moves between CDDP's and whose case management or support services do not lapse for more than a period of 12 months shall retain the wait list enrollment date assigned or continued by the CDDP in which case management services were previously received. If an individual did not receive case management services in any county in

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Oregon for a period exceeding 12 calendar months, a new wait list enrollment date shall be assigned. The new wait list enrollment date must be the date the individual first meets all the criteria described in section (4)(k) of this rule.

(m) When funding and resources are available, the CDDP must facilitate selection of individuals from the comprehensive services wait list using the date of enrollment on the comprehensive services wait list. An individual in crisis according to OAR 411-320-0160(2) and in need of service must be given first consideration for comprehensive services regardless of the date of enrollment on the comprehensive services wait list.

(n) The services coordinator may remove an individual from the comprehensive services wait list for the following reasons:

- (A) The individual requests to be removed;
- (B) The individual is placed in comprehensive services; or
- (C) The individual has exited or been terminated from case management services or a support services brokerage.

(o) The CDDP must inform the individual of the CDDP's intent to remove the individual from the comprehensive services wait list.

(p) Services coordinators must coordinate services with the child welfare (CW) caseworker assigned to a child to ensure the provision of required supports from the Department, CDDP, and CW.

(q) Services coordinators may attend IEP planning meetings or other transition planning meetings for children when the services coordinator is invited by the family or guardian to participate.

(A) The services coordinator may, to the extent resources are available, assist the family in accessing those critical non-educational services that the child or family may need.

(B) Upon request and to the extent possible, the services coordinator may act as a proponent for the child or family at IEP meetings.

(C) The services coordinator must participate in transition planning by attending IEP meetings or other transition planning meetings of students 16 years of age or older, or until the student is enrolled in the support services brokerage, to discuss the individual's transition to adult living and work situations unless such attendance is refused by the child's parent or legal guardian, or the individual if the individual is 18 years or older.

(r) The CDDP must ensure that individuals eligible for and receiving developmental disability services are enrolled in Department payment and reporting systems. The county of origin must enroll the individual into the Department payment and reporting systems for all developmental disability service providers except in the following circumstances:

(A) The Department shall complete the enrollment or termination form for children entering or leaving a licensed 24-hour residential program that is directly contracted with the Department.

(B) The Department shall complete the Department payment and reporting systems enrollment, termination, and billing forms for children entering or leaving the children's intensive in-home services (CIIS) program.

(C) The Department shall complete the enrollment, termination, and billing forms as part of an interagency agreement for purposes of billing for crisis diversion services by a region.

(s) Services coordinators must facilitate referrals to nursing homes when appropriate as determined by OAR 411-070-0043.

(t) The services coordinator must coordinate and monitor the specialized services provided to an eligible individual living in a nursing home in accordance with OAR 411-320-0150.

(u) If an adult who meets eligibility for support services as described in OAR 411-340-0100 is not enrolled in services other than case management and requires more than occasional services, or requires services that are available through a support services brokerage, the individual must be referred to a brokerage, unless the individual refuses. Referrals to the support services brokerage must be in accordance with OAR chapter 411, division 340.

(v) The services coordinator must ensure that all serious events related to an individual are reported to SPD using the SERT system. The CDDP must ensure that there is monitoring and follow-up on both individual events and system trends.

(w) When the services coordinator completes the Title XIX waiver form, the services coordinator must ensure that Medicaid eligible individuals are offered the choice of home and community-based waiver services, provided a notice of hearing rights, and have a completed Title XIX waiver form that is reviewed annually or at anytime there is a significant change. For individuals who are expected to enroll in support services, the services coordinator must complete the initial Title XIX waiver form after the individual's 18th birth date and no more than 30 days prior to enrollment into the support services brokerage. The support services brokerage staff must

assess the individual's level of care annually thereafter for continued Title XIX waiver eligibility or at anytime there are significant changes.

(x) The services coordinator must participate in the appointment of a health care representative per OAR chapter 411, division 365.

(y) The services coordinator must coordinate with other state, public, and private agencies regarding services to individuals.

(z) The CDDP must ensure that a services coordinator is available to provide or arrange for comprehensive in-home supports for adults, long term supports for children, or family supports, as required, to meet the support needs of eligible individuals. This includes:

- (A) Providing assistance in determining needs and planning supports;
- (B) Providing assistance in finding and arranging resources and supports;

(C) Providing education and technical assistance to make informed decisions about support need and direct support service providers;

(D) Arranging fiscal intermediary services;

(E) Arranging employer-related supports; and

(F) Providing assistance with monitoring and improving the quality of supports.

(5) SERVICE PRIORITIES. If it becomes necessary for the CDDP to prioritize the availability of case management services, the CDDP must request and have approval of a variance prior to implementation of any alternative plan. If the reason for the need for the variance could not have been reasonably anticipated by the CDDP, the CDDP has 15 working days to submit the variance request to the Department. The variance request must:

(a) Document the reason the service prioritization is necessary (including any alternatives considered);

(b) Detail the specific service priorities being proposed; and

(c) Provide assurances that the basic health and safety of individuals shall continue to be addressed and monitored.

(6) FAMILY RECONNECTION. The CDDP and the services coordinator must provide assistance to the Department when a family member is attempting to reconnect with an individual who was previously discharged from Fairview Training Center or Eastern Oregon Training Center or the individual is currently receiving developmental disability services.

(a) If a family member contacts a CDDP for assistance in locating a family member they shall be referred to the Department. A family member may contact the Department directly.

(b) The Department shall send the family member a Department form requesting further information to be used in providing notification to the individual. The form shall include the following information:

(A) Name of requestor;

(B) Address of requestor and other contact information;

(C) Relationship to individual;

(D) Reason for wanting to reconnect; and

(E) Last time the family had contact.

(c) The Department shall determine if the individual was previously a resident of Fairview Training Center or Eastern Oregon Training Center and also determine:

(A) If the individual is deceased or living;

(B) Whether the individual is currently or previously enrolled in Department services; and

(C) The county in which services are being provided, if applicable.

(d) Within 10 working days of receipt of the request, the Department shall notify the family member if the individual is enrolled or no longer enrolled in Department services.

(e) If the individual is enrolled in Department services, the Department shall send the completed family information form to the individual or the individual's guardian and the individual's services coordinator.

(f) If the individual is deceased, the Department shall follow the process for identifying the personal representative of the deceased as provided for in ORS 192.526.

(A) If the personal representative and the requesting family member are the same, the family member shall be informed that the person is deceased.

(B) If the personal representative is different from the requesting family member, the personal representative shall be contacted for permission to share the information to the requesting family member. In the event of this situation, the Department must make a good faith effort at finding the personal representative and obtaining a decision concerning the sharing of information as soon as practicable.

(g) When an individual is located, the services coordinator when the individual is enrolled in case management, or the CDDP in conjunction



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with the support services brokerage when the individual is enrolled in a support services brokerage, must facilitate a meeting with the individual or the individual's guardian to discuss and determine if the individual wishes to have contact with the family member.

(A) The services coordinator when the individual is enrolled in case management, or the CDDP in conjunction with the support services brokerage when the individual is enrolled in a support services brokerage, must assist the individual or the individual's guardian in evaluating the information to make a decision regarding initiating contact including providing the information from the form and any relevant history with the family member that might support contact or present a risk to the individual.

(B) If the individual does not have a guardian or is unable to express his or her wishes, the ISP team must be convened to review factors and choose the best response for the individual after evaluating the situation.

(h) If the individual or the individual's guardian wishes to have contact, the individual or ISP team designee may directly contact the family member to make arrangements for the contact.

(i) If the individual or the individual's guardian does not wish to have contact, the services coordinator must notify the Department with the information and the Department shall inform the family member in writing that no contact is requested.

(j) The notification to the family member regarding the decision of the individual or the individual's guardian must be within 60 business days of the receipt of the information form from the family member.

(k) The decision by the individual or the individual's guardian is not appealable.

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 18-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

## 411-320-0110

### Entry and Exit Requirements

#### (1) ADMISSION TO A DEPARTMENT-FUNDED DEVELOPMENTAL DISABILITY PROGRAM.

(a) Department staff must authorize entry into children's residential services, children's proctor care, children's intensive in-home supports, state operated community programs, and state training centers. The services coordinator must make referrals for admission and participate in all entry meetings for these programs.

(b) The services coordinator must ensure that individuals are appropriately referred to a support services brokerage and enrolled within 90 days of requesting support services and selecting a support services brokerage from those available as per OAR 411-340-0110.

(c) Admissions to all other Department-funded programs for individuals must be coordinated and authorized by the services coordinator in accordance with these rules.

(2) WRITTEN INFORMATION REQUIRED. The services coordinator, or the services coordinator's designee, must provide available and sufficient written information to service providers including information that is current and necessary to meet the individual's support needs in comprehensive services prior to admission.

(a) This written information must be provided in a timely manner and include:

(A) A copy of the individual's eligibility determination decision;

(B) A statement indicating the individual's safety skills including ability to evacuate from a building when warned by a signal device, and the ability to adjust water temperature for bathing and washing;

(C) A brief written history of any behavioral challenges including supervision and support needs;

(D) A medical history and information on health care supports that includes, where available:

(i) The results of a physical exam (if any) made within 90 days prior to the entry;

(ii) Results of any dental evaluation;

(iii) A record of immunizations;

(iv) A record of known communicable diseases and allergies; and

(v) A record of major illnesses and hospitalizations.

(E) A written record of any current or recommended medications, treatments, diets, and aids to physical functioning;

(F) If applicable, copies of protocols, the risk tracking record, and any support documentation;

(G) Copies of documents relating to guardianship, conservatorship, health care representative, power of attorney, court orders, probation and parole information, or any other legal restrictions on the rights of the individual, when applicable;

(H) Written documentation why preferences or choices of the individual cannot be honored at that time;

(I) Written documentation that the individual is participating in out-of-residence activities including school enrollment for individuals under the age of 21; and

(J) A copy of the most recent functional assessment, Behavior Support Plan, ISP, and IEP, if applicable.

(b) If the individual is being admitted from the individual's family home and entry information is not available due to a crisis, the services coordinator must ensure that the service provider assesses the individual upon entry for issues of immediate health or safety and the services coordinator must document a plan to secure the information listed in subsection (a) this section no later than 30 days after admission. The documentation must include a written description as to why the information is not available. A copy of the information and plan must be given to the service provider at the time of entry.

(c) If the individual is being admitted from comprehensive service, the information must be made available prior to the admission.

(3) ENTRY MEETING. Prior to an individual's date of entry into a Department-funded comprehensive service, the ISP team must meet to review referral material in order to determine appropriateness of placement. The ISP team participants shall be determined according to OAR 411-320-0120. The findings of the entry meeting must be recorded in the individual's file and distributed to the ISP team members. The documentation of the entry meeting must include at a minimum:

(a) The name of the individual proposed for services;

(b) The date of the entry meeting and the date determined to be the date of entry;

(c) The names and role of the participants at the entry meeting;

(d) Documentation of the pre-entry information required by section (2)(a) of this rule;

(e) Documentation of the decision to serve or not serve the individual requesting service, with reasons;

(f) If the decision was made to enter the individual, 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 after admission; and

(g) Documentation of the participants included in the entry meeting.

(4) CRISIS DIVERSION SERVICES. For a period not to exceed 30 days, section (3)(d) of this rule does not apply if an individual is temporarily admitted to a program for crisis diversion services.

(5) EXIT FROM DEPARTMENT-FUNDED PROGRAMS. All exits from Department-funded developmental disability services must be authorized by the CDDP. All exits from Department direct-contracted service for children's 24-hour residential and from state-operated community programs, must be authorized by Department staff. Prior to an individual's exit date, the ISP team must meet to review the appropriateness of the move and to coordinate any services necessary during or following the transition. The ISP team participants must be determined according to OAR 411-320-0120(1)(b).

(6) EXIT STAFFING. The exit plan must be distributed to all ISP team members. The exit plan must include:

(a) The name of the individual considered for exit;

(b) The date of the exit meeting;

(c) Documentation of the participants included in the exit meeting;

(d) Documentation of the circumstances leading to the proposed exit;

(e) Documentation of the discussion of the strategies to prevent an exit from service, unless the individual, the individual's legal guardian or, for a child, the child's parent or guardian, is requesting the exit;

(f) Documentation of the decision regarding exit including verification of majority agreement of the exit meeting participants regarding the decision; and

(g) The written plan for services for the individual after exit.

(7) TRANSFER MEETING. All transfers within a county between service sites by a comprehensive service provider agency must be authorized by the CDDP, except for transfers between Department direct contracted services for children in 24-hour residential programs and in state operated community programs. Transfers between Department direct contracted services for children in 24-hour residential programs and state operated community programs must be coordinated by Department staff. A transfer meeting of the ISP team must precede any decision to transfer an individual. Findings of such a transfer meeting must be recorded in the individual's file and include, at a minimum:

(a) The name of the individual considered for transfer;

(b) The date of the transfer meeting;

# ADMINISTRATIVE RULES

(c) Documentation of the participants included in the transfer meeting;

(d) Documentation of the circumstances leading to the proposed transfer;

(e) Documentation of the alternatives considered instead of transfer;

(f) Documentation of the reasons any preferences of the individual, the individual's legal representative, or family members may not be honored;

(g) Documentation of the decision regarding transfer including verification of majority agreement of the transfer meeting participants regarding the decision; and

(h) The written plan for services for the individual after transfer.

(8) ENTRY TO SUPPORT SERVICES.

(a) Referrals of eligible individuals to a support services brokerage must be made in accordance with OAR 411-340-0110. Referrals must be made using the Department mandated application and referral form in accordance with Department guidelines.

(b) The CDDP of an individual's county of origin must find the individual eligible for services from a support services brokerage when:

(A) The individual is an Oregon resident who has been determined eligible for developmental disability services by the CDDP;

(B) The individual is an adult living in his or her own home or family home and not receiving other Department-paid in-home or community living support other than state Medicaid plan services;

(C) The individual is not enrolled in comprehensive services;

(D) At the time of initial enrollment in the support services brokerage, the individual is not receiving crisis diversion services from the Department because the individual does not meet one or more of the crisis risk factors listed in OAR 411-320-0160;

(E) The individual, or the individual's legal representative, has chosen to use a support service brokerage for assistance with design and management of personal supports; and

(F) The individual is eligible for enrollment in the Support Services Waiver.

(c) The individual must be referred for enrollment within 90 days of:

(A) Being determined eligible for developmental disability services;

(B) Being determined eligible for enrollment in the Support Services

Waiver;

(C) The individual's 18th birth date;

(D) Requesting support services; and

(E) Selecting an available support services brokerage within the CDDP's geographic service area.

(d) The services coordinator must communicate with the support services brokerage staff and provide all relevant information upon request and as needed to assist support services brokerage staff in developing an ISP that best meets the individual's support needs including:

(A) A current application or referral on the Department mandated application or referral form;

(B) A completed Title XIX waiver form;

(C) A copy of the eligibility statement for developmental disability services;

(D) Copies of financial eligibility information;

(E) Copies of any legal documents such as guardianship papers, conservatorship, civil commitment status, probation and parole, etc.;

(F) Copies of relevant progress notes; and

(G) A copy of any current plans.

[ED. NOTE: Forms referenced are available from the agency.]

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 18-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

## 411-340-0100

### Eligibility for Support Service Brokerage Services

(1) NON-DISCRIMINATION. Individuals determined eligible according to section (2) of this rule may not be denied brokerage services or otherwise discriminated against on the basis of age, diagnostic or disability category, race, color, creed, national origin, citizenship, income, or duration of Oregon residence.

(2) ELIGIBILITY. The CDDP of an individual's county of residence may find the individual eligible for a brokerage when:

(a) The individual is an Oregon resident who has been determined eligible for developmental disability services by the CDDP;

(b) The individual is eligible for enrollment in the Support Services Waiver;

(c) The individual is an adult living in the individual's own home or family home and not receiving other Department-paid in-home or community living support other than state Medicaid plan services;

(d) The individual is not enrolled in comprehensive services;

(e) At the time of initial enrollment in the brokerage, the individual is not receiving short-term services from the Department because the individual is eligible for, and at imminent risk of, civil commitment under ORS chapter 427.215 through 427.306; and

(f) The individual or the individual's legal representative has chosen to use a brokerage for assistance with design and management of personal supports.

(3) CONCURRENT SERVICES. Individuals are not eligible for service by more than one brokerage unless the concurrent service:

(a) Is necessary to affect transition from one brokerage to another;

(b) Is part of a collaborative plan between the affected brokerages; and

(c) Does not duplicate services and expenditures.

Stat. Auth.: ORS 409.050 & 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 309-041-1840, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 18-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

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**Rule Caption:** Program Services Rule Revisions to Implement OAR Chapter 411, Division 323 (Developmental Disability Certification and Endorsement).

**Adm. Order No.:** SPD 19-2011(Temp)

**Filed with Sec. of State:** 7-1-2011

**Certified to be Effective:** 7-1-11 thru 12-28-11

**Notice Publication Date:**

**Rules Adopted:** 411-323-0035, 411-325-0025

**Rules Amended:** 411-323-0010, 411-323-0020, 411-323-0030, 411-323-0040, 411-323-0050, 411-323-0060, 411-323-0070, 411-325-0020, 411-325-0060, 411-325-0320, 411-325-0460, 411-328-0560, 411-328-0570, 411-328-0630, 411-328-0740, 411-335-0010, 411-335-0020, 411-335-0030, 411-335-0060, 411-335-0310, 411-345-0010, 411-345-0020, 411-345-0030, 411-345-0050, 411-345-0100, 411-345-0110, 411-345-0130, 411-345-0190

**Rules Suspended:** 411-325-0080, 411-325-0100, 411-325-0160, 411-325-0210, 411-325-0310, 411-325-0450, 411-328-0580, 411-328-0590, 411-328-0600, 411-328-0610, 411-328-0670, 411-328-0730, 411-328-0805, 411-328-0810, 411-328-0820, 411-328-0830, 411-335-0050, 411-335-0070, 411-335-0080, 411-335-0090, 411-335-0100, 411-335-0110, 411-335-0140, 411-335-0300, 411-335-0370, 411-335-0380, 411-335-0390, 411-345-0080

**Subject:** In response to the Department of Human Services' (Department) transformation efforts and the need to generally streamline operations in order to meet and address current and future budget needs, the Department adopted the developmental disability certification and endorsement rules for community services programs in OAR chapter 411, division 323.

The Department is temporarily updating the following rules to implement the July 1, 2011 adoption of the certification and endorsement rules; further prescribe standards, responsibilities and procedures for endorsement; and centralize many of the program management requirements that were previously reflected in specific program rules.

- OAR chapter 411, division 323 (Developmental Disability Certification and Endorsement);

- OAR chapter 411, division 325 (24-Hour Residential Services);

- OAR chapter 411, division 328 (Supported Living Services);

- OAR chapter 411, division 335 (Proctor Care Residential Services); and

- OAR chapter 411, division 345 (Employment and Alternatives to Employment Services).

The program rules will continue to exist but will focus on rules specific to the operation of the respective service.

**Rules Coordinator:** Christina Hartman—(503) 945-6398

# ADMINISTRATIVE RULES

## 411-323-0010

### Statement of Purpose

The rules in OAR chapter 411, division 323 prescribe standards, responsibilities, and procedures for agencies to obtain a certificate and endorsement in order to provide the following person-centered services to individuals with developmental disabilities:

- (1) 24-hour residential as described in OAR chapter 411, division 325;
- (2) Supported living as described in OAR chapter 411, division 328;
- (3) Proctor care as described in OAR chapter 411, division 335; or
- (4) Employment and alternatives to employment as described in OAR chapter 411, division 345.

Stat. Auth. ORS 409.050 & 410.070

Stats. Implemented: ORS 409.050 & 410.070

Hist.: SPD 12-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

## 411-323-0020

### Definitions

(1) "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.

(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) "Administrator" means the administrator of the Department, or that person's designee.

(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) "Agency" means a public or private community agency or organization that provides recognized developmental disability services and is approved by the Department to provide these services. For the purpose of these rules, "provider", "service provider", "program", "applicant", and "licensee" are synonymous with "agency".

(7) "Appeal" means the process under ORS chapter 183 that the agency may use to petition conditions or the suspension, denial, or revocation of their application, certificate, or endorsement.

(8) "Applicant" means a person, agency, corporation, or governmental unit, who applies for certification to operate an agency providing services to individuals with developmental disabilities.

(9) "Assessment" means an evaluation of an individual's needs.

(10) "Board of Directors" mean a group of persons formed to set policy and give directions to an agency designed to provide services to individuals with developmental disabilities. A board of directors includes local advisory boards used by multi-state organizations.

(11) "Care" means supportive services, including but not limited to 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 to ensure the individual's health, safety, and welfare. The term "care" is synonymous with "services".

(12) "Certificate" means a document issued by the Department to an agency that certifies the agency is eligible to receive state funds for the provision of endorsed program services.

(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 is 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 Department or a local mental health authority.

(16) "Complaint Investigation" means an investigation of any complaint that has been made to a proper authority that is not covered by an abuse investigation.

(17) "Condition" means a provision attached to:

(a) A new or existing certificate that limits or restricts the scope of the certificate or imposes additional requirements on the certified agency.

(b) A new or existing endorsement that limits or restricts the scope of program services or imposes additional requirements on the certified agency.

(18) "Denial" means the refusal of the Department to issue:

(a) A certificate to operate an agency because the Department has determined the agency is not in compliance with these rules or the corresponding program services rules.

(b) An endorsement to provide program services because the Department has determined the agency is not in compliance with these rules or the corresponding program services rules.

(19) "Department" means the Department of Human Services (DHS).

(20) "Developmental Disability" as defined in OAR 411-320-0020.

(21) "Division" means the Department of Human Services, Seniors and People with Disabilities Division (SPD).

(22) "Endorsement" means authorization to provide program services issued by the Department to a certified agency that has met the qualification criteria outlined in these rules and the corresponding program services rules.

(23) "Executive Director" means the person designated by a board of directors or corporate owner that is responsible for the administration of the agency's services for 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) "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.

(26) "Independence" means the extent to which individuals with developmental disabilities exert control and choice over their own lives.

(27) "Individual" means an adult or a child 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 ISP is developed at minimum annually 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.

(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 family or other persons requested to develop the ISP.

(30) "Integration" means the use by individuals with developmental disabilities of the same community resources used by and available to other persons in the community, including participation in community activities and having 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 including:

(a) For the purposes of these rules, 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, a staff or volunteer working with adults eighteen years and older, and while acting in an official capacity,



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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) "Medicaid Agency Identification Number" means the numeric identifier assigned to an agency as described in OAR chapter 411, division 370 following the agency's enrollment to manage service delivery sites or areas within Oregon under endorsement or license from the Department. .

(34) "Medicaid Performing Provider Number" means the numeric identifier assigned to an entity or person by the Department, following enrollment to deliver Medicaid funded services as described in OAR chapter 411, division 370. The Medicaid Performing Provider Number is used by the rendering provider for identification and billing purposes associated with service authorizations and payments.

(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. OIS is based on a proactive approach that includes methods of effective evasion, deflection, and escape from holding.

(36) "Ownership Interest" means, as defined in 42 CFR 455.101, the possession of equity in the capital, the stock, or the profits of the disclosing entity as determined by 42 CFR 455.102. Person with an ownership or control interest means a person or corporation that:

(a) Has an ownership interest totaling 5 percent or more in a disclosing entity;

(b) Has an indirect ownership interest equal to 5 percent or more in a disclosing entity;

(c) Has a combination of direct and indirect ownership interests equal to 5 percent or more in a disclosing entity;

(d) Owns an interest of 5 percent or more in any mortgage, deed of trust, note, or other obligation secured by the disclosing agency if that interest equals at least 5 percent of the value of the property or assets of the disclosing entity;

(e) Is an officer or director of a disclosing agency that is organized as a corporation; or

(f) Is a partner in a disclosing entity that is organized as a partnership.

(37) "Person-Centered Planning" means:

(a) A process, either formal or informal, for gathering and organizing information that helps an individual:

(A) Determine and describe choices about personal goals, activities, and lifestyle preferences;

(B) Design strategies and networks of support to achieve goals and a preferred lifestyle using individual strengths, relationships, and resources; and

(C) Identify, use, and strengthen naturally occurring opportunities for support at home and in the community.

(b) The methods for gathering information vary, but all are consistent with individual needs and preferences.

(38) "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.

(39) "Productivity" as defined in ORS 427.005 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.

(40) "Program Services" mean, for the purpose of these rules, the services described in:

(a) OAR chapter 411, division 325, 24-hour Residential Services for Children and Adults with Developmental Disabilities;

(b) OAR chapter 411, division 328, Supported Living Services for Individuals with Developmental Disabilities;

(c) OAR chapter 411, division 335, Proctor Care Residential Services for Individuals with Developmental Disabilities; and

(d) OAR chapter 411, division 345, Employment and Alternatives to Employment Services for Individuals with Developmental Disabilities.

(41) "Program Services Rules" mean, for the purpose of these rules, the rules in:

(a) OAR chapter 411, division 325, 24-hour Residential Services for Children and Adults with Developmental Disabilities;

(b) OAR chapter 411, division 328, Supported Living Services for Individuals with Developmental Disabilities;

(c) OAR chapter 411, division 335, Proctor Care Residential Services for Individuals with Developmental Disabilities; and

(d) OAR chapter 411, division 345, Employment and Alternatives to Employment Services for Individuals with Developmental Disabilities.

(42) "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.

(43) "Revocation" means the action taken by the Department to rescind:

(a) An agency certificate after the Department has determined that the agency is not in compliance with these rules or the corresponding program services rules.

(b) An endorsement for an agency after the Department has determined that the agency is not in compliance with these rules or the corresponding program services rules.

(44) "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, and monitor Individual Support Plan services, and to act as a proponent for individuals with developmental disabilities.

(45) "Staff" means paid employees responsible for providing services to individuals and whose wages are paid in part or in full with funds sub-contracted with the community developmental disability program or contracted directly through the Department.

(46) "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.

(47) "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 subject to change with time and circumstances.

(48) "Suspension" means an immediate temporary withdrawal of the:

(a) Certificate to operate an agency after the Department determines that the agency is not in compliance with these rules or the corresponding program services rules.

(b) Endorsement to provide program services after the Department determines that the agency is not in compliance with these rules or the corresponding program services rules.

(49) "These Rules" mean the rules in OAR chapter 411, division 323.

(50) "Unacceptable Background Check" means a check that precludes the agency from being certified or endorsed for the following reasons:

(a) The agency or any person holding 5 percent or greater ownership interest in the agency has been disqualified under OAR 407-007-0275; or

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

(51) "Variance" means a temporary exception from a regulation or provision of these rules or the program services rules that may be granted by the Department upon written application by the agency.

(52) "Volunteer" means any person assisting in an agency without pay to support the services provided to individuals.

Stat. Auth. ORS 409.050 & 410.070

Stats. Implemented: ORS 409.050 & 410.070

Hist.: SPD 12-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

## 411-323-0030

### Certification

(1) CERTIFICATE REQUIRED.

(a) No person, agency, or governmental unit acting individually or jointly with any other person, agency, or governmental unit intending to provide program services as defined in OAR 411-323-0020 shall establish, conduct, maintain, manage, or operate an agency without being certified by the Department under these rules.

(b) Certificates are not transferable.

(c) The Department shall issue a certificate to an applicant found to be in compliance with these rules. The certificate shall be in effect for five years from the date issued unless revoked or suspended.

(2) CURRENT AGENCY CERTIFICATION. All agencies providing program services as of July 1, 2011 shall be issued a certificate that expires in five years unless sooner revoked or suspended.

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(3) **CERTIFICATION.** Notwithstanding section (2) of this rule, an agency requiring certification must apply for an initial certificate and for a certificate renewal.

(a) **INITIAL APPLICATION.**

(A) The applicant must submit an application at least 30 days prior to anticipated certification. The completed application must be on a form provided by the Department and must include all information requested by the Department.

(B) The applicant requesting certification as an agency must identify the agency's business plan. At a minimum, the agency's business plan must include:

(i) A copy of any management agreements or contracts, relative to the operation and ownership of the agency;

(ii) A financial plan that includes:

(I) If an existing agency, the last two years audits, as directed by the Office of Management and Budget circular A-133, completed by an outside firm; or

(II) If applying as a new firm, financial statements indicating capital and the financial plan developed to assure sustainability, partnerships, loans, and any other financial assistance.

(iii) The names, dates of birth, and social security numbers of those serving as the agency's Board of Directors as required by CFR 455.104;

(C) The applicant must develop a plan identifying the scope of program services the applicant intends to provide and request endorsement for each program service as described in OAR 411-323-0035; and

(D) Liability and operational insurance coverage as described in subsection (b) of this section.

(b) **LIABILITY AND OPERATIONAL INSURANCE COVERAGE.**

(A) At a minimum, the agency must demonstrate proof, at the agencies expense, and maintain in effect with respect to all occurrences taking place during the certification period:

(i) Automobile liability insurance with a combined single limit per occurrence of not less than \$500,000.

(ii) Comprehensive or commercial general liability insurance covering bodily injury and property damage including personal injury coverage and contractual liability coverage for the agency. The combined single limit per occurrence may not be less than \$500,000 or the equivalent. Each annual aggregate limit may not be less than \$500,000 when applicable.

(B) The agency, the agency's subcontractors if any, and all employers providing work, labor, or materials under the agency are subject employers under the Oregon Workers' Compensation Law and must comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers including employers' liability insurance with coverage limits of not less than \$100,000 each accident. Agencies who perform the work without the assistance of labor or any staff member need not obtain such coverage.

(C) The agency must name the State of Oregon, Department of Human Services, and their divisions, officers, and employees as additional insured's on any insurance policies required by these rules with respect to agency activities being performed under the agency's certification. Such insurance must be issued by an insurance company licensed to do business in the state of Oregon and must contain a 30 day notice of cancellation endorsement.

(D) Prior to certification, the agency must forward to the Department certificates of insurance indicating coverage as required by this rule.

(E) In the event of unilateral cancellation or restriction by the agency's insurance company of any insurance coverage required by this rule, the agency must immediately notify the Department orally of the cancellation or restriction and must confirm the oral notification in writing within three days of notification by the insurance company to the agency.

(c) **RENEWAL.**

(A) The Department shall conduct a certification review of the agency prior to the renewal of the certificate. The review shall be conducted 30 to 120 days prior to expiration of the certificate.

(B) An application for renewal filed with the Department before the date of expiration extends the effective date of the existing certificate until the Department takes action upon the application for renewal.

(C) If the renewal application is not submitted prior to the expiration date, the agency shall be treated as a non-certified Medicaid agency subject to termination of their Medicaid Agency Identification Number.

(D) The Department may not renew a certificate if the agency is not in substantial compliance with these rules or the corresponding program services rules.

(d) If an applicant fails to provide complete, accurate, and truthful information during the application or renewal process, the Department may

delay initial certification, deny the application, or revoke or refuse to renew the application for certification.

(e) Any applicant or person with an ownership interest in an agency shall be considered responsible for acts occurring during, and relating to, the operation of the agency for purpose of certification.

(f) The Department may consider the background and operating history of the applicant and each person with an ownership interest when determining whether to issue or renew a certificate.

(g) Prior to issuance or renewal of the certificate, the applicant must demonstrate to the satisfaction of the Department that the applicant is in compliance with these rules.

(h) The Department shall conduct a review of the agency prior to the issuance of a certificate.

(4) **EXPIRATION.** Unless revoked, suspended, or terminated earlier, each certificate to operate as a Medicaid agency shall expire five years following the date of issuance.

(5) **TERMINATION.** The certificate shall automatically terminate on the date agency operation is discontinued or if there is a change in ownership.

(6) **RETURN OF CERTIFICATE.** The certificate must be returned to the Department immediately upon suspension or revocation of the certificate or when agency operation is discontinued.

(7) **CHANGE OF OWNERSHIP, LEGAL ENTITY, LEGAL STATUS, OR MANAGEMENT CORPORATION.**

(a) The agency must notify the Department in writing of any pending change in the agency's ownership or legal entity, legal status, or management corporation.

(b) A new certificate shall be required upon change in the agency's ownership or legal entity, legal status, or management corporation. The agency must submit a certificate application at least 30 days prior to change in ownership or legal entity, legal status, or management corporation.

(8) **CONDITIONS.**

(a) The Department may attach conditions to a certificate that limit, restrict, or specify other criteria for operation of the agency. The type of condition attached to a certificate shall directly relate to a risk of harm or potential risk of harm to individuals. The Department may attach a condition to a certificate upon a finding that:

(A) Information on the application or initial inspection requires a condition to protect the health, safety, or welfare of individuals;

(B) A threat to the health, safety, or welfare of an individual exists;

(C) There is reliable evidence of abuse, neglect, or exploitation; or

(D) The agency is not being operated in compliance with these rules or the corresponding program services rules.

(b) Conditions that the Department may impose on a certificate include but are not limited to:

(A) Restricting the total number of individuals that may be served;

(B) Restricting the number and support level of individuals allowed within program services based upon the capacity of the agency and staff to meet the health and safety needs of all individuals;

(C) Reclassifying the level of individuals that may be served;

(D) Requiring additional staff or staff qualifications;

(E) Requiring additional training;

(F) Restricting the agency from allowing persons on the premises who may be a threat to an individual's health, safety, or welfare;

(G) Requiring additional documentation; or

(H) Restricting admissions.

(c) **NOTICE.** The Department shall notify the agency in writing of any conditions imposed, the reason for the conditions, and the opportunity to request a hearing under ORS chapter 183. Conditions take effect immediately upon issuance of the notice, or at such later date as indicated on the notice, and shall continue until removed by the Department.

(d) **HEARING.** The agency may request a contested case hearing in accordance with ORS chapter 183 and this rule upon written notice from the Department of the imposition of conditions.

(A) The agency must request a hearing within 21 days of receipt of the Department's written notice of certificate conditions.

(B) In addition to, or in-lieu of a hearing, an agency may request an administrative review as described in section (11) of this rule. The administrative review does not diminish an agency's right to a hearing.

(e) The agency may send a written request to the Department to remove a condition if the agency believes the situation that warranted the condition has been remedied.

(9) **CERTIFICATE DENIAL, REFUSAL TO RENEW, OR REVOCATION.**

# ADMINISTRATIVE RULES

(a) The Department may deny, refuse to renew, or revoke a certificate when the Department finds the agency, or any person holding 5 percent or greater ownership interest in the agency:

(A) Demonstrates substantial failure to comply with these rules or the corresponding program services rules such that the health, safety, or welfare of individuals is jeopardized and the agency fails to correct the non-compliance within 30 calendar days of receipt of written notice of non-compliance;

(B) Has demonstrated a substantial failure to comply with these rules or the corresponding program services rules such that the health, safety, or welfare of individuals is jeopardized;

(C) Has been convicted of any crime that would have resulted in an unacceptable background check upon hiring or authorization of service;

(D) Has been convicted of a misdemeanor associated with the operation of an agency or program services;

(E) Falsifies information required by the Department to be maintained or submitted regarding care of individuals, program services finances, or individuals' funds;

(F) Has been found to have permitted, aided, or abetted any illegal act that has had significant adverse impact on individual health, safety, or welfare; or

(G) Has been placed on the current Centers for Medicare and Medicaid Services list of excluded or debarred providers.

(b) NOTICE. The Department may issue a notice of denial, refusal to renew, or revocation of the certificate following a Department finding that there is a substantial failure to comply with these rules or the corresponding program services rules such that the health, safety, or welfare of individuals is jeopardized, or that one or more of the events listed in subsection (a) of this section has occurred.

(c) HEARING. An applicant for a certificate or a certified agency, as applicable, may request a contested case hearing in accordance with ORS Chapter 183, this rule, and 443.440 for 24-hour residential services, upon written notice from the Department of denial, refusal to renew, or revocation of the certificate.

(A) DENIAL. The applicant must request a hearing within 60 days of receipt of the Department's written notice of denial.

(B) REFUSAL TO RENEW. The agency must request a hearing within 60 days of receipt of the Department's written notice of refusal to renew.

## (C) REVOCATION.

(i) Notwithstanding subsection (ii) below, the agency must request a hearing within 21 days of receipt of the Department's written notice of revocation. In addition to, or in-lieu of a hearing, the agency may request an administrative review as described in section (11) of this rule. The administrative review does not diminish the agency's right to a hearing.

(ii) 24-HOUR RESIDENTIAL SERVICES. An agency endorsed to provide 24-hour residential services as described in OAR chapter 411, division 325 must request a hearing within 10 days of receipt of the Department's written notice of revocation.

## (10) IMMEDIATE SUSPENSION OF CERTIFICATE.

(a) When the Department finds a serious and immediate threat to individual health and safety and sets forth the specific reasons for such findings, the Department may, by written notice to the agency, immediately suspend a certificate without a pre-suspension hearing and the agency may not continue operation.

(b) HEARING. The agency may request a contested case hearing in accordance with ORS Chapter 183, this rule, and 443.440 for 24-hour residential services, upon written notice from the Department of the immediate suspension of the certificate.

(A) Notwithstanding subsection (B) below, the agency must request a hearing within 21 days of receipt of the Department's written notice of suspension. In addition to, or in-lieu of a hearing, the agency may request an administrative review as described in section (11) of this rule. The administrative review does not diminish the agency's right to a hearing.

(B) 24-HOUR RESIDENTIAL SERVICES. An agency endorsed to provide 24-hour residential services as described in OAR chapter 411, division 325, must request a hearing within 10 days of receipt of the Department's written notice of suspension.

## (11) ADMINISTRATIVE REVIEW.

(a) Notwithstanding subsection (b) below, the agency, in addition to the right to a contested case hearing, may request an administrative review by the Department's Administrator or designee.

(b) 24-HOUR RESIDENTIAL SERVICES. An agency endorsed to provide 24-hour residential services as described in OAR chapter 411, division 325, may not request an administrative review for revocation or suspension. An agency endorsed to provide 24-hour residential services as

described in OAR chapter 411, division 325, may request an administrative review for imposition of conditions.

(c) The request for administrative review must be received by the Department within 10 days from the date of the Department's notice of suspension, revocation, or imposition of conditions. The agency may submit, along with the request for administrative review, any additional written materials the agency wishes to have considered during the administrative review.

(d) The Department shall conduct the administrative review and issue a decision within 10 days from the date of receipt of the request for administrative review, or by a later date as agreed to by the agency.

(e) If the decision of the Department is to affirm the suspension, revocation, or condition, the agency, notwithstanding subsection (b) of this section, may appeal the decision to a contested case hearing as long as the request for a contested case hearing was received by the Department within 21 days of the original written notice of suspension, revocation, or imposition of conditions.

(12) INFORMAL CONFERENCE. After the Department has received a request for hearing, the Department shall offer the applicant or the agency an opportunity for an informal conference unless an administrative review has been completed as described in section (11) of this rule.

Stat. Auth. ORS 409.050 & 410.070

Stats. Implemented: ORS 409.050 & 410.070

Hist.: SPD 12-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

## 411-323-0035

### Endorsement

#### (1) ENDORSEMENT REQUIRED.

(a) To provide program services, an agency must have:

(A) A certificate to provide Medicaid services in the state of Oregon as described in OAR 411-323-0030;

(B) A Medicaid Agency Identification Number assigned by the Department as described in OAR chapter 411, division 370;

(C) For each licensed site or geographic location where direct services shall be delivered, a Medicaid Performing Provider Number assigned by the Department as described in OAR chapter 411, division 370; and

(D) Approved endorsement for each program service as described in this rule.

(b) No person, agency, or governmental unit acting individually or jointly with any other person, agency, or governmental unit shall establish, conduct, maintain, manage, or operate program services without being endorsed by the Department under these rules.

(c) Endorsements are not transferable or applicable to any other program services.

(d) The Department shall issue an endorsement to an applicant found to be in compliance with these rules and the corresponding program services rules. The endorsement shall be in effect for five years from the date issued unless revoked or suspended.

(2) CURRENT AGENCY ENDORSEMENT. All agencies providing program services as of July 1, 2011 shall be endorsed for five years for the program services being provided as of July 1, 2011 unless the endorsement is sooner revoked or suspended.

(3) ENDORSEMENT. A certified agency requiring endorsement must apply for an initial endorsement and for endorsement renewal notwithstanding section (2) of this rule.

(a) INITIAL APPLICATION. At least 30 days prior to providing program services, an agency must submit an application for endorsement that identifies the services that the agency intends to provide. The completed application must be on a form provided by the Department and must include all information requested by the Department.

#### (b) RENEWAL.

(A) To renew endorsement, the agency must submit an application at least 30 days but not more than 120 days prior to the expiration date of the existing endorsement. On renewal, no additional program services shall be endorsed unless specifically approved by the Department.

(B) An application for renewal filed with the Department before the date of expiration extends the effective date of the existing endorsement until the Department takes action upon the application for renewal.

(C) If the renewal application is not submitted prior to the expiration date, the agency may not provide program services.

(D) The Department may not renew endorsement if the agency is not in substantial compliance with these rules or the corresponding program services rules.

(E) Renewal of endorsements for program services is contingent upon the successful renewal of the agency's certificate.



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(c) If an applicant fails to provide complete, accurate, and truthful information during the application or renewal process, the Department may delay initial endorsement, deny the application, or revoke or refuse to renew the endorsement for program services.

(d) Any applicant or person with an ownership interest in an agency shall be considered responsible for acts occurring during, and relating to, the operation of the agency for purpose of endorsement.

(e) The Department may consider the background and operating history of the applicant and each person with an ownership interest when determining whether to issue or renew an endorsement.

(f) Prior to issuance or renewal of the endorsement, the applicant must demonstrate to the satisfaction of the Department that the applicant is in compliance with these rules and the corresponding program services rules.

(g) The Department shall conduct a review of the agency prior to the issuance of an endorsement.

(h) Separate endorsements are required for each endorsed program service.

(4) EXPIRATION. Unless revoked, suspended, or terminated earlier, each endorsement to provide program services shall expire five years following the date of issuance.

(5) TERMINATION. Endorsement shall automatically terminate on the date program services are discontinued or agency certification is terminated.

(6) CHANGE OF CERTIFICATION. New endorsement shall be required upon change of an agency's certification. The recertified agency must submit an application for endorsement at least 30 days prior to change of an agency's certification including but not limited to change in ownership or legal entity, legal status, or management corporation.

### (7) CONDITIONS.

(a) The Department may attach conditions to an endorsement that limit, restrict, or specify other criteria for program services. The type of condition attached to an endorsement shall directly relate to a risk of harm or potential risk of harm to individuals. The Department may attach a condition to an endorsement upon a finding that:

(A) Information on the application or initial inspection requires a condition to protect the health, safety, or welfare of individuals;

(B) A threat to the health, safety, or welfare of an individual exists;

(C) There is reliable evidence of abuse, neglect, or exploitation; or

(D) The agency is not being operated in compliance with these rules or the corresponding program services rules.

(b) Conditions that the Department may impose on an endorsement include but are not limited to:

(A) Restricting the total number of individuals that may be served;

(B) Restricting the number and support level of individuals allowed within program services based upon the capacity of the agency and staff to meet the health and safety needs of all individuals;

(C) Reclassifying the level of individuals that may be served;

(D) Requiring additional staff or staff qualifications;

(E) Requiring additional training;

(F) Restricting the agency from allowing persons on the premises who may be a threat to an individual's health, safety, or welfare;

(G) Requiring additional documentation; or

(H) Restricting admissions.

(c) NOTICE. The Department shall notify the agency in writing of any conditions imposed, the reason for the conditions, and the opportunity to request a hearing under ORS chapter 183. Conditions take effect immediately upon issuance of the notice, or at such later date as indicated on the notice, and shall continue until removed by the Department.

(d) HEARING. The agency may request a contested case hearing in accordance with ORS chapter 183 and this rule upon written notice from the Department of the imposition of conditions.

(A) The agency must request a hearing within 21 days of receipt of the Department's written notice of endorsement conditions.

(B) In addition to, or in lieu of a hearing, the agency may request an administrative review as described in section (10) of this rule. The administrative review does not diminish the agency's right to a hearing.

(e) The agency may send a written request to the Department to remove a condition if the agency believes the situation that warranted the condition has been remedied.

(8) ENDORSEMENT DENIAL, REFUSAL TO RENEW, OR REVOCATION.

(a) The Department may deny, refuse to renew, or revoke an endorsement when the Department finds the agency, or any person holding 5 percent or greater ownership interest in the agency:

(A) Fails to maintain agency certification as described in OAR 411-323-0030;

(B) Demonstrates substantial failure to comply with these rules and the corresponding program services rules such that the health, safety, or welfare of individuals is jeopardized and the agency fails to correct the non-compliance within 30 calendar days of receipt of written notice of non-compliance;

(C) Has demonstrated a substantial failure to comply with these rules and the corresponding program services rules such that the health, safety, or welfare of individuals is jeopardized;

(D) Has demonstrated a failure to comply with applicable laws relating to safety from fire;

(E) Has been convicted of any crime that would have resulted in an unacceptable background check upon hiring or authorization of service;

(F) Has been convicted of a misdemeanor associated with the operation of an agency or program services;

(G) Falsifies information required by the Department to be maintained or submitted regarding care of individuals, program services finances, or individuals' funds;

(H) 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

(I) Has been placed on the current Centers for Medicare and Medicaid Services list of excluded or debarred providers.

(b) NOTICE. The Department may issue a notice of denial, refusal to renew, or revocation of an endorsement following a Department finding that there is a substantial failure to comply with these rules or the corresponding program services rules such that the health, safety, or welfare of individuals is jeopardized, or that one or more of the events listed in subsection (a) of this section has occurred.

(c) HEARING. An applicant for an endorsement or an endorsed agency, as applicable, may request a contested case hearing in accordance with ORS Chapter 183, this rule, and 443.440 for 24-hour residential services, upon written notice from the Department of denial, refusal to renew, or revocation of the endorsement.

(A) DENIAL. The applicant must request a hearing within 60 days of receipt of the Department's written notice of denial.

(B) REFUSAL TO RENEW. The agency must request a hearing within 60 days of the receipt of the Department's written notice of refusal to renew.

### (C) REVOCATION.

(i) Notwithstanding subsection (ii) below, the agency must request a hearing within 21 days of receipt of the Department's written notice of revocation. In addition to, or in lieu of a hearing, an agency may request an administrative review as described in section (10) of this rule. The administrative review does not diminish the agency's right to a hearing.

(ii) 24-HOUR RESIDENTIAL SERVICES. An agency endorsed to provide 24-hour residential services as described in OAR chapter 411, division 325, must request a hearing within 10 days of receipt of the Department's written notice of revocation.

### (9) IMMEDIATE SUSPENSION OF ENDORSEMENT.

(a) When the Department finds a serious and immediate threat to individual health and safety and sets forth the specific reasons for such findings, the Department may, by written notice to the agency, immediately suspend an endorsement without a pre-suspension hearing and the program service may not continue operation.

(b) HEARING. The agency may request a contested case hearing in accordance with ORS Chapter 183, this rule, and 443.440 for 24-hour residential services, upon written notice from the Department of the immediate suspension of the endorsement.

(A) Notwithstanding subsection (B) below, the endorsed agency must request a hearing within 21 days of receipt of the Department's written notice of suspension. In addition to, or in-lieu of a hearing, the agency may request an administrative review as described in section (10) of this rule. The administrative review does not diminish the agency's right to a hearing.

(B) 24-HOUR RESIDENTIAL SERVICES. An agency endorsed to provide 24-hour residential services as described in OAR chapter 411, division 325 must request a hearing within 10 days of receipt of the Department's written notice of suspension.

### (10) ADMINISTRATIVE REVIEW.

(a) Notwithstanding subsection (b) below, the agency, in addition to the right to a contested case hearing, may request an administrative review by the Department's Administrator or designee.

(b) 24-HOUR RESIDENTIAL SERVICES. An agency endorsed to provide 24-hour residential services as described in OAR chapter 411, divi-

# ADMINISTRATIVE RULES

sion 325 may not request an administrative review for revocation or suspension. An agency endorsed to provide 24-hour residential services as described in OAR chapter 411, division 325 may request an administrative review for imposition of conditions.

(c) The request for administrative review must be received by the Department within 10 days from the date of the Department's notice of suspension, revocation, or imposition of conditions. The agency may submit, along with the request for administrative review, any additional written materials the agency wishes to have considered during the administrative review.

(d) The Department shall conduct the administrative review and issue a decision within 10 days from the date of receipt of the request for administrative review, or by a later date as agreed to by the agency.

(e) If the decision of the Department is to affirm the suspension, revocation, or condition, the agency, notwithstanding subsection (b) of this section, may appeal the decision to a contested case hearing as long as the request for a contested case hearing was received by the Department within 21 days of the original written notice of suspension, revocation, or imposition of conditions.

(11) **INFORMAL CONFERENCE.** After the Department has received a request for hearing, the Department shall offer the applicant or agency an opportunity for an informal conference unless an administrative review has been completed as described in section (10) of this rule.

Stat. Auth. ORS 409.050 & 410.070  
Stats. Implemented: ORS 409.050 & 410.070  
Hist.: SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

## 411-323-0040

### Inspections and Investigations

(1) Agencies certified and endorsed under these rules must allow the following types of investigations and inspections:

- (a) Quality assurance, onsite inspections, and certificate renewal;
- (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, the Department, or the Department's designee has determined to initiate an investigation, the agency 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) The Department or the Department's designee shall conduct abuse investigations as described in OAR 407-045-0250 to 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, the Department's designee, or a law enforcement agency, the agency may conduct an investigation without further Department approval to determine if any personnel actions are necessary.

(8) 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 agency. The agency must implement the actions necessary within the deadlines listed, to prevent further abuse as stated in the report.

(9) The agency must submit a plan of correction to the Department for any noncompliance found during an inspection under this rule.

Stat. Auth. ORS 409.050 & 410.070  
Stats. Implemented: ORS 409.050 & 410.070  
Hist.: SPD 12-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

## 411-323-0050

### Agency Management and Personnel Practices

(1) **NON-DISCRIMINATION.** The agency must comply with all applicable state and federal statutes, rules, and regulations in regard to non-discrimination in employment policies and practices.

(2) **BASIC PERSONNEL POLICIES AND PROCEDURES.** The agency must have in place and implement personnel policies and procedures that address suspension, increased supervision, or other appropriate disciplinary employment procedures when a staff member or subcontractor including respite providers and volunteers has been identified as an accused person in an abuse investigation or when the allegation of abuse has been substantiated.

(3) **PROHIBITION AGAINST RETALIATION.** The agency or service provider may not retaliate against any staff member, subcontractor including respite providers and volunteers, or proctor providers 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 agency, 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 agency or the individuals served by the agencies.

(4) **MANDATORY ABUSE REPORTING PERSONNEL POLICIES AND PROCEDURES.** All agency staff are mandatory reporters. The agency must notify all staff of mandatory reporting status at least annually on forms provided by the Department. The agency must provide all staff with a Department produced card regarding abuse reporting status and abuse reporting. For reporting purposes the following shall apply:

(a) Agencies 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) Agencies providing services to children must report to the Department or law enforcement in the county where the child resides.

(5) **APPLICATION FOR EMPLOYMENT.** An application for employment at the agency must inquire whether an applicant has had any founded reports of child abuse or substantiated abuse.

(6) **BACKGROUND CHECKS.** Any staff, volunteer, 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 an individual in services must have an approved background 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 above in section (6) of this rule in any capacity who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(b) Subsection (6)(a) of this section does not apply to agency staff who were hired prior to July 28, 2009 and remain in the current position for which the staff member 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.

(7) **EXECUTIVE DIRECTOR QUALIFICATIONS.** The 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.

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(8) **GENERAL STAFF QUALIFICATIONS.** Any staff member 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 background checks in OAR 407-007-0200 to 407-007-0370 and section (6) of this rule;
- (c) If hired on or after July 28, 2009, not have been convicted of any of the disqualifying crimes listed in OAR 407-007-0275;
- (d) Be 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; and
- (g) Have clear job responsibilities as described in a current signed and dated job description.

(9) **PERSONNEL FILES AND QUALIFICATION RECORDS.** The agency must maintain up-to-date written job descriptions for all staff as well as a file available to the Department or the Department's designee for inspection that includes written documentation of the following for each staff member:

- (a) Written documentation that references and qualifications were checked;
- (b) Written documentation by the Department of an approved background check as defined in OAR 407-007-0210;
- (c) Written documentation of staff notification of mandatory abuse training and reporter status prior to supervising individuals and annually thereafter;
- (d) Written documentation of any complaints filed against the staff member and the results of the complaint process, including, if any, disciplinary action;
- (e) Written documentation of any founded report of child abuse or substantiated abuse; and
- (f) Written documentation of required training and hours of training received as described in the program services rules.

(10) **DISSOLUTION OF AN AGENCY.** Prior to the dissolution of an agency, a representative of the governing body or owner of the agency must notify the Department 30 days in advance in writing and make appropriate arrangements for the transfer of individual's records.

Stat. Auth. ORS 409.050 & 410.070  
Stats. Implemented: ORS 409.050 & 410.070  
Hist.: SPD 12-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

## 411-323-0060

### Policies and Procedures

(1) **INDIVIDUAL RIGHTS.** The agency must have and implement written policies and procedures that protect an individual's rights that address the following:

(a) **ABUSE.** Individuals as defined in OAR 411-323-0020 must not be abused nor shall abuse be tolerated by any staff or volunteer of the agency.

(b) **PROTECTION AND WELLBEING.** The agency must ensure the health and safety of individuals from abuse including the protection of individual rights, as well as, encourage and assist individuals through the ISP process to understand and exercise these rights. Except for children under the age of 18, where reasonable limitations have been placed by a parent or guardian, these rights must at a minimum allow for:

(A) Assurance that each individual has the same civil and human rights accorded to other citizens of the same age except when limited by a court order;

(B) Adequate food, housing, clothing, medical and health care, supportive services, and training;

(C) Visits with family members, guardians, friends, advocates and others of the individual's choosing, and legal and medical professionals;

(D) Confidential communication including personal mail and telephone;

(E) Personal property and fostering of personal control and freedom regarding that property;

(F) Privacy in all matters that do not constitute a documented health and safety risk to the individual;

(G) Protection from abuse and neglect, including freedom from unauthorized training, treatment, and chemical, mechanical, or physical restraints;

(H) Freedom to choose whether or not to participate in religious activity;

(I) The opportunity to vote for individuals over the age of 18 and training in the voting process;

(J) Expression of sexuality within the framework of state and federal laws, and for adults over the age of 18, freedom to marry and to have children;

(K) Access to community resources, including recreation, agency services, employment and community inclusion services, school, educational opportunities, and health care resources;

(L) Individual choice for children and adults that allows for decision making and control of personal affairs appropriate to age;

(M) Services that promote independence, dignity, and self-esteem and reflect the age and preferences of the individual;

(N) Individual choice for adults to consent to or refuse treatment, unless incapable, and then an alternative decision maker must be allowed to consent or refuse for the individual. For children, the child's parent or guardian must be allowed to consent to or refuse treatment except as described in ORS 109.610 or limited by court order;

(O) Individual choice to participate in community activities; and

(P) Access to a free and appropriate education for children and individuals under the age of 21 including a procedure for school attendance or refusal to attend.

(2) **HEALTH.** The agency must have and implement policies and procedures that maintain and protect the health of individuals.

(3) **INDIVIDUAL AND FAMILY INVOLVEMENT.** The agency must have and implement a written policy that addresses:

(a) Opportunities for the individual to participate in decisions regarding the operations of the agency;

(b) Opportunities for families, guardians, legal representatives, and significant others of the individuals served by the agency to interact; and

(c) Opportunities for individuals, families, guardians, legal representatives, and significant others to participate on the Board or on committees or to review policies of the agency that directly affect the individuals served by the agency.

(4) **CONFIDENTIALITY OF RECORDS.** The agency must have and implement written policies and procedures that ensure all individuals' records are confidential except as otherwise provided by applicable state and federal rule or laws.

(a) For the purpose of disclosure from individual medical records under this rule, an agency is considered a "public provider" as defined in ORS 179.505.

(b) For the purpose 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.

(5) **BEHAVIOR SUPPORT.** The agency must have and implement a written policy for behavior support that utilizes individualized positive behavior support techniques and prohibits abusive practices.

(6) **PHYSICAL INTERVENTION.** The agency must have and implement written policies and procedures for physical interventions that address the following:

(a) Circumstances allowing the use of physical intervention. The agency must only employ physical intervention techniques that are included in the OIS curriculum approved by the Department or the OIS Steering Committee.

(b) Physical intervention techniques must only be applied:

(A) When the health and safety of the individual and others are at risk, and the ISP team has authorized the procedures in a documented ISP team decision that is included in the ISP and uses procedures that are intended to lead to less restrictive intervention strategies; or

(B) As an emergency measure, if absolutely necessary to protect the individual or others from immediate injury; or

(C) As a health related protection ordered by a physician, if absolutely necessary during the conduct of a specific medical or surgical procedure, or for the individual's protection during the time that a medical condition exists.

(7) **HANDLING AND MANAGING INDIVIDUALS' MONEY.** The agency must have written policies and procedures for the handling and management of individuals' money. Such policies and procedures must provide for:

(a) The individual to manage his or her own funds unless the ISP documents and justifies limitations to self-management;

(b) Safeguarding of an individual's funds;

(c) Individuals receiving and spending their money; and

(d) Taking into account the individual's interests and preferences.

(8) **INFORMAL COMPLAINTS AND GRIEVANCES.** The agency must develop and implement written policies and procedures regarding



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individual informal complaints and formal grievances. These policies and procedures must at minimum address:

(a) **INFORMAL COMPLAINT RESOLUTION.** An individual or someone acting on behalf of the individual must be given the opportunity to informally discuss and resolve any allegation that an agency has taken action which is contrary to law, rule, or policy and that does not meet the criteria for an abuse investigation. Choosing this opportunity does not preclude the individual or someone acting on behalf of the individual to pursue resolution through formal grievance processes.

(b) **FORMAL GRIEVANCE AND GRIEVANCE LOG.**

(A) The agency's formal grievance policies and procedures must include:

(i) A description of how the agency receives and documents grievances from individuals and others acting on the individuals' behalf; and

(ii) Investigation of the facts supporting or disproving the grievance.

(B) The Executive Director or designee must provide a formal written response to the grievant within 15 days of receipt of the grievance, unless the grievance is informally resolved to the grievant's satisfaction prior to that time. The formal written response of the Executive Director or designee must clearly inform the grievant of the availability of assistance in appealing the grievance and how to access that assistance.

(C) The Executive Director or designee must submit to the Department for review grievances that have not been resolved to the satisfaction of the grievant, where the Executive Director or designee believes that the grievant may not have the capability to appeal an adverse decision to the Department.

(D) Documentation of each grievance and its resolution must be filed or noted in the complainant's record. In addition, the agency must maintain a grievance log, which must, at a minimum, identify the person making the complaint, the date of the grievance, the nature of the grievance, the resolution, and the date of the resolution.

(c) If a grievance is associated in any way with abuse, the recipient of the grievance must immediately report the issue to the appropriate authority, the CDDP, the Department, and notify the Executive Director or designee.

(9) **AGENCY DOCUMENTATION REQUIREMENTS.** The agency must have and implement policies and procedures that address agency documentation requirements. Documentation must:

(a) Be prepared at the time, or immediately following the event being recorded;

(b) Be accurate and contain no willful falsifications;

(c) Be legible, dated, and signed by the person making the entry; and

(d) Be maintained for no less than three years.

Stat. Auth. ORS 409.050 & 410.070

Stats. Implemented: ORS 409.050 & 410.070

Hist.: SPD 12-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

## 411-323-0070

### Variations

(1) The Department may grant a variance to these rules based upon a demonstration by the agency that an alternative method or different approach provides equal or greater agency effectiveness and does not adversely impact the welfare, health, safety, or rights of individuals.

(2) The agency requesting a variance must submit, in writing, an application to the Department that contains the following:

(a) The section of the rule from which the variance is sought;

(b) The reason for the proposed variance; and

(c) The alternative practice, service, method, concept, or procedure proposed.

(3) The Department shall approve or deny the request for a variance.

(4) The Department's decision shall be sent to the agency and to all relevant Department programs or offices within 30 calendar days of the receipt of the variance request.

(5) The agency may appeal the denial of a variance request by sending a written request for review to the Administrator, whose decision is final.

(6) The Department shall determine the duration of the variance.

(7) The agency may implement a variance only after written approval from the Department.

Stat. Auth. ORS 409.050 & 410.070

Stats. Implemented: ORS 409.050 & 410.070

Hist.: SPD 12-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

## 411-325-0020

### Definitions

(1) "24-Hour Residential Program" means a comprehensive residential home or facility licensed by the Department 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) "Administrator" means the administrator of the Department, or that person's designee.

(6) "Adult" means an individual 18 years or older with developmental disabilities.

(7) "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.

(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 under ORS chapter 183 that the licensed service provider may use to petition conditions or the suspension, denial, or revocation of their application, certificate, endorsement, or license.

(10) "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.

(11) "Assessment" means an evaluation of an individual's needs.

(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 (ISP) is to be assessed. A baseline level of behavior is reviewed and reestablished at minimum yearly, at the time of the ISP team meeting.

(13) "Behavior Data Collection System" means the methodology specified within the individual's Behavior Support Plan that directs the process for recording observations, interventions, and other support provision information critical to the analysis of the efficacy of the Behavior Support Plan.

(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 service provider 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 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 to ensure the individual's health, safety, and welfare. The term "care" is synonymous with "services".

(17) "Certificate" means a document issued by the Department to a service provider that certifies the service provider is eligible under the rules in OAR chapter 411, division 323 to receive state funds for the provision of endorsed 24-hour residential services.

(18) "Chemical Restraint" means the use of a psychotropic drug or other drugs for punishment or to modify behavior in place of a meaningful behavior or treatment plan.

(19) "Child" means an individual under the age of 18 that has a provisional determination of developmental disability.

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(20) "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 is communicated verbally, through sign language, or by other communication methods.

(21) "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 Department or a local mental health authority.

(22) "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 service 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 service provider to accommodate a staff member's specific circumstances.

(23) "Complaint Investigation" means an investigation of any complaint that has been made to a proper authority that is not covered by an abuse investigation.

(24) "Condition" means a provision attached to a new or existing certificate, endorsement, or license that limits or restricts the scope of the certificate, endorsement, or license or imposes additional requirements on the service provider.

(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 Department to issue a certificate, endorsement, or license to operate a 24-hour residential home or facility for children or adults because the Department has determined that the service provider or the home or facility is not in compliance with these rules or the rules in OAR chapter 411, division 323.

(27) "Department" means the Department of Human Services (DHS).

(28) "Developmental Disability" as defined in OAR 411-320-0020.

(29) "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.

(30) "Division" means the Department of Human Services, Seniors and People with Disabilities Division (SPD).

(31) "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.

(32) "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.

(33) "Endorsement" means authorization to provide 24-hour residential services issued by the Department to a certified service provider that has met the qualification criteria outlined in these rules and the rules in OAR chapter 411, division 323.

(34) "Entry" means admission to a Department-funded developmental disability service. For purposes of these rules, "entry" means admission to a licensed 24-hour home or facility.

(35) "Executive Director" means the person designated by a board of directors or corporate owner that is responsible for the administration of 24-hour residential services.

(36) "Exit" means either termination from a Department-funded developmental disability service provider or transfer from one Department-funded service provider to another.

(37) "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.

(38) "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.

(39) "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.

(40) "Health Care Representative" means:

(a) A health care representative as defined in ORS 127.505; or

(b) A person who has authority to make health care decisions for an individual under the provisions of OAR chapter 411, division 365.

(41) "Incident Report" means a written report of any injury, accident, acts of physical aggression, or 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 ISP is developed at minimum annually 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.

(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 family or other persons requested to develop the ISP.

(47) "Integration" means: the use by individuals with developmental disabilities of the same community resources used by and available to other persons in the community, including participation in community activities and having contact with persons in their community.

(48) "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.

(49) "Licensee" means a person or organization to whom a certificate, endorsement, and license is granted.

(50) "Majority Agreement" means for purposes of entry, exit, transfer, and annual Individual Support Plan (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. Service providers, families, community developmental disability programs, advocacy agencies, or individuals are considered as one member of the ISP team for the purpose of reaching majority agreement.

(51) "Mandatory Reporter" means any public or private official including:

(a) For the purposes of these rules, 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, 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.

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(52) "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.

(53) "Medicaid Agency Identification Number" means the numeric identifier assigned to a service provider as described in OAR chapter 411, division 370 following the service provider's enrollment to manage service delivery sites or areas within Oregon under endorsement or license from the Department.

(54) "Medicaid Performing Provider Number" means the numeric identifier assigned to an entity or person by the Department, following enrollment to deliver Medicaid funded services as described in OAR chapter 411, division 370. The Medicaid Performing Provider Number is used by the rendering service provider for identification and billing purposes associated with service authorizations and payments.

(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) "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.

(57) "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.

(58) "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.

(59) "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.

(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. OIS is based on a proactive approach that includes methods of effective evasion, deflection, and escape from holding.

(61) "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.

(62) "Physical Restraint" means any manual physical holding of or contact with an individual that restricts the individual's freedom of movement.

(63) "Prescription Medication" means any medication that requires a physician prescription before it may be obtained from a pharmacist.

(64) "Productivity" as defined in ORS 427.005 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.

(65) "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.

(66) "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.

(67) "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.

(68) "Revocation" means the action taken by the Department to rescind a certificate, endorsement, or 24-hour home or facility license after the Department has determined that the service provider is not in compliance with these rules or the rules in OAR chapter 411, division 323.

(69) "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.

(70) "Service Provider" means a public or private community agency or organization that provides recognized developmental disability services and is certified and endorsed by the Department to provide these services under these rules and the rules in OAR chapter 411, division 323. For the purpose of these rules, "agency", "provider", "program", "applicant", or "licensee" is synonymous with "service provider."

(71) "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, and monitor Individual Support Plan services, and to act as a proponent for individuals with developmental disabilities.

(72) "Significant Other" means a person selected by the individual to be the individual's friend.

(73) "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.

(74) "Staff" means paid employees responsible for providing services to individuals and whose wages are paid in part or in full with funds sub-contracted with the community developmental disability program or contracted directly through the Department.

(75) "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.

(76) "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 subject to change with time and circumstances.

(77) "Suspension" means an immediate temporary withdrawal of the approval to operate 24-hour residential services after the Department determines that the service provider or 24-hour home or facility is not in compliance with one or more of these rules or the rules in OAR chapter 411, division 323.

(78) "These Rules" mean the rules in OAR chapter 411, division 325.

(79) "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.

(80) "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 (ISP) is developed and approved by the ISP 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 ISP development.

(81) "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.

(82) "Variance" means a temporary exception from a regulation or provision of these rules or the rules in OAR chapter 411, division 323 that may be granted by the Department upon written application by the service provider.

(83) "Volunteer" means any person assisting a service provider without pay to support the services provided to individuals.

Stat. Auth.: ORS 409.050, 410.070, 443.450, & 443.455

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 25-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

### 411-325-0025

#### Program Management

(1) CERTIFICATION, ENDORSEMENT, AND ENROLLMENT. To provide 24-hour residential services, a service provider must have:

(a) A certificate and an endorsement to provide 24-hour residential services as set forth in OAR chapter 411, division 323;

(b) A Medicaid Agency Identification Number assigned by the Department as described in OAR chapter 411, division 370; and

(c) For each specific geographic service area where 24-hour residential services shall be delivered, a Medicaid Performing Provider Number assigned by the Department as described in OAR chapter 411, division 370.



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(2) **INSPECTIONS AND INVESTIGATIONS.** The service provider must allow inspections and investigations as described in OAR 411-323-0040.

(3) **AGENCY MANAGEMENT AND PERSONNEL PRACTICES.** The service provider must comply with the agency management and personnel practices as described in OAR 411-323-0050.

(4) **COMPETENCY BASED TRAINING PLAN.** The service provider must have and implement a Competency Based Training Plan that meets, at a minimum, the competencies and timelines set forth in the Department's Oregon Core Competencies.

(5) **GENERAL STAFF QUALIFICATIONS.** Any staff member providing direct assistance to individuals must:

(a) Have knowledge of individuals' ISP's and all medical, behavioral, and additional supports required for the individuals; and

(b) Have met the basic qualifications in the service provider's Competency Based Training Plan.

(6) **PERSONNEL FILES AND QUALIFICATION RECORDS.** The service provider must maintain the following for each staff member in a file available to the Department or the Department's designee for inspection:

(a) Written documentation kept current that the staff member has demonstrated competency in areas identified by the service provider's Competency Based Training Plan as required by section (4) of this rule, and that is appropriate to their job description;

(b) Written documentation of 12 hours of job-related in-service training annually; and

(c) Documentation that the staff member has been certified in CPR and First Aid by a recognized training agency within three months of employment and that certification is kept current.

(7) **CONFIDENTIALITY OF RECORDS.** The service provider must ensure all individuals' records are confidential as described in OAR 411-323-0060.

(8) **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.

Stat. Auth. ORS 409.050, 410.070, 443.450, & 443.455

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

## 411-325-0060

### Conditions on License

The Department may attach conditions to the license that limit, restrict, or specify other criteria for operation of the home or facility. The type of condition attached to a license shall directly relate to a risk of harm or potential risk of harm to individuals.

(1) The Department may attach a condition to a license upon a finding that:

(a) Information on the application or initial inspection requires a condition to protect the health, safety, or welfare of individuals;

(b) A threat to the health, safety, or welfare of an individual exists;

(c) There is reliable evidence of abuse, neglect, or exploitation;

(d) The home or facility is not being operated in compliance with these rules; or

(e) The service provider is licensed to provide services for a specific person only and further placements may not be made into that home or facility.

(2) Conditions that the Department may impose on a license include but are not limited to:

(a) Restricting the total number of individuals that may be served;

(b) Restricting the number and support level of individuals allowed within a licensed classification level based upon the capacity of the service provider and staff to meet the health and safety needs of all individuals;

(c) Reclassifying the level of individuals that may be served;

(d) Requiring additional staff or staff qualifications;

(e) Requiring additional training;

(f) Restricting the service provider from allowing persons on the premises who may be a threat to an individual's health, safety, or welfare;

(g) Requiring additional documentation; or

(h) Restriction of admissions.

(3) The Department shall notify the service provider in writing of any conditions imposed, the reason for the conditions, and the opportunity to request a hearing under ORS chapter 183. Conditions take effect immedi-

ately upon issuance of the notice, or at such later date as indicated on the notice, and shall continue until removed by the Department.

(4) The service provider may request a contested case hearing in accordance with ORS chapter 183 and this rule upon written notice from the Department of the imposition of conditions.

(a) The service provider must request a hearing within 21 days of receipt of the Department's written notice of conditions.

(b) In addition to, or in lieu of a hearing, a service provider may request an administrative review as described in section (5) of this rule. The administrative review does not diminish the service provider's right to a hearing.

(5) **ADMINISTRATIVE REVIEW.**

(a) A service provider, in addition to the right to a contested case hearing, may request an administrative review by the Department's Administrator or designee for imposition of conditions.

(b) The request for administrative review must be received by the Department within 10 days from the date of the Department's notice of imposition of conditions. The service provider may submit, along with the request for administrative review, any additional written materials the service provider wishes to have considered during the administrative review.

(c) The Department shall conduct the administrative review and issue a decision within 10 days from the date of receipt of the request for administrative review, or by a later date as agreed to by the service provider.

(d) If the decision of the Department is to affirm the condition, the service provider may appeal the decision to a contested case hearing as long as the request for a contested case hearing was received by the Department within 21 days of the original written notice of imposition of conditions.

(6) The service provider may send a written request to the Department to remove a condition if the service provider believes the situation that warranted the condition has been remedied.

Stat. Auth.: ORS 409.050, 410.070, 443.450 & 443.455

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 25-2004, f. 7-30-04, cert. ef. 8-1-04;

SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

## 411-325-0080

### Mid-Cycle Review

(1) **Mid-Cycle Review Process.** The Department may conduct a mid-cycle monitoring review of the home or facility nine to fifteen months after renewal of the provider's license under the following circumstances:

(a) Failure by the provider to successfully complete licensing renewal as evidenced by two or more follow-up reviews; or

(b) Failure by the provider to successfully complete plans of correction for protective service investigations; or

(c) Upon the request of the CDDP or other Department designee, or provider.

(2) **Self-Assessment Required.** As part of the mid-cycle process the provider must conduct a self-assessment based upon the requirements of this rule.

(a) The provider must document the findings of the self-assessment on forms provided by the Department;

(b) The provider must develop and implement a plan of correction based upon the findings of the self-assessment; and

(c) The provider must submit the self-assessment to the local CDDP with a copy to the Department 30 days prior to the mid-cycle review.

(3) **Compliance with OAR 411-325-0010 – 411-325-0480.** The review will be conducted for compliance with OAR 411-325-0010 – 411-325-0480, and at the discretion of the Department the review may be announced or unannounced.

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;

Suspended by SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

## 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:

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(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 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; Suspended by SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

## 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;

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(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; Suspended by SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

## 411-325-0210

### Individual/Family Involvement Policy

Individual/family involvement policy needed. The program must have and implement a written policy that addresses:

(1) Opportunities for the individual to participate in decisions regarding the operations of the program;

(2) Opportunities for families, guardians, legal representatives and significant others of the individuals served by the program to interact;

(3) Opportunities for individuals, families, guardians, legal representatives and significant others to participate on the Board or on committees or to review policies of the program that directly affect the individuals served by the program.

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; Suspended by SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

## 411-325-0310

### Rights: Confidentiality of Records

Confidentiality. All individuals' records are confidential except as otherwise provided by applicable State and Federal rule or laws.

(1) For the purpose of disclosure from individual medical records under these rules, service providers under these rules are considered "providers" as defined in ORS 179.505(1).

(2) 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).

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; Suspended by SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

## 411-325-0320

### Rights: Informal Complaints and Formal Grievances

(1) The service provider must implement written policies and procedures for individuals' grievances as required by OAR 411-323-0060.

(2) The service provider must send copies of the documentation on all grievances to the services coordinator within 15 working days of initial receipt of the grievance.

(3) At entry to service and as changes occur, the service provider must inform each individual and parent, guardian, or advocate orally and in writing of the service provider's grievance policy and procedures and a description of how to utilize them.

Stat. Auth.: ORS 409.050, 410.070, 443.450 & 443.455

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 25-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

## 411-325-0450

### 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, neglect, or exploitation;

(d) The home/facility is not being operated in compliance with these rules; or

(e) The provider is licensed to care for a specific person(s) only and further placements must not be made into that home or facility.

(2) Imposing conditions. Conditions that may be imposed on a licensee include:

(a) Restricting the total number of individuals that can be served;

(b) Restricting the number and support level of individuals allowed within a licensed classification level based upon the capacity of the provider and staff to meet the health and safety needs of all individuals;

(c) Reclassifying the level of individuals that can be served;

(d) Requiring additional staff or staff qualifications;

(e) Requiring additional training of provider/staff;

(f) Requiring additional documentation; or

(g) Restriction of admissions.

(3) Written notification. The provider will be notified in writing of any conditions imposed, the reason for the conditions, and be given an opportunity to request a hearing under ORS Chapter 183.310 to 183.550.

(4) Administrative review. In addition to, or in lieu of, a contested case hearing, a provider may request a review by the Administrator or designee of conditions imposed by the Department. The review does not diminish the provider's right to a hearing.

(5) Length of conditions. Conditions may be imposed for the extent of the licensure period (two years) or limited to some other shorter period of time. If the condition corresponds to the licensing period, the reasons for the condition will be considered at the time of renewal to determine if the conditions are still appropriate. The effective date and expiration date of the condition will be indicated on an attachment to the license.

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 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

## 411-325-0460

### Civil Penalties

(1) Long-term care facility statute applicable. For purposes of imposing civil penalties, 24-Hour residential homes and facilities licensed under ORS 443.440 to 443.455 and subsection (2) of 443.991 are considered to be long-term care facilities subject to ORS 441.705 to 441.745.

(2) Schedule and sections of rule subject to civil penalties. The Department will exercise the powers under ORS 441.705 to 441.745 and thereby issues the following schedule of penalties applicable to 24-hour residential homes and facilities:

(a) Violations of any requirement within any part of the following sections of the rule may result in a civil penalty up to \$500 per day for each violation not to exceed \$6,000 for all violations for any licensed 24-hour residential home or facility within a 90-day period:

(A) 411-325-0025(3), (4), (5), (6), (7) and (8);

(B) 411-325-0120(2), and (11);

(C) 411-325-0130;

(D) 411-325-0140;

(E) 411-325-0150;

(F) 411-325-0170;

(G) 411-325-0190;

(H) 411-325-0200;

(I) 411-325-0220(1), and (2);

(J) 411-325-0230;

(K) 411-325-0240, 0250, 0260, 0270, 0280, and 0290;

(L) 411-325-0300, 0320, 0330, 0340, and 0350;

(M) 411-325-0360;

(N) 411-325-0380;

(O) 411-325-0430(3), (4), and (5); and

(P) 411-325-0440.

(b) Civil penalties of up to \$300 per day per violation may be imposed for violations of any section of this rule not listed in (2)(a) (A)–(N) of this section if a violation has been cited on two consecutive inspections or surveys of a 24-hour residential home or facility where such surveys are con-



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ducted by an employee of the Department. Penalties assessed under this section will not exceed \$6,000 within a 90-day period.

(3) Monitoring defined. For purposes of this rule, a monitoring occurs when a 24-hour residential home or facility is surveyed, inspected or investigated by an employee or designee of the Department or an employee or designee of the Office of State Fire Marshal.

(4) Consideration of factors when imposing civil penalties. In imposing a civil penalty pursuant to the schedule published in section (2) of this rule, the Department will consider the following factors:

(a) The past history of the program incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation;

(b) Any prior violations of statutes or rules pertaining to 24-hour residential homes or facilities;

(c) The economic and financial conditions of the program incurring the penalty; and

(d) The immediacy and extent to which the violation threatens or threatened the health, safety and well-being of individuals.

(5) Due and payable. Any civil penalty imposed under ORS 443.455 and 441.710 will become due and payable when the program incurring the penalty receives a notice in writing from the Administrator or designee. The notice referred to in this section will be sent by registered or certified mail and will 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 program's right to request a hearing.

(6) Timeline to make written application for a hearing. The person representing the program, to whom the notice is addressed, will have 20 days from the date of mailing of the notice in which to make a written application for a hearing before the Department.

(7) Conduct of hearing. All hearings will be conducted pursuant to the applicable provisions of ORS Chapter 183.

(8) Failure to request a hearing within 20 days. If the program notified fails to request a hearing within 20 days, an order may be entered by the Department assessing a civil penalty.

(9) Program is found to be in violation of a license, rule, or order listed in ORS 441.701(1). If, after a hearing, the program is found to be in violation of a license, rule, or order listed in ORS 441.710(1), an order may be entered by the Department assessing a civil penalty.

(10) Remittance or reduction of a civil penalty. A civil penalty imposed under ORS 443.455 or 441.710 may be remitted or reduced upon such terms and conditions as the Administrator considers proper and consistent with individual health and safety.

(11) Civil penalty payable within 10 days after order is entered. 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, will constitute a judgment and may be filed in accordance with the 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.

(12) Violation of any general order or final order. A violation of any general order or final order pertaining to a 24-hour residential home or facility issued by the Department is subject to a civil penalty in the amount of not less than \$5 and not more than \$500 for each and every violation.

(13) Judicial review of civil penalties. Judicial review of civil penalties imposed under ORS 441.710 will be provided under ORS 183.480, except that the court may, in its discretion, reduce the amount of the penalty.

(14) Penalties recovered. All penalties recovered under ORS 443.455 and 441.710 to 441.740 will be paid into the State Treasury and credited to the General Fund.

Stat. Auth.: ORS 409.050, 410.070, 443.450 & 443.455

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 25-2004, f. 7-30-04, cert. ef. 8-1-04;

SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

## 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 sub-

sequent 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, facilitated by a services coordinator of the community developmental disability program and 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 ISP.

(8) "Board of Directors" mean a group of persons formed to set policy and give directions to a service provider 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 Department to a service provider that certifies the service provider is eligible under the rules in OAR chapter 411, division 323 to receive state funds for the provision of endorsed supported living services.

(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 is 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 Department 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" as defined in OAR 411-320-0020.

(16) "Division" means the Department of Human Services, Seniors and People with Disabilities Division (SPD).

(17) "Endorsement" means authorization to provide supported living services issued by the Department to a certified service provider that has met the qualification criteria outlined in these rules and the rules in OAR chapter 411, division 323.

(18) "Entry" means the admission to a Department-funded developmental disability service.

(19) "Executive Director" means the person designated by a board of directors or corporate owner that is responsible for the administration of supported living services.

(20) "Exit" means either termination from a Department-funded developmental disability service provider or transfer from one Department-funded service provider to another.

(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) "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.

(23) "Incident Report" means a written report of any injury, accident, acts 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.

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(25) "Individual" means a person with developmental disabilities for whom services are planned and provided.

(26) "Individual Profile" means a written profile that describes the individual entering into supported living. The profile consists of materials or assessments generated by the service provider or other related agencies, consultants, family members, or advocates.

(27) "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 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.

(28) "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 family or other persons requested to develop the ISP.

(29) "Integration" means the use by individuals with developmental disabilities of the same community resources used by and available to other persons in the community, including participation in community activities and having contact with persons in their community.

(30) "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.

(31) "Mandatory Reporter" means any public or private official including for the purpose of these rules, a staff member 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.

(32) "Medicaid Agency Identification Number" means the numeric identifier assigned to a service provider as described in OAR chapter 411, division 370 following the service provider's enrollment to manage service delivery sites or areas within Oregon under endorsement or license from the Department.

(33) "Medicaid Performing Provider Number" means the numeric identifier assigned to an entity or person by the Department, following enrollment to deliver Medicaid funded services as described in OAR chapter 411, division 370. The Medicaid Performing Provider Number is used by the rendering service provider for identification and billing purposes associated with service authorizations and payments.

(34) "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.

(35) "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 service provider to develop the individual's Transition Plan.

(36) "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.). Personal futures planning helps determine activities, supports, and resources that best create a desirable future for the individual.

(37) "Physical Restraint" means any manual physical holding of or contact with an individual that restricts the individual's freedom of movement.

(38) "Prescription Medication" means any medication that requires a physician prescription before it may be obtained from a pharmacist.

(39) "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.

(40) "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.

(41) "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.

(42) "Service Provider" means a public or private community agency or organization that provides recognized developmental disability services and is certified and endorsed by the Department to provide these services under these rules and the rules in OAR chapter 411, division 323. For the purpose of these rules, "agency" or "program" is synonymous with "service provider."

(43) "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, and monitor Individual Support Plan services, and to act as a proponent for individuals with developmental disabilities.

(44) "Significant Other" means a person selected by the individual to be the individual's friend.

(45) "Staff" means paid employees 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 Department.

(46) "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.

(47) "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 subject to change with time and circumstances.

(48) "Supported Living" means the endorsed 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.

(49) "These Rules" mean the rules in OAR chapter 411, division 328.

(50) "Transfer" means movement of an individual from one type of service to another within the same county, administered by the same service provider.

(51) "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 (ISP) is developed and approved by the ISP 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 ISP development.

(52) "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.

(53) "Variance" means a temporary exception from a regulation or provision of these rules or the rules in OAR chapter 411, division 323 that may be granted by the Department upon written application by the service provider.

(54) "Volunteer" means any person assisting a service provider without pay to support the services provided to individuals.

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; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

## 411-328-0570

### Program Management

(1) CERTIFICATION, ENDORSEMENT, AND ENROLLMENT. To provide supported living services, a service provider must have:

(a) A certificate and an endorsement to provide supported living services as set forth in OAR chapter 411, division 323;

(b) A Medicaid Agency Identification Number assigned by the Department as described in OAR chapter 411, division 370; and

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(c) For each specific geographic service area where supported living services shall be delivered, a Medicaid Performing Provider Number assigned by the Department as described in OAR chapter 411, division 370.

(2) **INSPECTIONS AND INVESTIGATIONS.** The service provider must allow inspections and investigations as described in OAR 411-323-0040.

(3) **AGENCY MANAGEMENT AND PERSONNEL PRACTICES.** The service provider must comply with the agency management and personnel practices as described in OAR 411-323-0050.

(4) **PERSONNEL FILES AND QUALIFICATION RECORDS.** The service provider must maintain the following for each staff member in a file available to the Department or the Department's designee for inspection:

(a) Written documentation of six hours of pre-service training prior to supervising individuals that includes mandatory abuse reporting training and training on individual profiles and Transition Plans or ISPs;

(b) Written documentation of 12 hours of job-related in-service training annually; and

(c) Documentation that the staff member has been certified in CPR and First Aid by a recognized training agency within three months of employment and that certification is kept current.

(5) **CONFIDENTIALITY OF RECORDS.** The service provider must ensure all individuals' records are confidential as described in OAR 411-323-0060.

(6) **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 five years.

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 309-041-0570 by SPD 17-2009, f. & cert. ef. 12-9-09; SPD 5-2011(Temp), f. & cert. ef. 2-7-11 thru 8-1-11; SPD 13-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

## 411-328-0580

### Application for Initial Certificate and Certificate Renewal

(1) **Form.** The application shall be on a form provided by the Division and shall include all information requested by the Division.

(2) **Initial application.** The applicant shall identify the number of individuals to be served.

(3) **Renewal application.** To renew certification, the service provider shall make application at least 30 days but not more than 120 days prior to the expiration date of the existing certificate. On renewal, no increase in the number of individuals to be served shall be certified unless specifically approved by the Division.

(4) **Renewal application extends expiration date.** Filing of an application for renewal at least 30 days but not more than 120 days prior to the expiration date of the existing certificate extends the effective date until the Division or its designee takes action upon such application.

(5) **Incomplete or incorrect information.** Failure to disclose requested information on the application or provision of incomplete or incorrect information on the application may result in denial, revocation or refusal to renew the certificate.

(6) **Demonstrated capability.** 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.

(7) **Separate certificates.** Separate certificates are required when the service provider delivers services in multiple counties to the extent that contracts with each different county are required.

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 309-041-0580 by SPD 17-2009, f. & cert. ef. 12-9-09; Suspended by SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

## 411-328-0590

### Certificate Expiration, Termination of Operations, Certificate Return

(1) **Expiration.** Unless revoked, suspended or terminated earlier, each certificate to operate a supported living program shall expire on the expiration date specified on the certificate.

(2) **Termination of operation.** If a supported living program operation is discontinued, the certificate terminates automatically on the date the operation is discontinued.

(3) **Return of certificate.** Each certificate in the possession of the program shall be returned to the Division immediately upon suspension, revocation or termination.

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 309-041-0590 by SPD 17-2009, f. & cert. ef. 12-9-09; Suspended by SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

## 411-328-0600

### Change of Ownership, Legal Entity, Legal Status, Management Corporation

(1) **Notice of pending change in ownership, legal entity, legal status or management corporation.** The program shall notify the Division in writing of any pending change in the program's ownership or legal entity, legal status or management corporation.

(2) **New certificate required.** A new certificate shall be required upon change in a program's ownership/legal entity or legal status. The program shall submit a certificate application at least 30 days prior to change in ownership/legal entity or legal status.

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 309-041-0600 by SPD 17-2009, f. & cert. ef. 12-9-09; Suspended by SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

## 411-328-0610

### 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;

(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 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 serv-



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ice 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; Suspended by SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

## 411-328-0630

### Health: Medical Services

(1) All individuals' medical records must be kept confidential as described in OAR 411-323-0060.

(2) Individuals must receive sufficient oversight and guidance by the service provider to ensure that the individual's health and medical needs are adequately addressed.

(3) Written health and medical supports must be developed as required by the individual's ISP team and integrated into the Transition Plan or ISP. The Plan must be based on a review or identification of the individual's health and medically related support needs and preferences, and updated annually or as significant changes occur.

(4) The service provider must have and implement written policies and procedures that maintain and improve the physical health of individuals. Policies and procedures must address:

- (a) Early detection and prevention of infectious disease;
- (b) Emergency medical intervention;
- (c) Treatment and documentation of illness and health care concerns;

and

(d) Obtaining, administering, storing, and disposing of prescription and non-prescription drugs including self administration.

(5) The service provider must ensure each individual has a primary physician whom the individual has chosen from among qualified providers.

(6) Provisions must be made for a secondary physician or clinic in the event of an emergency.

(7) The service provider must ensure that individuals have a medical evaluation by a physician no less often than every two years or as recommended by a physician. Evidence of the evaluation must be placed in the individual's record and must address:

- (a) Current health status;
- (b) Changes in health status;
- (c) Recommendations, if any, for further medical intervention;
- (d) Any remedial and corrective action required and when such actions were taken;

(e) Statement of restrictions on activities due to medical limitations; and

(f) A review of medications, treatments, special diets, and therapies prescribed.

(8) Before entry, the service provider must obtain the most complete medical profile available including:

- (a) The results of a physical exam made within 90 days prior to entry;
- (b) Findings of a TB test made within two weeks of entry;
- (c) Results of any dental evaluation;
- (d) A record of immunizations;
- (e) Status of Hepatitis B screening;
- (f) A record of known communicable diseases and allergies; and
- (g) A summary of the individual's medical history including chronic health concerns.

(9) The provider must ensure that all medications, treatments, and therapies:

(a) Have a written order or copy of the written order, signed by a physician or physician designee, before any medication, prescription, or non-prescription, is administered to or self-administered by the individual unless otherwise indicated by the ISP team in the written health and medical support section of the ISP or Transition Plan.

(b) Be followed per written orders.

(10) PRN orders are not allowed for psychotropic medication.

(11) The drug regimen of each individual on prescription medication must be reviewed and evaluated by a physician or physician designee, no less often than every 180 days unless otherwise indicated by the ISP team in the written health and medical support section of the ISP or Transition Plan.

(12) All prescribed medications and treatments must be self-administered unless contraindicated by the ISP team. For individuals who require assistance in the administration of their own medications, the following must be required:

(a) The ISP team has recommended that the individual be assisted with taking their medication;

(b) There is a written training program for the self-administration of medication unless contraindicated by the ISP team; and

(c) There is a written record of medications and treatments that document physician's orders are being followed.

(13) For individuals who independently self-administer medications, there must be a plan for the periodic monitoring and review of medications on each individual's ISP.

(14) The service provider must assist individuals with the use of prosthetic devices as ordered.

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 309-041-0630 by SPD 17-2009, f. & cert. ef. 12-9-09; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

## 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;

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(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; Suspended by SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

## 411-328-0730

### Rights: Confidentiality of Records

Confidentiality. All individuals' records are confidential except as otherwise provided by applicable rule or laws.

(1) For the purpose of disclosure from individual medical records under these rules, service providers under these rules shall be considered "providers" as defined in ORS 179.505(1), and all of ORS 179.505 shall be applicable.

(2) For the purposes of disclosure from nonmedical 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).

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 309-041-0730 by SPD 17-2009, f. & cert. ef. 12-9-09; Suspended by SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

## 411-328-0740

### Rights: Grievances

(1) The service provider must implement written policies and procedures for individuals' grievances as required by OAR 411-323-0060.

(2) The service provider must send copies of the documentation on all grievances to the services coordinator within 15 working days of initial receipt of the grievance.

(3) At entry to service and as changes occur, the service provider must inform each individual and parent, guardian, or advocate orally and in writing of the service provider's grievance policy and procedures and a description of how to utilize them.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0740 by SPD 17-2009, f. & cert. ef. 12-9-09; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

## 411-328-0805

### Individual/Family Involvement

Policy needed. The program shall have a policy that addresses:

(1) Opportunities for the individual to participate in decision regarding the operation of the program;

(2) Opportunities for families, guardians, and/or significant others of the individuals served by the program to interact; or

(3) Opportunities for individuals, families, guardians, and significant others to participate on the Board or on committees of the program or to review policies of the program that directly affect the individuals served by the program.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0805 by SPD 17-2009, f. & cert. ef. 12-9-09; Suspended by SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

## 411-328-0810

### Program Management

(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) PROHIBITION AGAINST RETALIATION. A community program or service provider may not retaliate against any staff who reports in

good faith suspected abuse or retaliate against the adult with respect to any report. An alleged perpetrator 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 residents served by the program.

(3) DOCUMENTATION REQUIREMENTS. All entries required by this rule, unless stated otherwise, must:

(a) Be prepared at the time, or immediately following the event being recorded;

(b) Be accurate and contain no willful falsifications;

(c) Be legible, dated, and signed by the person making the entry; and

(d) Be maintained for no less than five years.

(4) DISSOLUTION. Prior to the dissolution of a program, a representative of the governing body or owner must notify the Division 30 days in advance in writing and make appropriate arrangements for the transfer of individuals' records.

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 309-041-0810 by SPD 17-2009, f. & cert. ef. 12-9-09; SPD 5-2011(Temp), f. & cert. ef. 2-7-11 thru 8-1-11; SPD 13-2011, f. & cert. ef. 7-1-11; Suspended by SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

## 411-328-0820

### Certificate Denial, Suspension, Revocation, Refusal to Renew

(1) Conditions. The Division may deny, revoke or refuse to renew a certificate when it finds the program, the program's director, or any person holding five percent or greater financial interest in the program:

(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 on-site review of the service site by the Division 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 a felony;

(e) Has been convicted of a misdemeanor associated with the operation of a residential program;

(f) Falsifies information required by the Division to be maintained or submitted regarding care of individuals, supported living program finances, or individuals' funds; or

(g) Has been found to have permitted, aided or abetted any illegal act which has had significant adverse impact on individual health, safety or welfare.

(2) Immediate suspension of certificate. In any case where 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 service may not continue operation.

(3) Notice of certificate revocation or denial. Following a Division finding that there is a substantial failure to comply with these rules such that the health, safety or welfare of individual is jeopardized, or that one or more of the events listed in section (1) of this rule has occurred, the Division may issue a notice of certificate revocation, denial or refusal to renew.

(4) Informal process. Following the notice issued pursuant to section (3) of this rule, the Division shall provide the certificate holder an opportu-

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nity for an informal conference within 10 calendar days from the date of the notice.

(5) Hearing. Following issuance of a notice of certificate revocation, denial or refusal to renew, the Division shall provide the opportunity for a hearing pursuant to OAR 411-328-0830.

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 309-041-0820 by SPD 17-2009, f. & cert. ef. 12-9-09; Suspended by SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

## 411-328-0830

### Hearings

(1) Hearings rights. An applicant for a certificate, or certificate holder, upon written notice from the Division of denial, suspension, revocation or refusal to renew a certificate, may request a hearing pursuant to the Contested Case Provisions of ORS Chapter 183.

(2) Request for hearing. Upon written notification by the Division of revocation, denial or refusal to renew a certificate, pursuant to OAR 411-328-0830(1), the applicant/certified program shall be entitled to a hearing in accordance with ORS Chapter 183 within 60 days of receipt of notice. The request for a hearing shall include an admission or denial of each factual matter alleged by the Division and shall affirmatively allege a short plain statement of each relevant, affirmative defense the applicant/certified program may have.

(3) Hearing rights under OAR 411-328-0820(2). In the event of a suspension pursuant to 411-328-0820(2) and during the first 30 days after the suspension of a certificate, the certified program shall be entitled to a fair hearing within 10 days after its written request to the Division for a hearing regarding certificate suspension. Any hearing requested after the end of the 30 days period following certificate suspension shall be treated as a request for hearing under section (2) of this rule.

(4) Issue at hearing on denial or revocation pursuant to OAR 411-328-0820(1)(a). The issue at a hearing on certification, denial, revocation, suspension or refusal to renew a certificate pursuant to 411-328-0820(1)(a) is limited to whether the program was/is in compliance at the end of the 30 calendar days following written notice of non-compliance.

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 309-041-0830 by SPD 17-2009, f. & cert. ef. 12-9-09; Suspended by SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

## 411-335-0010

### Statement of Purpose

The rules in OAR chapter 411, division 335 prescribe administrative, policy, procedure, documentation, and personnel requirements for proctor agencies providing intensive, person focused services to individuals with developmental disabilities experiencing significant emotional, medical, or behavioral difficulties. Proctor providers are specially trained and supported by the proctor agency. Proctor providers assist the individual in a home environment to make positive changes in the individual's adaptive skills that shall enable the individual to move to a less restrictive setting. These rules, in addition to the rules in OAR chapter 411, division 323, also prescribe standards and procedures by which the Department endorses service providers to safely operate and oversee proctor care homes and provide training and support to children with developmental disabilities.

Stat. Auth.: ORS 409.050, 410.070, 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 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

## 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) "Administrator" means the administrator of the Department, or that person's designee.

(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 paid employees 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 Department. For the purpose of these rules, agency staff includes skill trainers.

(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) "Alternate Caregiver" means any person 18 and older responsible for the care or supervision of a child in foster care.

(9) "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 (ISP) is to be assessed. A baseline level of behavior is reviewed and reestablished at minimum yearly, at the time of the ISP team meeting.

(10) "Behavior Data Collection System" means the methodology specified within the individual's Behavior Support Plan that directs the process for recording observations, interventions, and other support provision information critical to the analysis of the efficacy of the Behavior Support Plan.

(11) "Behavior Data Summary" means a document composed by the proctor 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.

(12) "Behavior Support Plan (BSP)" means a written strategy based on person-centered planning and a functional assessment that outlines specific instructions for proctor 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.

(13) "Board of Directors" means a group of persons formed to set policy and give directions to an agency designed to provide residential services to individuals with developmental disabilities. A board of directors includes local advisory boards used by multi-state organizations.

(14) "Care" means supportive services, including but not limited to 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 to ensure the individual's health, safety, and welfare. The term "care" is synonymous with "services".

(15) "Certificate" means a document issued by the Department to an agency that certifies the agency is eligible under the rules in OAR chapter 411, division 323 to receive state funds for the provision of endorsed proctor care residential services.

(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) "Child" means an individual under the age of 18 that has a provisional determination of developmental disability.

(18) "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 is communicated verbally, through sign language, or by other communication methods.

(19) "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 Department or a local mental health authority.

(20) "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 proctor agency'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 proctor agency to accommodate staff or proctor provider's specific circumstances.



## ADMINISTRATIVE RULES

(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) "Contracting Entity" means the community developmental disability program or proctor agency contracting with the Department.

(23) "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.

(24) "Department" means the Department of Human Services (DHS).

(25) "Developmental Disability" as defined in OAR 411-320-0020.

(26) "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.

(27) "Division" means the Department of Human Services, Seniors and People with Disabilities Division (SPD).

(28) "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.

(29) "Endorsement" means authorization to provide proctor care residential services issued by the Department to a certified proctor agency that has met the qualification criteria outlined in these rules and the rules in OAR chapter 411, division 323.

(30) "Entry" means admission to a Department-funded developmental disability service. For purposes of these rules, "entry" means admission to a proctor provider certified by the Department as described in OAR chapter 411, division 346.

(31) "Executive Director" means the person designated by a board of directors or corporate owner that is responsible for the administration of proctor care residential services.

(32) "Exit" means either termination from a Department-funded developmental disability proctor agency or transfer from one Department-funded proctor agency to another.

(33) "Foster Care" for the purpose of these rules means 24-hour substitute care for children in a foster home that is contracted with the proctor agency and certified by the Department as described in OAR chapter 411, division 346.

(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) "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 staff involved in or witnessing the incident.

(38) "Independence" means the extent to which individuals with developmental disabilities exert control and choice over their own lives.

(39) "Individual" means an adult or a child with developmental disabilities for whom services are planned and provided.

(40) "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.

(41) "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 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.

(42) "Individual Support Plan (ISP) Team" means a team composed of the individual served, the proctor provider, agency staff who provide service to the individual (if appropriate for in-home supports), the guardian (if any), the services coordinator, and family or other persons requested to develop the ISP.

(43) "Integration" means the use by individuals with developmental disabilities of the same community resources used by and available to other persons in the community, including participation in community activities and having contact with persons in their community.

(44) "Legal Representative" means the parent, if the individual is under age 18, unless the court appoints another person or agency to act as guardian.

(45) "Majority Agreement" means for purposes of entry, exit, transfer, and annual Individual Support Plan (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. Agency staff, proctor providers, families, the services coordinator, or advocacy agencies are considered as one member of the ISP team for the purpose of reaching majority agreement.

(46) "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.

(47) "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.

(48) "Medicaid Agency Identification Number" means the numeric identifier assigned to a service provider as described in OAR chapter 411, division 370 following the service provider's enrollment to manage service delivery sites or areas within Oregon under endorsement or license from the Department.

(49) "Medicaid Performing Provider Number" means the numeric identifier assigned to an entity or person by the Department, following enrollment to deliver Medicaid funded services as described in OAR chapter 411, division 370. The Medicaid Performing Provider Number is used by the rendering service provider for identification and billing purposes associated with service authorizations and payments.

(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 those 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 and proctor providers in the areas of health, safety, rights, values and personal regard, and the proctor agency's mission; and

(b) The associated timelines in which newly hired staff and proctor providers 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. OIS 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.

# ADMINISTRATIVE RULES

(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 a public or private community agency or organization that provides recognized developmental disability services and is certified and endorsed by the Department to provide these services under these rules and the rules in OAR chapter 411, division 323. For the purpose of these rules, "agency" or "program" is synonymous with "proctor agency".

(60) "Proctor Care Services" means a comprehensive residential program endorsed by the Department 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 certified care provider who resides at a child foster home for individuals with developmental disabilities certified by the Department as described in OAR chapter 411, division 346.

(62) "Productivity" as defined in ORS 427.005 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) "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.

(67) "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, produce, coordinate, and 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 and guardian 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) "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.

(71) "Support" means assistance that individuals require, solely because of the effects of developmental disability, to maintain or increase independence, achieve community presence and participation, and improve productivity. Support is subject to change with time and circumstances.

(72) "These Rules" mean the rules in OAR chapter 411, division 335.

(73) "Transfer" means movement of an individual from one proctor provider to another within the same county administered by the same proctor agency.

(74) "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 (ISP) is developed and approved by the ISP 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 ISP development.

(75) "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.

(76) "Variance" means a temporary exception from a regulation or provision of these rules or the rules in OAR chapter 411, division 323 that may be granted by the Department upon written application by the proctor provider or proctor agency.

(77) "Volunteer" means any person assisting a proctor provider or the proctor agency without pay to support the services provided to individuals.

Stat. Auth.: ORS 409.050, 410.070, 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; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

## 411-335-0030

### Agency Management and Personnel Practices

#### (1) PROCTOR AGENCY.

(a) CERTIFICATION, ENDORSEMENT, AND ENROLLMENT. To provide proctor care residential services, a proctor agency must have:

(A) A certificate and an endorsement to provide proctor care residential services as set forth in OAR chapter 411, division 323;

(B) A Medicaid Agency Identification Number assigned by the Department as described in OAR chapter 411, division 370; and

(C) For each specific geographic service area where proctor care residential services shall be delivered a Medicaid Performing Provider Number assigned by the Department as described in OAR chapter 411, division 370.

(b) INSPECTIONS AND INVESTIGATIONS. The proctor agency must allow inspections and investigations as described in OAR 411-323-0040.

(c) AGENCY MANAGEMENT AND PERSONNEL PRACTICES. The proctor agency must comply with the agency management and personnel practices as described in OAR 411-323-0050.

(d) COMPETENCY BASED TRAINING PLAN. The proctor agency must have and implement a Competency Based Training Plan that meets, at a minimum, the competencies and timelines set forth in the Department's Oregon Core Competencies.

(e) PERSONNEL FILES AND QUALIFICATION RECORDS. The proctor agency must maintain the following for each staff member and proctor provider in a file available to the Department or the Department's designee for inspection:

(A) Written documentation kept current that the staff member and proctor provider has demonstrated competency in areas identified by the proctor agency's Competency Based Training Plan as required by section (5) of this rule, and that is appropriate to their job;

(B) Written documentation of 12 hours of job-related in-service training annually; and

(C) Documentation that the staff member and proctor provider has been certified in CPR and First Aid by a recognized training agency within three months of employment and that certification is kept current.

(f) POLICIES AND PROCEDURES. The proctor agency must implement policies and procedures to:

(A) Assure support, health, safety, and crisis response for individuals served, including policies and procedures to assure training of agency staff and proctor providers.

(B) Assure that provider payment and agency support is commensurate to the support needs of individuals enrolled in proctor care services. Policies and procedures must include frequency of review.

(C) 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:

(i) Respite care in the proctor provider's home during day hours only;

(ii) Respite care in the home of someone other than the proctor provider for day time only;

(iii) Overnight care in the proctor provider's home; and

(iv) Overnight care at someone other than the proctor provider's home.

(D) 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.

# ADMINISTRATIVE RULES

(i) The child's need for a formal Behavior Support Plan based on the Risk Tracking Record and functional assessment of the behavior.

(ii) The child has been stable and generally free of serious behavioral or delinquency incidents for the past 12 months.

(iii) 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.

(iv) The child poses no significant risk to self or community.

(v) The proctor provider has not needed or utilized the proctor agency's crisis services in response to the child's medical, mental health, or behavioral needs more than one time in the past 12 months.

(vi) The proctor provider is successfully supporting the child over time, with a minimum of proctor agency case management contact other than periodic monitoring and check in.

(vii) The proctor provider does not require professional support for the child, and there has been or may be a reduction in ongoing weekly professional support for the child including consultation, skill training, and staffing.

(viii) The proctor agency is not actively working with the child's family to return the child to the family home.

(g) RESPONSIBILITIES. The proctor agency must:

(A) Assure that preliminary certification for the proctor provider is completed per the relevant foster care statutes and OAR chapter 411, divisions 346. Such work must be submitted to the Department for final review and approval.

(B) Complete an initial home study for all proctor provider applicants that is updated at the certification renewal for all certified proctor providers.

(C) Provide and document training and support to agency staff, proctor providers, subcontractors, volunteers, and respite providers:

(i) To maintain the health and safety of the individuals served.

(ii) 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.

(D) 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.

(E) Coordinate and document entries, exits, and transfers.

(F) Report to the Department, 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.

(G) Assure that each proctor provider has a current Emergency Disaster Plan on file in the proctor provider home, in the proctor agency office, and provided to the CDDP and any case manager of an individual who is not an employee of the local CDDP.

(H) Assure emergency backup in the event the proctor provider is unavailable.

(2) 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 Department policies and a background check completed by the Department in accordance with OAR 407-007-0200 to 407-007-0370 and 411-323-0050.

(c) Disclose 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.

(3) GENERAL REQUIREMENTS FOR SAFETY AND TRAINING. All proctor providers, substitute caregivers, respite providers, child care providers, agency staff, and volunteers having contact with an individual, 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 background check requirements in OAR 407-007-0200 to 407-007-0370 and OAR 411-323-0050.

(g) Have a valid Oregon driver's license and proof of insurance.

(4) Receive training in applicable agency policies and procedures.

(4) PROCTOR PROVIDERS.

(a) Proctor providers must:

(A) Meet all the standards in these rules and the rules in OAR chapter 411, division 346;

(B) Must have knowledge of these rules and the rules in OAR chapter 411, division 346; and

(C) Must receive and maintain current First Aid and CPR training.

(b) Any home managed and contracted to serve children with developmental disabilities by a proctor agency must be certified by the Department as a foster home for children with developmental disabilities in accordance with OAR chapter 411, division 346.

(5) SKILLS TRAINERS, ADVISORS, OR OTHER AGENCY STAFF. Skills trainers, advisors, or other agency staff must:

(a) Receive and maintain current First Aid and CPR training;

(b) Must have knowledge of these rules and the rules in OAR chapter 411, division 346;

(c) Anyone age 18 or older, living in an agency staff members uncertified home must have an approved Department background check per OAR 407-007-0200 to 407-007-0370 and as described in OAR 411-323-0050, prior to any visit of an individual to the staff member's home.

(d) Assure health and safety guidelines for alternative caregivers including but not limited to the following:

(A) 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.

(B) 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.

(C) The home must have tubs or showers, toilets, and sinks that are operable and in good repair with hot and cold water.

(D) 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.

(E) 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.

(F) 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.

(G) First aid supplies must be available in the home and in the vehicles that shall be used to transport an individual.

(6) RESPITE PROVIDERS.

(a) If respite is being provided in the proctor provider's home day or night, the respite provider must be trained on the:

(A) Basic health needs of the individuals in service; and

(B) Basic safety in the home including but not limited to first aid supplies, the Emergency Plan, and the Fire Evacuation Plan.

(b) If respite is being provided in a home other than the proctor provider's home day or night, the respite provider must assure health and safety guidelines for alternative caregivers, including but not limited to:

(A) 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.

(B) 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.

(C) The home must have tubs or showers, toilets, and sinks that are operable and in good repair with hot and cold water.



# ADMINISTRATIVE RULES

(D) 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.

(E) All medications, poisonous chemicals, and cleaning materials must be stored in a way that prevents an individual from accessing them.

(F) 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.

(G) First aid supplies must be available in the home and in the vehicles that shall be used to transport individuals.

(7) **DAY CARE AND CAMP.** 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 proctor 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.

(8) **SOCIAL ACTIVITIES FOR LESS THAN 24 HOURS, INCLUDING OVERNIGHT ARRANGEMENTS.** The proctor agency must assure:

(a) The person providing care is capable of assuming all care responsibilities and shall be present at all times.

(b) The ISP team is in agreement with the planned social activity.

(c) The proctor provider maintains back-up responsibilities for the individual in service.

(9) **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 background checks per OAR 407-007-0200 to 407-007-0370 and as described in OAR 411-323-0050, prior to supervising any individual. Providers 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. Be trained on required documentation for health, safety, and behavioral needs of the individual.

(b) The proctor agency must:

(A) Make follow-up contact with the crisis provider 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.

(10) **MANDATORY ABUSE REPORTING.** Proctor agency staff and providers are mandatory reporters. Upon reasonable cause to believe that abuse has occurred, all members of the household and any proctor providers, substitute caregivers, agency staff, 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.

(11) **CONFIDENTIALITY OF RECORDS.**

(a) The proctor agency must ensure all individuals' records are confidential as described in OAR 411-323-0060.

(b) The proctor agency, proctor provider, and the proctor provider's family must treat personal information about an individual or an individual's family in a confidential manner. Confidential information is to be used and disclosed in accordance with OAR 407-014-0020 only on a need to know basis to law enforcement, services coordinators, the Department including child protective services staff and child welfare caseworkers, the CDDP, Office of Investigations and Training investigators, and medical professionals who are treating or providing services to the individual. The information shared must be limited to the health, safety, and service needs of the individual.

(c) The proctor agency, proctor provider, and the proctor provider's family must comply with the provisions of ORS 192.518 to 192.523 and OAR 407-014-0020 and therefore may use or disclose an individual's protected health information as defined in OAR 407-014-0000 only:

(A) To law enforcement, the Department, or the CDDP;

(B) As authorized by the individual's guardian including but not limited to a guardian appointed under ORS 125.305, 419C.481, or 419C.555;

(C) For purposes of obtaining healthcare and treatment of the individual;

(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.

(d) The proctor agency and the proctor provider must keep all written records for each individual in a manner that assures their confidentiality.

(12) **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 falsification;

(c) Be legible, dated, and signed by the person making the entry;

(d) Be maintained for no less than five years; and

(e) Be made readily available for the purposes of inspection.

Stat. Auth.: ORS 409.050, 410.070, 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; SPD 5-2011(Temp), f. & cert. ef. 2-7-11 thru 8-1-11; SPD 13-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

## 411-335-0050

### Issuance of Proctor Care Agency Certificate

(1) No person, agency, or governmental unit acting individually or jointly with any other person, agency, or governmental unit shall establish, conduct, maintain, manage, or operate Department funded proctor services in proctor provider homes for individuals with developmental disabilities without being certified by the Department for each home or facility.

(2) No certificate is transferable or applicable to any other agency, management agent, or ownership other than that indicated on the application and certificate.

(3) The Department shall issue a certificate to an agency found to be in compliance with these rules. A certificate issued on or before February 1, 2009 shall be valid for five years unless revoked or suspended.

(4) Any home managed and contracted to serve children with developmental disabilities by a proctor care agency under this certificate must be certified by the Department in accordance with the Division's rules for children's foster provider homes: OAR chapter 411, division 346.

(5) Any home managed and contracted to serve adults with developmental disabilities must be licensed as an adult foster home for adults with developmental disabilities (AFH-DD) in accordance with OAR chapter 411, division 360.

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 5-2011(Temp), f. & cert. ef. 2-7-11 thru 8-1-11; SPD 13-2011, f. & cert. ef. 7-1-11; Suspended by SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

## 411-335-0060

### Admittance of Individuals

(1) No proctor agency or home contracted with the proctor agency shall admit individuals to a home whose care needs or age, exceed the home's certificate, or would violate conditions on the certificate, without prior written consent of the Department or the Department's designee.

(2) No proctor agency or home contracted with the proctor agency shall admit or continue to serve children whose numbers exceed the capacity on the proctor provider's child foster home certificate without Department approval.

(3) No proctor agency or home contracted to provide proctor services shall admit or continue to provide proctor services to children who can be safely and appropriately supported in foster care, if available, or the individual's family home.

(4) No proctor agency or home contracted with the proctor agency shall admit an individual from another funding source without first determining that the care and safety needs of all individuals in the home may be maintained, and that there is prior written approval from the placing agency and the CDDP where the foster home is located.

Stat. Auth.: ORS 410.070, 409.050, 427.005-427.007 & 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 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

## 411-335-0070

### Certificate Expiration, Termination of Operations, Certificate Return

(1) Expiration. Unless revoked, suspended or terminated earlier, each certificate to operate a proctor agency will expire two years following the date of issuance.

# ADMINISTRATIVE RULES

(2) Termination of operation. The certificate will be considered void immediately if the operation is discontinued for any reason by voluntary action of the agency or if there is a change in ownership.

(3) Return of certificate. The certificate must be returned to the Department immediately upon suspension or revocation of the certificate or when the operation is voluntarily or involuntarily discontinued.

Stat. Auth.: ORS 410.070, 409.050, 427.005-427.007, 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; Suspended by SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

## 411-335-0080

### Renewal of Certification

(1) Renewal application required. A certificate is renewable upon submission of an application to the Department.

(2) Filing of application extends date of expiration. Filing of an application for renewal before the date of expiration extends the effective date of expiration until the Department takes action upon such application. If the renewal application is not submitted prior to the expiration date, the agency will be considered as not certified to provide Proctor Care Services for individuals with developmental disabilities funded by the Department.

(3) Certification review. The Department will conduct a certification review of the agency and agency services prior to the renewal of the certificate. The review may be unannounced, will be conducted prior to expiration of the certificate and will review compliance with OAR chapter 411, division 335 and where appropriate, chapter 411, divisions 346 or 360.

(4) Refusal to renew a certification. The Department will not renew a certificate if the agency or its services are not in substantial compliance with these rules.

Stat. Auth.: ORS 410.070, 409.050, 427.005-427.007, 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; Suspended by SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

## 411-335-0090

### Change of Ownership, Legal Entity, Legal Status, Management Corporation

Notice of pending change in ownership, legal entity, legal status, or management corporation: new certificate required. The agency must notify the Department in writing of any pending change in the program's ownership or legal entity, legal status, or management corporation and submit a certification application at least 30 days prior to change in ownership, legal entity or legal status.

Stat. Auth.: ORS 410.070, 409.050, 427.005-427.007, 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; Suspended by SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

## 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; Suspended by SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

## 411-335-0110

### Mid-Cycle Review

(1) Mid-Cycle Review Process. The Department may conduct a mid-cycle monitoring review of the agency and its services nine to fifteen months after renewal of the agency's certificate under the following circumstances:

(a) Failure by the agency to successfully complete certificate renewal as evidenced by two of more follow-up reviews; or

(b) Failure by the agency to successfully complete plans of correction for protective service investigations; or

(c) Upon the request of the CDDP or other Department designee, or agency.

(2) Self-Assessment Required. As part of the mid-cycle process the agency must conduct a self-assessment based upon the requirements of this rule.

(a) The agency must document the findings of the self-assessment on forms provided by the Department;

(b) The agency must develop and implement a plan of correction based upon the findings of the self-assessment; and

(c) The agency must submit the self-assessment to the local CDDP with a copy to the Department 30 days prior to the mid-cycle review.

(3) Compliance with OAR chapter 411, division 335. The review will be conducted for compliance with OAR chapter 411, division 335 and where applicable, OAR chapter 411, divisions 346 or 360. The review may be announced or unannounced based on the discretion of the Department.

Stat. Auth.: ORS 410.070, 409.050, 427.005 - 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; Suspended by SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

## 411-335-0140

### Individual/Family Involvement Policy

Individual/family involvement policy needed. The agency must have and implement a written policy that addresses:

(1) Opportunities for the adult service recipients and guardians to participate in decisions regarding the operations of the agency;

(2) Opportunities for families, guardians, legal representatives and significant others of the individuals served by the agency to interact;

(3) Opportunities for adult service recipients, families, guardians, legal representatives and significant others to participate on the Board or on committees or to review policies of the program that directly affect the individuals served by the agency.

Stat. Auth.: ORS 410.070, 409.050, 427.005-427.007, 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; Suspended by SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

# ADMINISTRATIVE RULES

## 411-335-0300

### Rights: Confidentiality of Records

Confidentiality. All individuals' records are confidential except as otherwise provided by applicable State and Federal rule or laws.

(1) For the purpose of disclosure from individual medical records, service providers under these rules are considered "providers" as defined in ORS 179.505

(2) 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).

(3) The proctor agency, proctor provider and the proctor provider's family must treat personal information about an individual or an individual's family in a confidential manner. Confidential information is to be used and disclosed in accordance with OAR 410-014-0020 (1)–(5) only on a need to know basis to law enforcement, Services Coordinator, DHS-CW child protective services staff, SOSCF DHS-CW caseworker, CDDP or OIT investigators, and medical professionals who are treating or providing services to the child. The information shared must be limited to the health and safety, and service needs of the individual.

(4) The proctor agency, proctor provider and the proctor provider's family must comply with the provisions of ORS 192.518 to 192.523 and OAR 410-014-0020(1)–(5) and therefore may use or disclose an individual's protected health information as defined in OAR 410-014-0000(33) only:

(a) To law enforcement, CDDP, SPD, or DHS-CW staff;

(b) As authorized by the child or adults personal representative, including but not limited to a guardian appointed under ORS 125.305, 419C.481 or 419C.555;

(c) For purposes of obtaining healthcare and treatment of the individual;

(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.

(5) The proctor agencies and the proctor providers must keep all written records for each individual in a manner that assures their confidentiality.

Stat. Auth.: ORS 410.070, 409.050, 427.005 - 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; Suspended by SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

## 411-335-0310

### Rights: Informal Complaints and Formal Grievances

(1) The proctor agency must implement written policies and procedures for individuals' grievances as required by OAR 411-323-0060.

(2) The proctor agency must send copies of the documentation on all grievances to the services coordinator within 15 working days of initial receipt of the grievance.

(3) At entry to service and as changes occur, the service provider must inform each individual and parent, guardian, or advocate orally and in writing of the service provider's grievance policy and procedures and a description of how to utilize them.

Stat. Auth.: ORS 409.050, 410.070, 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 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

## 411-335-0370

### Conditions on Certificate

Attaching conditions to a certificate. The Department may attach conditions to the certificate, which limit, restrict or specify other criteria for operation of the agency and its proctor service.

Stat. Auth.: ORS 409.050, 410.070, 427.005 - 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; Suspended by SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

## 411-335-0380

### Conditions

(1) Conditions may be attached to a certificate 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 individuals;

(c) There is reliable evidence of abuse, neglect, or exploitation;

(d) The home or agency is not being operated in compliance with these rules; or

(e) The proctor provider is certified to care for a specific person only and further placements may not be made into that home or facility.

(2) Conditions that may be imposed on a certificate include but are not limited to:

(a) Restricting the total number of individuals;

(b) Restricting the number and support level of individuals allowed within a certified classification level based upon the capacity of the proctor provider and agency staff to meet the health and safety needs of all individuals;

(c) Reclassifying the level of individuals that can be served;

(d) Requiring additional agency staff or agency staff qualifications;

(e) Requiring additional training of proctor providers and agency staff;

(f) Requiring additional documentation; or

(g) Restriction of admissions.

(3) The agency shall be notified in writing of any conditions imposed, the reason for the conditions, and be given an opportunity to request a hearing under ORS 183.310 to 183.502.

(4) In addition to, or in lieu of, a contested case hearing, an agency may request a review by the Administrator or designee of conditions imposed by the Department. The review does not diminish the agency's right to a hearing.

(5) Conditions may be imposed for the duration of the certificate period (five years) or limited to some other shorter period of time. If the condition corresponds to the certification period, the reasons for the condition shall be considered at the time of renewal to determine if the conditions are still appropriate. The effective date and expiration date of the condition shall be indicated on an attachment to the certificate.

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 5-2011(Temp), f. & cert. ef. 2-7-11 thru 8-1-11; SPD 13-2011, f. & cert. ef. 7-1-11; Suspended by SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

## 411-335-0390

### Certificate Denial, Suspension, Revocation, Refusal to Renew

(1) Substantial failure to comply with rules. The Department will deny, suspend, revoke or refuse to renew a certificate where it finds there has been substantial failure to comply with these rules; or where the State Fire Marshal or his representative certifies there is failure to comply with all applicable ordinances and rules relating to safety from fire.

(2) Imminent danger to individuals. The Department will immediately suspend the home or agency certificate where imminent danger to health or safety of individuals exists.

(3) Debarred providers or individuals. The Department will deny, suspend, revoke or refuse to renew a certificate or license where it finds that a provider or agency is on the current Centers for Medicare and Medicaid Services list of excluded or debarred providers.

(4) Revocation, suspension or denial done in accordance with ORS Chapter 183. Such revocation, suspension or denial will be done in accordance with these rules and ORS Chapter 183.

(5) Failure to disclose requested information. Failure to disclose requested information on the application or provision of incomplete or incorrect information on the application will constitute grounds for denial or revocation of the certificate.

(6) Failure to implement a plan of correction or comply with a final order. The Department will deny, suspend, revoke or refuse to renew a certificate if the agency fails to implement a plan of correction or comply with a final order of the Department.

Stat. Auth.: ORS 410.070, 409.050, 427.005 - 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; Suspended by SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

## 411-345-0010

### Statement of Purpose

The rules in OAR chapter 411, division 345 prescribe standards for providing employment and alternatives to employment services for individuals with developmental disabilities receiving residential services. These rules also prescribe the standards and procedures by which the Department endorses service providers to provide employment and alternatives to employment services.

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 309-047-0000, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 14-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11



# ADMINISTRATIVE RULES

## 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) "Administrator" means the administrator of the Department, or that person's designee.
- (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, facilitated by a services coordinator of the community developmental disability program and attended by the ISP team members and other persons, as appropriate. The purpose of the meeting is to determine needs, coordinate services and training, and develop an ISP.
- (9) "Certificate" means a document issued by the Department to a service provider that certifies the service provider is eligible under the rules in OAR chapter 411, division 323 to receive state funds for the provision of endorsed employment and alternatives to employment services.
- (10) "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.
- (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 Department.
- (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 to 5 under the Federal Controlled Substance Act.
- (14) "Department" means the Department of Human Services (DHS).
- (15) "Developmental Disability" as defined in OAR 411-320-0020.
- (16) "Discovery" is a focused time-limited service engaging a participant in identifying their strengths, needs, and interests to prepare for integrated employment.
- (17) "Division" means the Department of Human Services, Seniors and People with Disabilities Division (SPD).
- (18) "Employment Services" means any service that has as its primary goal the employment of individuals, including job assessment, job development, training, and ongoing supports.
- (19) "Endorsement" means authorization to provide employment and alternatives to employment services issued by the Department to a certified service provider that has met the qualification criteria outlined in these rules and the rules in OAR chapter 411, division 323.
- (20) "Entry" means admission to a Department-funded developmental disability service.
- (21) "Executive Director" means the person designated by a board of directors or corporate owner that is responsible for the administration of employment and alternatives to employment services.
- (22) "Exit" means either termination from a Department-funded developmental disability service provider or transfer from one Department-funded service provider to another.
- (23) "Facility Based Service" means any service or program operated by a service provider that occurs in a location supporting more than eight individuals as a group.
- (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) "Important for an Individual" means the areas of life that relate to being healthy, safe, and a valued member of the community.
- (26) "Important to an Individual" means the individual's perspective on the people, places, and things they like, personal values, spirituality, and a sense of self. This is learned by listening to what is being said by words or actions. When there is a conflict between words and actions, actions are considered first.
- (27) "Incident Report" means a written report of any injury, accident, acts of physical aggression, or unusual incident involving an individual.
- (28) "Independence" means the extent to which individuals exert control and choice over their own lives.
- (29) "Individual" means a person with developmental disabilities for whom services are planned and provided.
- (30) "Individual Support Plan (ISP) Action Plan" means the written documentation of the ISP team's commitment in supporting an individual to resolve or improve particular aspects of their life. An ISP Action Plan identifies the necessary measurable steps to be taken, who is accountable for assuring implementation, and timelines for completion.
- (31) "Individual Support Plan (ISP) Team" means a team composed of the individual served, agency representatives who provide service to the individual (as appropriate), the guardian (if any), the services coordinator, and family or other persons requested to develop the ISP.
- (32) "Integration" means the use by individuals of the same community resources used by and available to other persons in the community, including participation in community activities and having contact with persons in their community.
- (33) "Job Development" means assistance and support for individuals to pursue employment and obtain job placement.
- (34) "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.
- (35) "Medicaid Agency Identification Number" means the numeric identifier assigned to a service provider as described in OAR chapter 411, division 370 following the service provider's enrollment to manage service delivery sites or areas within Oregon under endorsement or license from the Department.
- (36) "Medicaid Performing Provider Number" means the numeric identifier assigned to an entity or person by the Department, following enrollment to deliver Medicaid funded services as described in OAR chapter 411, division 370. The Medicaid Performing Provider Number is used by the rendering service provider for identification and billing purposes associated with service authorizations and payments.
- (37) "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.
- (38) "OIS" means Oregon Intervention System.
- (39) "Path to Employment" means a concept that identifies an individual's preferences in moving toward employment using principles of self-determination and a set of questions and strategies that assist the Individual Support Plan team when planning.
- (40) "Person-Centered Planning" means:
  - (a) A process, either formal or informal, for gathering and organizing information that helps an individual:
    - (A) Determine and describe choices about employment or personal goals, activities, and lifestyle preferences; and
    - (B) Identify, use, and strengthen naturally occurring opportunities for support in the community.
  - (b) The methods for gathering information vary, but all are consistent with individual needs and preferences.
- (41) "Person-Centered Process" means a practice of identifying what is important to and for an individual, and the supports necessary to address issues of health, safety, behavior, and financial support.
- (42) "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.

## ADMINISTRATIVE RULES

(43) "Physical Restraint" means any manual physical holding of or contact with an individual that restricts the individual's freedom of movement.

(44) "Productivity" as defined in ORS 427.005 means:

(a) Engagement in income producing work by an individual that is measured through improvements in income level, employment status, or job advancement; or

(b) Engagement by an individual in work contributing to a household or community.

(45) "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.

(46) "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.

(47) "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.

(48) "Self-Determination" means for the purpose of these rules, a philosophy and process by which individuals are empowered to gain control over the selection of services that meet their needs. The basic principles of self-determination are:

(a) Freedom. The ability for an individual, together with freely chosen family, friends, and professionals, to plan for employment beyond the parameters of a predefined program;

(b) Authority. The ability for an individual, together with the Individual Support Plan team, to declare a chosen employment path and to plan supports accordingly.

(c) Autonomy. Planning for and accessing resources that support an individual to seek employment; and

(d) Responsibility. The acceptance of a valued role in an individual's community through employment, organizational affiliations, personal development, and general caring for others in the community, as well as accountability for spending public dollars in ways that are life-enhancing for individuals.

(49) "Service Provider" or "Service" means a public or private community agency or organization that provides recognized developmental disability services and is certified and endorsed by the Department to provide these services under these rules and the rules in OAR chapter 411, division 323. For the purpose of these rules, "agency", "provider", or "program" is synonymous with "service provider".

(50) "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, and monitor Individual Support Plan services and to act as a proponent for individuals.

(51) "Staff" means paid employees 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.

(52) "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.

(53) "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 subject to change with time and circumstances.

(54) "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. The individual is compensated in accordance with the Fair Labor Standards Act.

(55) "These Rules" mean the rules in OAR chapter 411, division 345.

(56) "Transfer" means movement of an individual from one site to another site administered by the same service provider within the same county.

(57) "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.

(58) "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.

(59) "Variance" means a temporary exception from a regulation or provision of these rules or the rules in OAR chapter 411, division 323 that may be granted by the Department upon written application by the service provider.

(60) "Volunteer" means any person assisting a service provider without pay to support the services provided to individuals.

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; SPD 14-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

### 411-345-0030

#### Program Management

(1) CERTIFICATION, ENDORSEMENT, AND ENROLLMENT. To provide employment and alternatives to employment services, a service provider must have:

(a) A certificate and an endorsement to provide employment and alternatives to employment services as set forth in OAR chapter 411, division 323;

(b) A Medicaid Agency Identification Number assigned by the Department as described in OAR chapter 411, division 370; and

(c) For each specific geographic service area where employment and alternatives to employment services shall be delivered, a Medicaid Performing Provider Number assigned by the Department as described in OAR chapter 411, division 370.

(2) INSPECTIONS AND INVESTIGATIONS. The service provider must allow inspections and investigations as described in OAR 411-323-0040.

(3) AGENCY MANAGEMENT AND PERSONNEL PRACTICES. The service provider must comply with the agency management and personnel practices as described in OAR 411-323-0050.

(4) PERSONNEL FILES AND QUALIFICATION RECORDS. The service provider must maintain the following for each staff member in a file available to the Department or the Department's designee for inspection:

(a) Written documentation of six hours of pre-service training prior to supervising individuals including mandatory abuse reporting training, training to work with individuals with developmental disabilities, and training on the support needs of the individual to whom they will provide support;

(b) Written documentation of 12 hours of job-related in-service training annually; and

(c) Documentation that the staff member has been certified in CPR and First Aid by a recognized training agency within three months of employment and that certification is kept current;

(5) CONFIDENTIALITY OF RECORDS. The service provider must ensure all individuals' records are confidential as described in OAR 411-323-0060.

(6) 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 five years.

(7) INDEPENDENCE, PRODUCTIVITY, AND INTEGRATION. As stated in ORS 427.007, the service provider must have a written policy that states each individual's ISP is developed to meet employment and activities that address each individual's level of independence, productivity, and integration into the local community.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 26-1982(Temp), f. & ef. 12-3-82; MHD 9-1983, f. & ef. 6-7-83; MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0010, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 5-2011(Temp), f. & cert. ef. 2-7-11 thru 8-1-11; SPD 14-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

# ADMINISTRATIVE RULES

## 411-345-0050

### Reciprocal Compliance

(1) The Department may accept compliance with other formally recognized standards as assurance of compliance with all or part of these rules.

(2) An employment or alternative to employment service seeking an endorsement based on compliance with other standards must provide the Department with a copy of the complete detailed report from the reviewing group. Where there are differences between other standards and Oregon Administrative Rules, the Oregon Administrative Rules shall take precedence.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 13-1990, f. & cert. ef. 12-7-90; Renumbered from 309-047-0018, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 14-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

## 411-345-0080

### 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 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.

(6) When an abuse investigation has been initiated, the CDDP must provide notice to the service provider according to 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 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; SPD 14-2011, f. & cert. ef. 7-1-11; Suspended by SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

## 411-345-0100

### Staffing Requirements

(1) Each service provider must provide direct service staff appropriate to the number and level of individuals served as follows:

(a) Supported employment and community based service providers must provide adequate direct services staff to ensure initial service and site development, training, and ongoing support to ensure that individual's rights, basic health, and safety are met. A staff member must contact individual's receiving services through supported employment or community based sites two times per month at minimum.

(b) Facility based service providers must provide adequate direct services staff to ensure that individual's rights, basic health, and safety are met. When individuals are present, the service provider must provide and document that there are staff trained in the following areas:

(A) At least one staff member on duty with CPR certification at all times;

(B) At least one staff member on duty with current First Aid certification at all times;

(C) At least one staff member on duty with training to meet other specific medical needs as determined through ISP processes; and

(D) At least one staff member on duty with training to meet other specific behavior intervention needs as determined through ISP processes.

(2) Each service provider must meet all additional requirements for direct service staff ratios and specialized training as specified by contract requirements.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 26-1982(Temp), f. & 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; SPD 5-2011(Temp), f. & cert. ef. 2-7-11 thru 8-1-11; SPD 14-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

## 411-345-0110

### Individual Rights

(1) ABUSE. Any individual as defined in OAR 411-345-0020 must not be abused nor shall abuse be tolerated by any employee, staff, or volunteer of the service provider.

(2) PROTECTION AND WELLBEING.

(a) The service provider must have and implement written policies and procedures that protect individuals' rights during the hours the individual is receiving services. The service provider must encourage and assist individuals to understand and exercise their rights. The policies and procedures must at a minimum provide for:

(A) Assurance that each individual has the same civil and human rights accorded to other citizens;

(B) Adherence to all applicable state and federal labor rules and regulations;

(C) Opportunities for individuals to be productive;

(D) Services that promote independence and that are appropriate to the age and preferences of the individual;

(E) Confidentiality of personal information regarding the individual;

(F) Adequate medical and health care, supportive services, and training;

(G) Opportunities for visits to legal and medical professionals when necessary;

(H) Private communication, including personal mail and access to a telephone, consistent with the service provider's policies for all employees;

(I) Fostering of personal control and freedom regarding personal property;

(J) Protection from abuse and neglect, including freedom from unauthorized training, treatment, and chemical or mechanical restraints;

(K) Freedom from unauthorized personal restraints; and

(L) Transfer of individuals within a service as described in OAR 411-345-0140.

(b) At entry to service and in a timely manner as changes occur, the service provider must inform each individual and parent, guardian, or advocate orally and in writing of the service provider's policy and procedures and a description of how the individual may exercise their rights.

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 309-047-0050, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 14-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11



# ADMINISTRATIVE RULES

## 411-345-0130

### Grievances

(1) The service provider must implement written policies and procedures for individuals' grievances as required by OAR 411-323-0060.

(2) The service provider must send copies of the documentation on all grievances to the services coordinator within 15 working days of initial receipt of the grievance.

(3) At entry to service and as changes occur, the service provider must inform each individual and parent, guardian, or advocate orally and in writing of the service provider's grievance policy and procedures and a description of how to utilize them.

Stat. Auth.: ORS 409.050 & 410.070

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 309-047-0060, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 14-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

## 411-345-0190

### Medical Services

(1) All individuals' medical records must be kept confidential as described in OAR 411-323-0060.

(2) The service provider must have and implement written policies and procedures that describe the medical management system including medication administration, early detection and prevention of infectious disease, self-administration of medication, drug disposal, emergency medical procedures including the handling of bodily fluids, and confidentiality of medical records.

(3) Individuals must receive care that promotes their health and well being, as follows:

(a) The service provider must observe the health and physical condition of individuals and take action in a timely manner in response to identified changes in condition that could lead to deterioration or harm;

(b) The service provider must assist individuals with the use and maintenance of prosthetic devices as necessary for the activities of the service;

(c) The service provider, with the individual's knowledge, must share information regarding medical conditions with the individual's residential contact and the Services Coordinator; and

(d) The service provider must provide rest and lunch periods at least as required by applicable law unless the individual's needs dictate additional time.

(4) The service provider must maintain records on each individual to aid physicians, medical professionals, and the service provider in understanding the individual's medical history and current treatment program. These records must be kept current and organized in a manner that permits staff and medical persons to follow easily the individual's course of treatment. Such documentation must include:

(a) A medical history obtained prior to entry to services including where available:

(A) A copy of a record of immunizations; and

(B) A list of known communicable diseases and allergies.

(b) A record of the individual's current medical condition including:

(A) A copy of all current orders for medication administered, maintained at the service provider's site;

(B) A list of all current medications; and

(C) A record of visits to medical professionals, consultants, or therapists if facilitated or provided by the service provider.

(5) The administration of medication at the service site must be avoided whenever possible. When medications, treatments, equipment, or special diets must be administered or monitored for self-administration, the service provider must:

(a) Obtain a copy of a written order, signed by a physician, physician's designee, or a medical practitioner prescribing the medication, treatment, special diet, equipment or other medical service; and

(b) Follow written orders.

(c) PRN orders are not accepted for psychotropic medication.

(6) All medications administered or monitored in the case of self-administration must be:

(a) Kept in their original containers;

(b) Labeled by the dispensing pharmacy, product manufacturer, or physician, as specified per the physician's or licensed health care practitioner's written order;

(c) Kept in a secured locked container and stored as indicated by the product manufacturer; and

(d) Recorded on an individualized Medication Administration Record (MAR), including treatments and PRN orders.

(8) The MAR must include:

(a) The name of the individual;

(b) The brand or generic name of the medication including the prescribed dosage and frequency of administration as contained on physician order and medication;

(c) For topical medications and basic first aid treatments utilized without a physician's order, a transcription of the printed instructions from the package or the description of the basic first aid treatment provided;

(d) Times and dates of administration or self-administration of the medication;

(e) The signature of the staff administering the medication or monitoring the self-administration of the medication;

(f) Method of administration;

(g) Documentation of any known allergies or adverse reactions to a medication;

(h) Documentation and an explanation of why a PRN medication was administered and the results of such administration; and

(i) An explanation of any medication administration irregularity with documentation of administrative review by the service provider's executive director or designee.

(9) Safeguards to prevent adverse medication reactions shall be utilized to include:

(a) Maintaining information about each prescribed medication's effects and side-effects;

(b) Communicating any concerns regarding any medication usage, effectiveness, or effects to the residential contact and the services coordinator; and

(c) Prohibiting the use of one individual's medications by another.

(10) The service site or service provider may not keep unused, discontinued, outdated, or recalled drugs, or drug containers with worn, illegible, or missing labels. All unused, discontinued, outdated, or recalled drugs, or drug containers with worn, illegible, or missing labels must be promptly disposed of in a manner consistent with federal statutes and designed to prevent illegal diversion of the substances into the possession of people other than for whom it was prescribed. A written record must be maintained by the service provider of all disposed drugs and must include:

(a) Date of disposal;

(b) A description of the medication including amount;

(c) The individual for whom the medication was prescribed;

(d) The reason for disposal;

(e) The method of disposal;

(f) Signature of staff disposing; and

(g) For controlled medications, the signature of a witness to the disposal.

(11) For any individual who is self-administering medication the service provider must:

(a) Have documentation that a training program was initiated with approval of the individual's ISP team or that training for the individual is unnecessary;

(b) If necessary, have a training program that is consistent with the self-administration training program in place at the individual's residence;

(c) If necessary, have a training program that provides for retraining when there is a change in dosage, medication, or time of delivery;

(d) Have specific supports identified and documented for the individual when training has been deemed unnecessary; and

(e) Provide for an annual review, at a minimum, as part of the ISP process, upon completion of the training program or when training for the individual has been deemed necessary by the ISP team.

(12) The service provider must ensure that individuals able to self-administer medications keep them secured, unavailable to any other person, and stored as recommended by the product manufacturer.

(13) The service provider must immediately contact the services coordinator when the individual's medical, behavioral, or physical needs change to a point that the individual's needs may not be met by the service provider. The ISP team must determine alternative placement or arrangement if necessary.

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 309-047-0090, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 14-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11

# ADMINISTRATIVE RULES

## Department of Justice Chapter 137

**Rule Caption:** Intergovernmental child support services and alternative support payments.

**Adm. Order No.:** DOJ 4-2011

**Filed with Sec. of State:** 7-1-2011

**Certified to be Effective:** 7-1-11

**Notice Publication Date:** 5-1-2011

**Rules Amended:** 137-055-1020, 137-055-1090, 137-055-1120, 137-055-1145, 137-055-3220, 137-055-3240, 137-055-3400, 137-055-3420, 137-055-4040, 137-055-4060, 137-055-4455, 137-055-4540, 137-055-5060, 137-055-5080, 137-055-5220, 137-055-5240, 137-055-6023, 137-055-6120, 137-055-7020, 137-055-7040, 137-055-7060, 137-055-7100, 137-055-7120, 137-055-7140, 137-055-7160, 137-055-7180, 137-055-7190

**Rules Repealed:** 137-055-4100, 137-055-4110, 137-055-4120, 137-055-4180, 137-055-5020, 137-055-7080, 137-055-1020(T), 137-055-1090(T), 137-055-1120(T), 137-055-1145(T), 137-055-3220(T), 137-055-3240(T), 137-055-3400(T), 137-055-3420(T), 137-055-4040(T), 137-055-4455(T), 137-055-4540(T), 137-055-5080(T), 137-055-5220(T), 137-055-5240(T), 137-055-6120(T), 137-055-7020(T), 137-055-7040(T), 137-055-7060(T), 137-055-7100(T), 137-055-7120(T), 137-055-7140(T), 137-055-7160(T), 137-055-7180(T), 137-055-7190(T)

**Subject:** OAR 137-055-1020, 137-055-1090, 137-055-1120, 137-055-1145, 137-055-3220, 137-055-3240, 137-055-3400, 137-055-3420, 137-055-4040, 137-055-4455, 137-055-4540, 137-055-5080, 137-055-5220, 137-055-5240, 137-055-6120, and 137-055-7020 through 137-055-7190 are amended (OAR 137-055-7080 is repealed) to reflect changes in federal regulations concerning intergovernmental case processing. Additionally, language in existing rules is simplified for clarity.

OAR 137-055-4060 through 137-055-4120, 137-055-4180, 137-055-5020, 137-055-5060 and 137-055-6023 are being amended or repealed to allow flexibility in the manner in which the Child Support Program accepts payments and to remove provisions that are in statute.

**Rules Coordinator:** Vicki Tungate—(503) 986-6086

### 137-055-1020

#### Child Support Program Definitions

The following definitions apply to OAR 137-055-1040 through 137-055-7190:

(1) Unless otherwise stated, “administrator” means either the Administrator of the Division of Child Support of the Department of Justice or a district attorney, or the administrator’s or a district attorney’s authorized representative.

(2) “Assignee” means the Department of Human Services (DHS), the Oregon Health Authority (OHA), the Division of Child Support, Oregon Youth Authority (OYA) or equivalent agencies in any other state or Tribe to which support rights for a person are assigned.

(3) “Assignment” or “Assigned” means all or a portion of support payments owed to a person will be kept by the state if the person or a beneficiary of the person is receiving Temporary Assistance for Needy Families (TANF) cash assistance, foster care, or OYA services. Support payments will be distributed as provided in OAR 137-055-6022. Additionally, if a person receives Title XIX medical assistance, medical support rights are assigned.

(4) “Beneficiary” means any child, spouse or former spouse for whom an obligor has been ordered (or has agreed) to pay support, under a court or administrative order, or a voluntary agreement.

(5) “Child Support Award” means a money award or administrative order that requires the payment of child support.

(6) “Child Support Program” or ACSP” is the program authorized under title IV-D of the Social Security Act to provide child support enforcement services required by federal and state law. The CSP director in Oregon is the Administrator of the Division of Child Support. The CSP includes the Division of Child Support and those district attorneys that contract to provide services described in ORS 25.080.

(7) “Class Order” means a support order for multiple children that does not specify an amount of support per child and requires the payment

of the entire amount until the last child attains majority or until the order is prospectively modified.

(8) “Court Order” means any judgment or order of the court requiring an obligor to provide child or spousal and/or health care coverage, for specified beneficiaries.

(9) “Court ordered Amount”, or “COA”, means the periodic payment amount, usually monthly, ordered by the administrator, an administrative law judge or by a court for support. The COA can be either the amount for each beneficiary on a support case, or the total amount for all beneficiaries in a single support case.

(10) “Department of Human Services”, or “DHS”, is the state’s health and human services agency. DHS is responsible for public assistance programs such as: TANF, Food Stamps, child-protective services, and foster care and adoption programs.

(11) “Disbursement” means dispensing or paying out collected support.

(12) “Distribution” means allocating or apportioning collected support.

(13) “District Attorney”, or “DA”, means the district attorney for an Oregon county responsible for providing services under ORS 25.080.

(14) “Division of Child Support”, or “DCS”, is the Division of Oregon’s Department of Justice that is responsible for providing services under ORS 25.080.

(15) “Guidelines” refers to the guidelines, the formula, and related provisions established by DCS, in OAR 137-050-0705 through 137-050-0765.

(16) “Income Withholding” means a judicial or administrative process under which an obligor’s employer, trustee, or other provider of income is ordered to withhold a specified percentage, or a specified amount, from each and every paycheck or benefit payment of an obligor, for the purpose of paying current and past due support. Income withholding is distinguished from garnishment as follows: income withholding will occur continuously under a single order and is not subject to claim of exemption; a garnishment occurs for only a limited duration under a single writ and is subject to certain property exemptions provided by law.

(17) “Initiating agency” means a state or tribal IV-D agency, or a child support agency in a reciprocating foreign country, in which an individual has applied for or is receiving child support services.

(18) “Intergovernmental” means a case or action that involves a tribe, another country, or another state’s child support agency.

(19) “Issuing jurisdiction” means the state, tribe or reciprocating foreign country in which a tribunal issues a support order or renders a judgment determining parentage and includes an “issuing state” as defined in ORS 110.303(9).

(20) “Judgment Lien” means the effect of a judgment on real property for the county in which the judgment is entered, or such other county where the lien is recorded, and includes any support arrearage lien attaching to real property.

(21) “Judgment Remedy” means the ability of a judgment creditor to enforce a judgment, including enforcement through a judgment lien.

(22) “Legal proceeding” means any action related to the support order that requires service of documents on the parties. For the purposes of OAR 137-055-1140 and 137-055-1160, “legal proceeding” means a proceeding initiated by the administrator.

(23) “Medicaid” refers to Title XIX of the Social Security Act (see the definition under “Title XIX”).

(24) “Money Award” means a judgment or portion of a judgment that requires the payment of money. A money award will always refer to a sum certain and will not require a payment in installments.

(25) “Oregon Health Authority” or “OHA” is the State of Oregon agency acting as the state Medicaid agency for administration of funds from Title XIX and XXI of the Social Security Act and to administer medical assistance under ORS chapter 414.

(26) “Oregon Youth Authority”, or “OYA”, is the State of Oregon agency responsible for the supervision, management, and administration of state parole and probation services, community out-of-home placements, and youth correction facilities for youth offenders, and other functions related to state programs for youth corrections.

(27) “Party” means an obligor, obligee, a child attending school under ORS 107.108 and OAR 137-055-5110, and includes any person who has been joined to the proceeding.

(28) “Responding agency” means the agency that is providing services in response to a referral from an initiating agency in an intergovernmental case.

# ADMINISTRATIVE RULES

(29) "Subsequent child" means a child whose paternity or support has not been established and who is born to the same parents of another child, or who has not been included in a support order for another child with the same parties.

(30) "Support" means monetary payments, health care coverage payments or premiums, cash medical payments or other benefits or payments that a person has been ordered by a court or by administrative process, or has voluntarily agreed, to provide for the benefit and maintenance of another person.

(31) "Support Arrearage Lien" means a lien that attaches to real property when an installment becomes due under the terms of a support award and is not paid.

(32) "Support Award" means a money award or administrative order that requires the payment of child or spousal support.

(33) "Support Order" means a judgment or order, whether temporary, final or subject to modification, which reflects an obligation to contribute to the support of a child, a spouse or a former spouse, and requires an obligor to provide monetary support, health care, arrears or reimbursement. A support order may include related costs and fees, interest, income withholding, attorney fees and other relief.

(34) "TANF" means "Temporary Assistance for Needy Families", a public assistance program which provides case management and cash assistance to low income families with minor children. It is designed to promote personal responsibility and accountability for parents. The goal of the program is to reduce the number of families living in poverty through employment services and community resources. Title IV-A of the Social Security Act is the specific provision that gives grants to states and Tribes for aid and services to needy families with dependent children.

(35) "Tiered" order means an order which includes an amount of support to be paid if an adult child becomes a child attending school under ORS 107.108 and OAR 137-055-5110.

(36) "Title IV-A" refers to Title IV-A of the Social Security Act, which is the specific provision that gives grants to states and Tribes for aid and services to needy families with dependent children (see "TANF"). Applicants for assistance from IV-A programs are automatically referred to their state IV-D agency in order to identify and locate the non-custodial parent, establish paternity or a child support order, and obtain child support payments.

(37) "Title IV-D" refers to Title IV-D of the Social Security Act, which requires each state to create a program to locate noncustodial parents, establish paternity, establish and enforce child support obligations, and collect, distribute and disburse support payments. Recipients of IV-A (TANF), IV-E (foster care), XIX (Medicaid), and Oregon Youth Authority (OYA) assistance are referred to their state's IV-D child support program. States must also accept applications from families who do not receive assistance, if requested, to assist in collection of child support. Title IV-D also established the federal Office of Child Support Enforcement.

(38) "Title IV-E" refers to Title IV-E of the Social Security Act which established a federal-state program known as Foster Care that provides financial support to a person, family, or institution that is raising a child or children that is not their own. The funding for IV-E foster care programs is primarily from federal sources.

(39) "Title XIX", known as Medicaid, refers to Title XIX of the Social Security Act which mandates health care coverage by states for TANF recipients and certain other means-tested categories of persons. Within broad national guidelines which the federal government provides, each state: establishes its own eligibility standards; determines the type, amount, duration, and scope of services; sets the rate of payment for services; and administers its own program. In Oregon, the program is administered by OHA.

Stat. Auth.: ORS 18.005, 180.345

Stats. Implemented: ORS 25.080

Hist.: AFS 10-1990, f. 3-14-90, cert. ef. 4-1-90; AFS 14-1990, f. & cert. ef. 6-7-90; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0001; 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 461-200-1020; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-1020; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 5-2006, f. 6-29-06, cert. ef. 7-3-06; DOJ 1-2007, f. & cert. ef. 1-2-07; DOJ 5-2007, f. & cert. ef. 7-2-07; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07; DOJ 1-2010, f. & cert. ef. 1-4-10; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11; DOJ 4-2011, f. & cert. ef. 7-1-11

## 137-055-1090

### Good Cause

(1) For the purposes of OAR chapter 137, division 055, "good cause" means the Child Support Program (CSP) is exempt from providing services as defined in ORS 25.080. Specifically excluded from this definition is good cause for not withholding as defined in ORS 25.396 and OAR 137-

055-4060 and good cause found for not disbursing support to a child attending school under ORS 107.108 and OAR 137-055-5110.

(2) If an obligee believes that physical or emotional harm to the family may result if services under ORS 25.080 are provided, the obligee may request, either verbally or in writing, that the administrator discontinue all activity against the obligor. Upon such a request by an obligee, the administrator will:

(a) On an open TANF or Medicaid case, immediately suspend all activity on the case, notify DHS or OHA to add good cause coding, and send a safety packet to the obligee requesting a response be sent to DHS; or

(b) On any other case, immediately suspend all activity on the case, add good cause case coding pending a final determination, and send a Client Safety Packet on Good Cause to the obligee requesting a response within 30 days.

(3) Good cause must be determined by:

(a) The Department of Human Services (DHS), pursuant to OAR 413-100-0830, 461-120-0350, 461-120-0360, 461-135-1200 or 461-135-1205, if TANF or Title IV-E benefits are being provided;

(b) The Oregon Health Authority (OHA) if Medicaid benefits are being provided;

(c) The Oregon Youth Authority (OYA), pursuant to OAR 416-100-0020 and Policy Statement II-E-1.5, if the child is in OYA's custody;

(d) The Director of the CSP when the provisions of OAR 137-055-3080 apply; or

(e) The administrator when the provisions of subsections (a) through (d) of this section do not apply.

(4) When the provisions of subsection (3)(e) apply and the obligee makes a written claim that the provision of services may result in emotional or physical harm to the child or obligee or completes and returns the good cause form, the administrator will:

(a) Make a finding and determination that it is in the best interests of the child not to provide services;

(b) Proceed with case closure pursuant to OAR 137-055-1120; and

(c) Except for arrears permanently assigned to the Oregon Youth Authority, satisfy any and all permanently assigned arrears as defined in OAR 137-055-6010.

(5) In determining whether providing services is in the best interest of the child under section (3)(d), the CSP Director will consider:

(a) The likelihood that provision of services will result in physical or emotional harm to the child or obligee, taking into consideration:

(A) Information received from the obligee; or

(B) Records or corroborative statements of past physical or emotional harm to the child or obligee, if any.

(b) The likelihood that failure to provide services will result in physical or emotional harm to the child or obligee;

(c) The degree of cooperation needed to complete the service;

(d) The availability and viability of other protections, such as a finding of risk and order for non-disclosure pursuant to OAR 137-055-1160; and

(e) The extent of involvement of the child in the services sought.

(6) A finding and determination by the CSP Director that good cause does not apply, may be appealed as provided in ORS 183.484.

(7) A finding and determination of good cause applies to any case which involves the same obligee and child, or any case in which a child is no longer in the physical custody of the obligee, but there is a support order for the child in favor of the obligee.

(8) When an application for services is received from an obligee and TANF, Title IV-E or Medicaid benefits are not being provided, the child is not in OYA's custody, and there has been a previous finding and determination of good cause, the administrator will:

(a) Notify the obligee of the previous finding and determination of good cause and provide a Client Safety Packet;

(b) Allow the obligee 30 days to retract the application for services or return appropriate documents from the Client Safety Packet; and

(c) If no objection to proceeding or good cause form is received from the obligee, document CSEAS, remove the good cause designation and, if the case has been closed, reopen the case.

(9) When an application for services is received from a physical custodian of a child, the physical custodian is not the obligee who originally claimed good cause and TANF, Title IV-E or Medicaid benefits are not being provided, the child is not in OYA's custody and there is no previous support award, the administrator will open a new case without good cause coding with the physical custodian as the obligee.



## ADMINISTRATIVE RULES

(10)(a) When an application for services is received from a physical custodian of a child, the physical custodian is not the obligee who originally claimed good cause and TANF, Title IV-E or Medicaid benefits are not being provided, the child is not in OYA's custody, and the case in which there has been a finding and determination of good cause has a support award in favor of the obligee who originally claimed good cause, the administrator will:

(A) Notify the obligee who originally claimed good cause that an application has been received and provide a Client Safety Packet; and

(B) Advise the obligee who originally claimed good cause that the previous good cause finding and determination will be treated as a claim of risk as provided in OAR 137-055-1160; and

(C) Allow the obligee 30 days to provide a contact address as provided in OAR 137-055-1160.

(b) If an objection or good cause form is received from the obligee who originally claimed good cause, or if the location of the obligee who originally claimed good cause is unknown, the administrator will forward the objection, form or case to the Director of the CSP for a determination of whether to proceed;

(c) If no objection or good cause form is received from the obligee who originally claimed good cause, the administrator will document CSEAS, make a finding of risk and order for non-disclosure pursuant to OAR 137-055-1160 for that obligee, remove the good cause designation, and, if the case has been closed, reopen the case.

(11)(a) If a request for services under ORS chapter 110 is received from another jurisdiction and TANF, Title IV-E or Medicaid benefits are not being provided by the State of Oregon, the child is not in OYA's custody and there has been a finding and determination of good cause, the administrator will:

(A) Notify the referring jurisdiction of the finding and determination of good cause and request that the jurisdiction consult with the obligee to determine whether good cause should still apply; and

(B) If the location of the obligee is known, notify the obligee that the referral has been received, provide a Client Safety Packet and ask the obligee to contact both the referring agency and the administrator if there is an objection to proceeding; and

(C) Advise the obligee who originally claimed good cause that the previous good cause finding and determination will be treated as a claim of risk as provided in OAR 137-055-1160; and

(D) Allow the obligee 30 days to provide a contact address as provided in OAR 137-055-1160.

(b) If an objection or good cause form is received from the obligee, the administrator will forward the objection, form or case to the Director of the CSP for a determination of whether to proceed.

(c) If there is no objection or good cause form received from the obligee, or if the obligee's address is unknown, and the referring jurisdiction advises that the finding and determination of good cause no longer applies, the administrator will document CSEAS, remove the good cause designation and, if the case has been closed, reopen the case.

(12) If a referral for services under ORS 25.080 is received because TANF, Title IV-E or Medicaid benefits are being provided or the child is in OYA's custody, and there has been a previous finding and determination of good cause, the administrator will notify the appropriate state agency of the previous finding and determination of good cause and:

(a) If TANF, Title IV-E or Medicaid benefits are being provided, DHS will, in consultation with the office which made the good cause finding and determination and as provided in DHS policy SS-PT-05-005, decide whether good cause still applies pursuant to OAR 413-100-0830, 461-135-1200, 461-135-1205, 461-120-0350 or 461-120-0360; or

(b) If the child is in OYA's custody, OYA will, in consultation with the office which made the good cause finding and determination and as provided in OYA Policy II-E-1.5, determine if the circumstances that created the good cause still exist and, if they do not, request that the agency which determined good cause remove the coding.

(13) When the provisions of section (12) apply, the administrator will not provide services unless and until good cause coding is removed by the agency who made the good cause finding and determination.

(14) Notwithstanding any other provision of this rule, when a case has not previously had a good cause finding and determination and TANF, Title IV-E or Medicaid benefits are being provided or the child is in OYA's custody, and DHS, OHA or OYA makes a current good cause finding and determination on a related case, the administrator will not provide services on the case or related cases unless and until good cause coding is removed by DHS, OHA or OYA.

(15) In any case in which a good cause finding and determination has been made and subsequently removed, past support under ORS 416.422 and OAR 137-055-3220 may not be sought for any periods prior to the determination that good cause no longer applies.

(16) In any case in which a good cause finding and determination has been made, and a child attending school as defined in ORS 107.108 and OAR 137-055-5110 is a party to the case, the child attending school may file an application for services pursuant to OAR 137-055-1060, 137-055-1070 and 137-055-5110.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 25.080

Hist.: DOJ 4-2005, f. & cert. ef. 4-1-05; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 6-2006, f. & cert. ef. 10-2-06; DOJ 12-2009, f. & cert. ef. 10-1-09; DOJ 1-2010, f. & cert. ef. 1-4-10; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11; DOJ 4-2011, f. & cert. ef. 7-1-11

### 137-055-1120

#### Case Closure

(1) The administrator may close a child support case whenever the case meets at least one of the following criteria for case closure:

(a) There is no longer a current support order, arrears are under \$500 and there are no reasonable expectations for collection or the arrears are uncollectible under state law. For the purposes of this subsection, "no longer a current support order" means the support order is not currently accruing or there never was a support order. This subsection specifically includes but is not limited to cases in which:

(A) Action to establish support has not been initiated and the child is at least 18 years old;

(B) The child has been adopted;

(C) The child is deceased; or

(D) Parental rights for the child have been terminated;

(b) The non-custodial parent or putative father is deceased and no further action, including a levy against the estate, can be taken;

(c) Paternity cannot be established because:

(A) A parentage test, or a court or administrative process, has excluded the putative father and no other putative father can be identified;

(B) The identity of the biological father is unknown and cannot be identified after diligent efforts, including at least one interview by the administrator with the recipient of services;

(C) Action to establish paternity has not been initiated and the child is at least 18 years old; or

(D) In a case involving incest or forcible rape, or where legal proceedings for adoption are pending, the administrator has determined that it would not be in the best interests of the child to establish paternity. For the purposes of this paragraph, a determination by the Department of Human Services (DHS) or the Oregon Youth Authority (OYA) that paternity establishment is not in the best interests of the child is sufficient for the administrator to make the same finding.

(d) The location of the non-custodial parent is unknown, and the state parent locator service has made regular attempts using multiple sources, all of which have been unsuccessful, to locate the non-custodial parent:

(A) Over a three-year period when there is sufficient information to initiate an automated locate effort; or

(B) Over a one-year period when there is not sufficient information to initiate an automated locate effort;

(e) When paternity is not at issue and the non-custodial parent cannot pay support for the duration of the child's minority because the parent is both:

(A) Institutionalized in a psychiatric facility, is incarcerated with no chance for parole, or has a medically verified total and permanent disability with no evidence of support potential; and

(B) Without available income or assets which could be levied or attached for support;

(f) The non-custodial parent:

(A) Is a citizen of, and lives in, a foreign country;

(B) Does not work for the Federal government or for a company or state with headquarters in or offices in the United States;

(C) Has no reachable income or assets in the United States; and

(D) Oregon has been unable to establish reciprocity with the country;

(g) The state parent locator service has provided location-only services based upon a request under 45 CFR 302.35(c)(3);

(h) The custodial parent or recipient of services requests closure, and:

(A) There is no assignment to the state of medical support; and

(B) There is no assignment of arrears that have accrued on the case;

(i) An initiating agency requests closure and the agency requesting closure:

(A) Has closed its case; or

(B) Has advised Oregon that services are no longer needed.

# ADMINISTRATIVE RULES

(j) The custodial parent or recipient of services is deceased and no trustee or personal representative has requested services to collect arrears;

(k) DHS, OYA, the Oregon Health Authority or the administrator pursuant to OAR 137-055-1090, has made a finding of good cause or other exceptions to cooperation and has determined that support enforcement may not proceed without risk or harm to the child or caretaker;

(l) In a non-TANF case (excluding a Medicaid case), the administrator is unable to contact the custodial parent, or recipient of services, within 60 calendar days, despite an attempt of at least one letter sent by first class mail to the last known address;

(m) In a non-TANF case, the administrator documents the circumstances of non-cooperation by the custodial parent, or recipient of services, and an action by the custodial parent, or applicant for services, is essential for the next step in providing enforcement services; or

(n) The administrator documents failure by the initiating agency to take an action which is essential for the next step in providing services.

(2)(a)(A) Except as otherwise provided in this section, if the administrator elects to close a case pursuant to subsection (1)(a), (1)(e), (1)(f), (1)(j) or (1)(l) through (1)(n) of this rule, the administrator will notify all parties to the case in writing at least 60 calendar days prior to closure of the case of the intent to close the case.

(B) If the administrator elects to close a case pursuant to subsection (1)(b) through (1)(d) of this rule, the administrator:

(i) Will notify the obligee and any child attending school in writing at least 60 days prior to closure of the case of the intent to close the case;

(ii) Is not required to notify the obligor of the intent to close the case; and

(iii) If the provisions of paragraph (1)(c)(D) apply, is not required to notify any other party.

(C) If the administrator elects to close a case pursuant to subsection (1)(g) or (1)(i) of this rule, the administrator is not required to notify any party of the intent to close the case. However, if the case is closed pursuant to paragraph (1)(i), the administrator will send a courtesy notice to the parties advising the reason for closure.

(D) If the administrator elects to close a case pursuant to subsection (1)(h) of this rule, the administrator will notify all parties to the case in writing at least 60 calendar days prior to closure of the case of the intent to close the case, except:

(i) When the case is a Child Welfare or Oregon Youth Authority case in which the child has left state care, an order under OAR 137-055-3290 is not appropriate, and a notice and finding has not been initiated, the case will be closed immediately; and

(ii) No closure notice will be sent to the parents unless a parent had contact with the Child Support Program, Child Welfare or the Oregon Youth Authority regarding the child support case.

(E) If the administrator elects to close a case pursuant to subsection (1)(k) of this rule, the administrator will:

(i) Notify the obligee and any child attending school in writing at least 60 days prior to closure of the case of the intent to close the case; and

(ii) Not notify the obligor of the intent to close the case.

(b) The 60-day time frame in paragraph (2)(a)(A) is independent of the 60-day calendar time frame in subsection (1)(l).

(c) The administrator will document the notice of case closure by entering a narrative line, or lines, on the child support computer system and will include the date of the notice.

(d) The content of the notice in paragraph (2)(a)(A) must include, but is not limited to, the specific reason for closure, actions a party can take to prevent closure, and a statement that an individual may reapply for services at any time.

(3) Notwithstanding paragraph (2)(a)(A) of this rule, a case may be closed immediately if:

(a) All parties agree to waive the notice of intent to close and the 60-day objection period when the notice of intent to close has not yet been sent; or

(b) All parties agree to waive the remainder of the 60-day objection period when the notice of intent to close has already been sent.

(4) The administrator will keep a case open if, in response to the notice sent pursuant to paragraph (2)(a)(A) of this rule:

(a) The applicant or recipient of services:

(A) Supplies information which could lead to the establishment of paternity or of a support order, or enforcement of an order; or

(B) Reestablishes contact with the administrator, in cases where the administrator proposed to close the case under subsection (1)(l) of this rule; or

(b) The party who is not the applicant or recipient of services completes an application for services.

(5) A party may request at a later date that the case be reopened if there is a change in circumstances that could lead to the establishment of paternity or a support order, or enforcement of an order, by completing a new application for services.

(6) The administrator will document the justification for case closure by entering a narrative line or lines on the child support computer system in sufficient detail to communicate the basis for the case closure.

Stat. Auth.: ORS 25.080 & 180.345

Stats. Implemented: ORS 25.020 & 25.080

Hist.: AFS 35-1986(Temp), f. & ef. 4-14-86; AFS 66-1986, f. & ef. 9-19-86; AFS 27-1988, f. & cert. ef. 4-5-88; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89, Renumbered from 461-035-0055; AFS 15-1993, f. 8-13-93, cert. ef. 8-15-93; AFS 13-1999, f. 10-29-99, cert. ef. 11-1-99; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0050; AFS 2-2001, f. 1-31-01, cert. ef. 2-1-01; 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 461-200-1120; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-1120; 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 6-2006, f. & cert. ef. 10-2-06; DOJ 1-2007, f. & cert. ef. 1-2-07; DOJ 1-2010, f. & cert. ef. 1-4-10; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11; DOJ 4-2011, f. & cert. ef. 7-1-11

## 137-055-1145

### Access to Child Support Records

(1) When information may be shared pursuant to ORS 25.260, this rule clarifies the type of information which may be accessed through automation or contact and who is authorized to access the information.

(2)(a) Information which may be accessed from the Child Support Enforcement Automated System (CSEAS) records by an agency administering programs under Title IV-A of the Social Security Act may include:

(A) Obligor name, social security number, date of birth, address and phone number;

(B) Obligee name, social security number, date of birth and address;

(C) Title IV-A case number;

(D) Whether the case carries identifiers indicating:

(i) There is a finding or determination of good cause under OAR 137-055-1090, 413-100-0830, 461-120-0350, 461-120-0360, 461-135-1200 or 461-135-1205;

(ii) There is an order for nondisclosure of information pursuant to OAR 137-055-1160; or

(iii) There is a contact address;

(E) Obligor employer name, address, federal identification number and wages;

(F) Obligor's unemployment compensation benefits;

(G) Obligor's gross quarterly compensation;

(H) The name of any jurisdiction with a child support case or order;

(I) Child's name, date of birth and social security number;

(J) The date(s) and amount(s) of any support payment distributed and to whom or where it was distributed; and

(K) Any information which is not considered confidential, including but not limited to the child support case number, caseload assignment and Child Support Program (CSP) employee roster.

(b) Information which may be accessed from CSEAS records by an agency administering programs under Title XIX of the Social Security Act may include:

(A) Obligor name, social security number, date of birth, address and phone number;

(B) Obligee name, social security number, date of birth and address;

(C) Title IV-A case number;

(D) Whether the case carries identifiers indicating:

(i) There is a finding or determination of good cause under OAR 137-055-1090, 413-100-0830, 461-120-0350, 461-120-0360, 461-135-1200 or 461-135-1205;

(ii) There is an order for nondisclosure of information pursuant to OAR 137-055-1160; or

(iii) There is a contact address;

(E) Obligor's employer name, address, federal identification number and wages;

(F) Obligor's unemployment compensation benefits;

(G) Obligor's gross quarterly compensation;

(H) The name of any jurisdiction with a child support case or order;

(I) Child's name, date of birth and social security number;

(J) Whether health care coverage is ordered;

(K) Whether health care coverage is provided;

(L) Insurer name, address and health insurance policy number;

(M) The date(s) and amount(s) of any support payment made to the obligee; and

# ADMINISTRATIVE RULES

(N) Any information which is not considered confidential, including but not limited to the child support case number, caseload assignment and CSP employee roster.

(c) Information which may be accessed from CSEAS records by an agency administering programs under Title I, X, XIV or XVI of the Social Security Act, an agency administering the Food Stamp program, the State Employment Services Agency (including agencies which administer the unemployment compensation program), and agencies administering workers' compensation programs is limited to obligor name, social security number and address and employer name, address and federal identification number.

(A) Notwithstanding the provisions of subsection (2)(c), if an agency identified in that subsection receives a written consent to release information as provided in OAR 137-055-1140(12), the agency may have access to information that may be released to a party.

(B) In addition to the information listed in subsection (2)(c), the State Employment Services Agency (including agencies which administer the unemployment compensation program) may have access to the history of the obligor's employers' names, addresses and federal identification numbers.

(d) Information which may be accessed from CSEAS records by a private industry council, as defined in OAR 137-055-1140, is limited to obligor name, address, phone number and Title IV-A case number.

(3) An agency administering a program identified in section (2) of this rule may obtain access for its employees to CSEAS records by entering into an interagency agreement with the Child Support Program (CSP). Any agreement must include provisions under which the agency seeking access agrees to put into place a process that ensures:

(a) Each employee given access has read and understands the CSP rules and Division of Child Support conflict of interest policy;

(b) Each employee given access agrees to abide by the terms of the CSP rules and policy;

(c) Each employee given access agrees to access and use information only for the purposes for which access is allowed as described in this rule;

(d) Employees can identify and be screened from conflict of interest cases;

(e) The agency, on a regular basis, audits access by employees, including verification of the purpose for which information is accessed and provides the CSP with the results of the audit;

(f) Violations are reported to the CSP, including the steps taken by the agency to prevent future violation;

(g) Access is revoked as provided in section (4) of this rule; and

(h) Access rights are updated, including notifying the CSP when an employee terminates or is transferred.

(4) If an employee of an agency described in section (2) of this rule discloses or inappropriately uses the information covered by this rule:

(a) The CSP Director, after consulting with the employee's agency, will determine whether the disclosure or usage occurred or likely occurred; and

(b) The employee's access to information from CSEAS records will be revoked:

(A) Temporarily, if a determination by the CSP Director is pending; or

(B) Permanently, if a determination by the CSP Director is made that disclosure or usage occurred or likely occurred.

(c) The provisions of this section are in addition to any other penalty for disclosure or usage of confidential information imposed by the employee's agency or by any other provision of law.

(5) CSP staff may disclose case information to an employee of an agency described in subsection (2)(a) when:

(a) That agency's employee requests specific information from a branch office;

(b) The employee's agency has entered into an agreement as provided in section (3) of this rule; and

(c) The source of the information is not the Internal Revenue Service.

(6) CSP staff may disclose information to an employee of an agency described in subsection (2)(b) when:

(a) That agency's employee requests specific information from a branch office;

(b) The employee's agency has entered into an agreement as provided in section (3) of this rule; and

(c) The source of the information is not:

(A) The Internal Revenue Service;

(B) The National Directory of New Hires; or

(C) The Federal Case Registry.

(7) Information for which disclosure is allowed under section (5) or (6) of this rule may be accessed from CSEAS records if feasible.

Stat. Auth.: ORS 25.260, 180.345 & 180.380

Stats. Implemented: ORS 25.260

Hist.: DOJ 12-2004, f. & cert. ef. 10-1-04; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 5-2006, f. 6-29-06, cert. ef. 7-3-06; DOJ 1-2010, f. & cert. ef. 1-4-10; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11; DOJ 4-2011, f. & cert. ef. 7-1-11

## 137-055-3220

### Establishment of Past Support Orders

(1) For purposes of this rule the following definitions apply:

(a) "Past support" means the amount of child support that could have been ordered based on the Oregon Child Support Guidelines and accumulated as arrears against a parent for the benefit of a child for any period of time during which the child was not supported by the parent and for which period no support order was in effect.

(b) "Supported by the parent" in subsection (1)(a) means payments in cash or in kind in amounts or in-kind value equal to the amount that would have accrued under the Oregon Child Support Guidelines from the non-custodial parent to the custodial parent or other custodial adult for purposes of support of the child.

(c) The Oregon Child Support Guidelines means the formula for calculating child support specified in ORS 25.275.

(2) The administrator may establish "past support" when establishing a child support order under ORS 416.400 through 416.470.

(3) When a non-custodial parent has made payments in cash or in kind to a custodial parent or other custodial adult for the support of the child during the period for which a judgment for past support is sought, and providing that those payments were in amounts equal to or exceeding the amount of support that would have been presumed correct under the Oregon Child Support Guidelines, no past support will be ordered.

(4) When such payments as described in section (3) were made in amounts less than the amount of support presumed correct under the Oregon Child Support Guidelines, the amount of the past support judgment will be the correct amount presumed under the Oregon Child Support Guidelines minus any amounts of support paid.

(5) The non-custodial parent must provide evidence of such payments as described in sections (3) and (4) by furnishing copies of:

(a) Canceled checks;

(b) Cash or money order receipts;

(c) Any other type of funds transfer records;

(d) Merchandise receipts;

(e) Verification of payments from the custodial parent or other custodial adult;

(f) Any other record of payment deemed acceptable by the administrator.

(6) It will be within the discretion of the administrator to determine whether to accept evidence of such cash or in-kind support payments for purposes of giving credit for them. If any party disagrees with this determination, the support determination may be appealed to an administrative law judge per ORS 416.427.

(7) Past support may not be ordered for any period of time prior to the later of:

(a) October 1, 1995; or

(b) The date of the initiation of IV-D services from any jurisdiction by application for services; or in case of a mandatory referral based on the receipt of TANF cash assistance, Medicaid, foster care or Oregon Youth Authority services, the date of the referral to the Child Support Program (CSP).

(8) If the support case was initiated from another jurisdiction, the date of application for services will be considered to be either:

(a) The date the initiating jurisdiction requests past support to begin but not before October 1, 1995; or

(b) If the initiating jurisdiction requests that past support be established for multiple periods of time, the beginning date of the most recent period but not before October 1, 1995; or

(c) If the initiating jurisdiction does not specify a beginning date for past support, the date of the initiating petition but not before October 1, 1995.

(9) Where CSP services did not produce a support order and CSP services were terminated by the applicant or by the CSP agency per state and federal regulations and subsequently CSP services were initiated again, the administrator will not establish past support prior to the date of the most recent initiation of CSP services. If an initiating jurisdiction requests that past support be established for two or more periods of time, past support will be established only for the most recent period.



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(10) If there is or was a child support judgment in existence in any jurisdiction for the non-custodial parent to pay support to the obligee for the same child, no order for past support will be entered for a period of time before entry of the child support judgment already or previously existing except as provided in OAR 137-055-3200.

(11) Where the order to be entered is for past support only and does not include current support and the past support would be owed only to the State of Oregon or another jurisdiction, the administrator will not enter an order for past support for a period of less than four months.

(12) Past support will be calculated per the Oregon Child Support Guidelines and will use current income for the parties in calculating past support monthly amounts. Parties may rebut use of current income by presenting evidence of income in differing amounts for the months for which past support is being ordered.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 416.422

Hist.: AFS 28-1995, f. 11-2-95, cert. ef. 11-3-95; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-1010; 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 461-200-3220; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3220; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 1-2010, f. & cert. ef. 1-4-10; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11; DOJ 4-2011, f. & cert. ef. 7-1-11

## 137-055-3240

### Establishment of Arrears

(1) The administrator will establish arrears on support cases when the following conditions have been met:

(a) Services are being provided under ORS 25.080;

(b) There is an Oregon support order or an order from another jurisdiction has been registered in Oregon;

(c) The administrator has determined that there is a need to establish the arrears balance on the case because:

(A) The administrator has no record or an incomplete accounting case record;

(B) An establishment of income withholding has been requested by an obligor or obligee pursuant to ORS 25.381; or

(C) There is a reason which necessitates that the arrears on the case record be reestablished; and

(D) There has been a request for arrears establishment by a party.

(2) A party requesting establishment or reestablishment of arrears must furnish an accounting that shows the payment history in as much detail as is necessary to demonstrate the periods and amounts of any arrears.

(3) Where arrears had earlier been established, through a process which afforded notice and an opportunity to contest to the parties, the arrears from that period will not be reestablished except that if interest had not been included in the establishment, interest may be added for that period.

(4) The administrator may establish or reestablish arrears by either:

(a) Use of the judicial process authorized under ORS 25.167; or

(b) Use of the administrative process authorized under ORS 416.429.

(5) Upon completion of the arrears establishment process in subsection (4)(a) or subsection (4)(b) of this rule, the case record will be adjusted to reflect the new arrears amount.

(6) Notwithstanding any other provision of this rule, when applicable, arrears will be established pursuant to ORS 25.015.

(7) Arrears for a child attending school as defined in OAR 137-055-5110, will be as set forth in OAR 137-055-5120.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 25.015, 25.167, 25.381, 416.429

Hist.: AFS 5-1996, f. 2-21-96, cert. ef. 3-1-96; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0047; AFS 2-2001, f. 1-31-01, cert. ef. 2-1-01; AFS 15-2002, f. 10-30-02, ef. 11-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3240; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3240; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 5-2007, f. & cert. ef. 7-2-07; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11; DOJ 4-2011, f. & cert. ef. 7-1-11

## 137-055-3400

### District Attorney Case Assignment for Modification or Suspension of Support

(1)(a) The purpose of this rule is to provide criteria for determining which Oregon District Attorney will have responsibility for initiating action to review and modify an Oregon judgment, or administrative order that requires payment of child support. This rule applies only when both of the following conditions exist:

(A) An Oregon District Attorney has responsibility for providing support enforcement services under ORS 25.080; and

(B) Either of the following is true:

(i) A party to the case has requested a review and modification, as provided in OAR 137-055-3420, for purposes of changing the amount of the monthly support obligation; or

(ii) The obligor is presumed entitled to a suspension of the support obligation as a recipient of certain cash assistance, as provided in ORS 25.245.

(b) This rule does not apply to a Division of Child Support (DCS) office that is performing district attorney functions.

(2) For purposes of this rule, the following definitions apply:

(a) "Requesting party" means the party requesting the district attorney to review and modify the support obligation;

(A) The requesting party may be the obligor, the obligee, or the child attending school;

(B) An obligor deemed presumptively eligible for a suspension under ORS 25.245 will be considered the "requesting party";

(b) "Non-requesting party" means any party that is not the party as defined in subsection (2)(a), above.

(3) In any case where there are arrears, the district attorney responsible under OAR 137-055-2020 for enforcing the case will, if the support order is in another Oregon county, transfer in the order for review and modification under ORS 25.100.

(4) In any case where there are no arrears:

(a) If all the parties reside in the same Oregon county, but the support order is in another county:

(A) The district attorney for the county of residence of the parties will be responsible for review and modification action;

(B) The district attorney for the county of residence may transfer in the support order for review and modification under ORS 25.100, as the county of residence for the non-requesting party.

(b) If any of the parties reside in the same Oregon county that is the county of the support order, the district attorney for that county will be responsible for review and modification action;

(c) If the support order, the requesting party, and the non-requesting party(ies) are all in different counties:

(A) If the district attorney for the county of the requesting party has previously transferred the support order to the requesting party's county for enforcement, the district attorney for the enforcing county will be responsible for review and modification action;

(B) If the case is not currently open as an enforcement case under ORS 25.080, or if the district attorney for the requesting party's county has never transferred the support order for enforcement:

(i) That district attorney will refer the requesting party to the district attorney for the county of the support order;

(ii) The district attorney for the county of the support order will then be responsible for review and modification action;

(C) If the case is currently open as an enforcement case under ORS 25.080:

(i) The district attorney for the enforcing county will transfer the enforcement case to the district attorney for the county of the support order;

(ii) The district attorney for the county of the support order will then be responsible for review and modification action;

(iii) Once the review and modification is completed, the district attorney for the county of the support order will transfer the enforcement case back to the proper enforcement county under OAR 137-055-2040.

(5) If the requesting party does not reside in Oregon, and regardless of whether the case has arrears or not:

(a) If the requesting party's case is already being enforced, the administrator will advise the requesting party to direct the request to the child support program in that other jurisdiction. The other child support program may then ask the administrator to pursue action under appropriate state and federal statutes;

(b) If the requesting party's support case is not being enforced under the child support program in another jurisdiction, the administrator will handle the request under sections (3) and (4) of this rule.

(6) If the non-requesting party(ies) does not reside in Oregon, the district attorney will handle the request under sections (3) and (4) of this rule.

(7) The matrix set out in **Table 1**, is included in this rule as an aid, and incorporates preceding sections of this rule: [Table not included. See Ed. Note.]

(8) Notwithstanding subsection (1)(b), all functions and responsibilities assigned to Oregon District Attorneys under this rule will also be considered assigned to DCS, for those counties where DCS has assumed responsibility from the district attorney for providing support enforcement services.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 180.345

# ADMINISTRATIVE RULES

Stats. Implemented: ORS 25.080 & 25.287  
Hist.: AFS 33-1992, f. 11-17-92, cert. ef. 12-1-92; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0074; 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 461-200-3400; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3400; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 5-2005, f. & cert. ef. 7-15-05; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 1-2010, f. & cert. ef. 1-4-10; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11; DOJ 4-2011, f. & cert. ef. 7-1-11

## 137-055-3420

### Periodic Review and Modification of Child Support Order Amounts

(1) In addition to the definitions found in ORS 25.321 and OAR 137-050-0750, for the purposes of this rule, the following definitions apply:

(a) "Determination" means an order resulting from a periodic review, which finds that the current order of support is in "substantial compliance" with the Oregon guidelines (OAR 137-050-0700 through 137-050-0765) and appropriate health care coverage or cash medical support is ordered against one or both parties.

(b) "Periodic Review" means proceedings initiated under ORS 25.287.

(c) "Review" means an objective evaluation by the administrator of the information necessary for application of the guidelines to determine:

(A) The presumptively correct child support amount; and

(B) The need to provide in the order for the child's health care needs through appropriate health care coverage or cash medical support regardless of whether an adjustment in the amount of child support is necessary.

(d) "Substantial compliance" means that the current support order is within at least 15 percent or \$50, whichever is less, of the presumptively correct child support amount as calculated using the guidelines. When making this determination, the 15 percent or \$50 formula will be applied to the currently ordered support amount.

(2) For all child support cases receiving support enforcement services under ORS 25.080, the Child Support Program (CSP) will annually notify the parties:

(a) Of their right to request a periodic review of the amount of support ordered; and

(b) That the CSP will perform a mandatory periodic review and adjustment if the family is currently receiving TANF.

(3) The purpose of a periodic review is to determine, based on information from the parties and other sources as appropriate, whether the current child support order should be modified to ensure substantial compliance with Oregon's child support guidelines, or to order appropriate health care coverage or cash medical support for the child.

(4) The administrator will initiate a periodic review if a written request is received from any party and 35 months have passed since the date the most recent support order took effect, or the date of a determination that the most recent support order should not be adjusted. For purposes of calculating the 35-month time period, a suspension and temporary modification order entered pursuant to ORS 416.425(13) will not be considered.

(5) The administrator will initiate a periodic review when 35 months have passed since the date the most recent support order took effect, or the date of a determination that the most recent support order should not be adjusted, and the family is currently receiving TANF. For purposes of calculating the 35-month time period, any suspension and temporary modification order entered pursuant to ORS 416.425(13) will not be considered.

(6) The administrator must complete the determination that the order is in substantial compliance with the guidelines and appropriate health care coverage or cash medical support is ordered, or complete the modification of the existing order within 180 days of receiving a written request for a periodic review, initiating the mandatory review, or locating the non-requesting party(ies), if necessary, whichever occurs later.

(7) The administrator is responsible for conducting a periodic review in this state or for requesting that another jurisdiction conduct a review pursuant to OAR 137-055-7190. As provided in ORS 110.429 and 110.432, the law of the jurisdiction reviewing the order applies in determining if a basis for modification exists.

(8) Upon receipt of a written request for a periodic review or when a mandatory periodic review is required, 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.

(9) The administrator will notify the parties in writing of the presumed correct support amount under the child support guidelines and the need to order appropriate health care coverage or cash medical support. Notification may be by motion for modification or a proposed determination that the existing order is in substantial compliance and appropriate health care coverage or cash medical support is already ordered, and will include a request for hearing form.

(10) If the administrator determines that the support order should be modified and there is an adult child on the case, the proposed modification will be a tiered order as defined in OAR 137-055-1020.

Stat. Auth.: ORS 180.345 & 416.455

Stats. Implemented: ORS 25.080, 25.287, 25.321 - 25.343, 107.135 & 416.425

Hist.: AFS 65-1989, f. 10-31-89, cert. ef. 11-1-89; AFS 11-1992(Temp), f. & cert. ef. 4-30-92; AFS 26-1992, f. & cert. ef. 9-30-92; AFS 20-1993, f. 10-11-93, cert. ef. 10-13-93; AFS 21-1994, f. 9-13-94, cert. ef. 12-1-94; AFS 17-1997(Temp), f. & cert. ef. 9-16-97; AFS 17-1997(Temp) Repealed by AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 75-1998, f. 9-11-98, cert. ef. 9-15-98; AFS 13-1999, f. 10-29-99, cert. ef. 11-1-99; AFS 9-2000, f. 3-13-00, cert. ef. 4-1-00; AFS 21-2000, f. & cert. ef. 8-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0072; AFS 23-2001, f. 10-2-01, cert. ef. 10-6-01; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; 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 461-200-3420; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3420; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 10-2004, f. & cert. ef. 7-1-04; 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 11-2008(Temp), f. & cert. ef. 7-15-08 thru 9-30-08; DOJ 12-2008(Temp), f. & cert. ef. 10-1-08 thru 3-29-09; DOJ 14-2008(Temp), f. & cert. ef. 10-7-08 thru 3-29-09; DOJ 1-2009, f. & cert. ef. 1-2-09; DOJ 4-2009(Temp), f. 5-6-09, cert. ef. 5-7-09 thru 11-1-09; DOJ 13-2009, f. & cert. ef. 10-30-09; DOJ 1-2010, f. & cert. ef. 1-4-10; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11; DOJ 4-2011, f. & cert. ef. 7-1-11

## 137-055-4040

### New Hire Reporting Requirements

(1) Employers with employees who work only in this state or who have designated Oregon as their reporting state with the United States Secretary of Health and Human Services must transmit information regarding the hiring or rehiring of any employee by:

(a) Mailing or faxing to the Division of Child Support (DCS) a copy of the IRS W-4 Form completed by the newly hired employee; or

(b) Mailing or faxing to DCS a completed form adopted by DCS; or

(c) Sending to DCS a magnetic tape or diskette, as specified by DCS;

or

(d) Any other method approved by DCS.

(2) Reports made under this section must contain the employer's name, address and federal tax identification number and the employee's name, address and social security number.

(3) Reports made by copy of W-4 form or by the form adopted by DCS must be sent to DCS not later than 20 days after the employer hires or rehires the employee. Employers who transmit the reporting data magnetically or electronically must transmit the data within 12 to 16 days of hiring or rehiring the employee.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 25.790

Hist.: AFS 16-1998, f. 9-16-98, cert. ef. 10-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0236; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4040; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-4040; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11; DOJ 4-2011, f. & cert. ef. 7-1-11

## 137-055-4060

### Income Withholding — General Provisions, Requirements and Definitions

(1) OARs 137-055-4060 through 137-055-4080 provide for collection of support by means of income withholding, in accordance with ORS 25.372 through ORS 25.427 and all other applicable Oregon law, on all support cases being enforced by the administrator.

(2) For purposes of OARs 137-055-4060 through 137-055-4080 and as used in ORS 25.372 through 25.427, the following definitions apply:

(a) "Alternative payment method" means the methods of paying support described in OAR 137-055-4080;

(b) "Best interests of the child" means the method of payment likely to produce consistent support that will reach the child(ren) in the most expedient manner.

(c) "Disposable income" means the part of an individual's income that remains after the deduction of any amounts required to be withheld by law, except as provided in paragraphs (B) or (C) of this subsection.

(A) Amounts required to be withheld by law include, but are not limited to, required withholding for taxes and social security;

(B) Any amounts withheld for the following will not be deducted from the obligor's income when computing disposable income, even if such withholding is required by law or by judicial or administrative order:

(i) Health insurance premiums;

(ii) Spousal or child support.

(C) An obligor may claim offsets against gross receipts for ordinary and necessary business expenses and taxes directly related to the income withheld. The obligor has the burden of proving such claims and must therefore furnish verifiable business records or documents to support any offsets claimed. The obligor also has the burden of furnishing such records or documents in a timely manner, and the Division of Child Support (DCS)

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will not refund to the obligor, on the basis of such claims, any amounts withheld that DCS has already disbursed to the obligee or to any child attending school under ORS 107.108 and OAR 137-055-5110;

(d) "Electronic Funds Transfer" (EFT) has the definition given in OAR 137-055-5035, and includes but is not limited to payment by Electronic Payment Withdrawal (EPW) and by debit or credit system or card.

(e) "Electronic Payment Withdrawal" (EPW) means an automatic withdrawal of support from the person's bank account.

(f) "Good cause" for not withholding means a situation that exists when:

(A) A court or the administrator makes a written determination that, and a written explanation in the official record of why, immediate income withholding would not be in the best interests of the child; and

(B) If the case involves the modification of an existing support order, there is proof of timely payment of previously-ordered support and there are no arrearages. Timely payment is indicated when the obligor has not previously become subject to initiated income withholding under the existing order.

(g) "Periodic recurring income" as used in calculating withholding from a lump sum payment or benefit pursuant to ORS 25.414(4), means income that is intended as a monthly or more frequent payment that includes, but is not limited to, a teacher's lump sum payment for summer months.

(3) All support orders issued or modified by the administrator will include a provision requiring the parties to keep the administrator informed of:

(a) The name and address of the party's current employer;

(b) Whether or not the party has access to appropriate health care coverage, and if so, the health care coverage policy information.

Stat. Auth.: ORS 25.396; 25.427, 180.345

Stats. Implemented: ORS 25.372, 25.427, 656.234, 657.780 & 657.855

Hist.: AFS 4-1990, f. 1-18-90, cert. ef. 2-1-90; AFS 14-1990, f. & cert. ef. 6-7-90; AFS 29-1992, f. 10-8-92, cert. ef. 11-1-92; AFS 7-1994, f. & cert. ef. 4-1-94; AFS 12-1994, f. 6-28-94, cert. ef. 7-1-94; AFS 20-1995, f. 8-30-95, cert. ef. 9-9-95; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0175; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4060; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-4060; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 6-2006, f. & cert. ef. 10-2-06; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07; DOJ 4-2011, f. & cert. ef. 7-1-11

## 137-055-4455

### Expiration of Support Judgment Remedies

(1) Judgment remedies for the child support award portion of a judgment, and any lump sum money award for unpaid child support installments, expire 35 years after the entry of the judgment that first establishes the support obligation.

(2) Notwithstanding any other provisions of this rule, when the child support judgment being enforced was issued by another jurisdiction, the expiration of judgment under the laws of this state or of the issuing jurisdiction, whichever is longer, applies.

(3) Spousal support judgments entered on or after January 1, 2004: Judgment remedies for any unpaid installment under the spousal support award portion of a judgment, expire the later of:

(a) 25 years after entry of the judgment that first establishes the support obligation; or

(b) 10 years after an installment comes due under the judgment and is not paid.

(4) Spousal support judgments entered prior to January 1, 2004: Judgment remedies for any unpaid installment under the spousal support award portion of a judgment, expire the later of:

(a) 25 years after entry of the judgment that first establishes the support obligation; or

(b) 10 years after an installment comes due under the judgment and is not paid; or

(c) 10 years from the date of a judgment renewal.

(5) The judgment remedies for a money award for child or spousal support expire by operation of law.

(6) The Department of Justice, Division of Child Support (DCS) is responsible for completing expiration of judgment audits on cases receiving support enforcement services under ORS 25.080.

(7) If an audit result is that the expired judgment amount is greater than the current arrearages on the case, DCS will reduce the case arrearages to zero.

(8) When an expiration of judgment audit is completed, DCS will notify the parties if there is any change to the arrearages as a result of the audit. The notice must include:

(a) The current balance or zero, as appropriate, per section (7) of this rule;

(b) Information that a party may make a written request for an administrative review within 30 days of the notice.

(9) If a party requests an administrative review, DCS will:

(a) Conduct the administrative review within 45 days from the date of receiving the objection to verify the case was adjusted correctly and make any necessary corrections or adjustments as determined in the review;

(b) Notify both the obligee and the obligor, in writing, of the results of the review and of the right to appeal pursuant to ORS 183.484.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 18.180 - 18.194

Hist.: AFS 15-2001, f. 7-31-01, cert. ef. 8-1-01; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-6110; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-6110; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; Renumbered from 137-055-6110, DOJ 5-2005, f. & cert. ef. 7-15-05; DOJ 1-2010, f. & cert. ef. 1-4-10; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11; DOJ 4-2011, f. & cert. ef. 7-1-11

## 137-055-4540

### Passport Denial and Release

(1) When the administrator submits delinquent child support accounts for administrative offset pursuant to OAR 137-055-4340, the federal Office of Child Support Enforcement (OCSE) will select individual obligors with a total delinquency in excess of \$2,500 for passport denial.

(2) Passport denial means that pursuant to 42 U.S. Code 652(k), the United States Secretary of State will refuse to issue a passport and may revoke, restrict or limit a passport which was previously issued.

(3) The parties will receive notice of passport denial with the notice of administrative offset specified in OAR 137-055-4340. The notice will advise the parties of the right to an administrative review under OAR 137-055-4340.

(4) An obligor whose passport has been denied may request an administrative review. The administrator will conduct a review and notify the parties of the decision. The only issues that may be considered in the review are whether:

(a) The administrator erroneously submitted the obligor to OCSE for passport denial, such as mistaken identity or an error in recordkeeping or accounting;

(b) The obligor has provided documentation of a life or death situation involving an immediate family member, as defined by OCSE; or

(c) The obligor has paid as ordered, but the arrearage that caused the case to be submitted for passport denial resulted solely from one or more orders for past support or upward modifications filed in court within one year of the administrator's receipt of the request for review.

(5) If at any time the administrator finds that the obligor qualifies for passport release under one or more of the criteria in subsections (4)(a) through (4)(c), the administrator will notify OCSE to release the passport.

(6) Passport denial will continue until the delinquency is paid in full, unless the administrator determines the obligor qualifies for passport release under this rule.

(7) Where a passport has been denied and the obligor has paid the delinquency in full or the administrator determines the obligor qualifies for passport release under this rule, the administrator will notify OCSE to release the passport. Notice will be by the process specified by OCSE.

Stat. Auth.: ORS 25.625 & 180.345

Stats. Implemented: ORS 25.625

Hist.: AFS 23-1997, f. 12-29-97, cert. ef. 1-1-99; AFS 15-2000, f. 5-31-00, cert. ef. 6-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0234; AFS 2-2001, f. 1-31-01, cert. ef. 2-1-01; AFS 15-2001, f. 7-31-01, cert. ef. 8-1-01; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4540; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-4540; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 6-2006, f. & cert. ef. 10-2-06; DOJ 13-2008, f. & cert. ef. 10-1-08; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11; DOJ 4-2011, f. & cert. ef. 7-1-11

## 137-055-5060

### Billings for Support Payments

(1) Except as provided in subsections (3)(a) and (b) of this rule, when a case with a support order is activated on the Child Support Enforcement Automated System, the Division of Child Support (DCS) will send notice to the parties of the requirement to pay through DCS.

(2) DCS will begin billing in the first full calendar month following 30 days from the receipt of the order or notice that the order should be activated.

(3)(a) When support is paid for a period of six months by income withholding pursuant to ORS 25.378 or by electronic payment withdrawal pursuant to OAR 137-055-4080 DCS may discontinue monthly billings unless:

(A) The obligor requests otherwise; or



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(B) The administrator determines that monthly billings should continue.

(b) When the total amount due is less than five dollars, DCS will discontinue monthly billings.

Stat. Auth.: ORS 180.345  
Stats. Implemented: ORS 25.020

Hist.: AFS 21-1978, f. & ef. 5-30-78; AFS 88-1980, f. & ef. 12-10-80; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89, Renumbered from 461-035-0001; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0105; 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 461-200-5060; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-5060; DOJ 9-2005, f. & cert. ef. 10-3-05; DOJ 4-2011, f. & cert. ef. 7-1-11

## 137-055-5080

### Adding Interest Calculations to Individual Support Cases

(1) For a support case with an Oregon support order as the controlling order, the administrator will add interest calculations to the case by using the establishment of arrears process set out in OAR 137-055-3240 under the following conditions:

(a) The party makes a written request that the interest be added to the case;

(b) The requesting party provides a month by month calculation showing support accrual, principal due and interest accrual for each month with total principal and interest due as separate totals at the end of the calculations; and

(c) The interest is calculated per ORS 82.010 from the date of entry of a judgment in Oregon.

(2) The administrator may limit adding interest to the case under section (1) of this rule to one time every 24 months.

(3) For a case with a controlling support order from another jurisdiction, the law of the jurisdiction which issued the controlling order governs the computation and accrual of interest under the support order. Interest accrued under the laws of the jurisdiction which issued the controlling order may be added to the Oregon case by administratively reconciling the case record when interest amounts are provided by the other jurisdiction. The administrator will send an informational notice to the parties when the case is adjusted.

Stat. Auth.: Sec. 2, Ch. 73 OL 2003

Stats. Implemented: ORS 25.167, 82.010 & 416.429

Hist.: AFS 6-1996, f. 2-21-96, cert. ef. 3-1-96; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0048; AFS 15-2001, f. 7-31-01, cert. ef. 8-1-01; AFS 15-2002, f. 10-30-02, ef. 11-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-5080; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-5080; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11; DOJ 4-2011, f. & cert. ef. 7-1-11

## 137-055-5220

### Satisfaction of Support Awards

The purpose of this rule is to define how the Division of Child Support (DCS) will credit "satisfactions of support award" in certain circumstances. This rule must not be construed as limiting the authority of DCS to approve or credit a satisfaction of support award in other lawful circumstances not specified in this rule.

(1) When support payment records are kept by the Department of Justice, an obligee may satisfy amounts indicated on the case records as past due by filing a properly-completed "satisfaction of support award" form with the administrator, subject to approval by DCS under the provisions of this rule; or in accordance with OAR 137-055-5240.

(2) When current support or arrears are assigned to the State of Oregon or to another jurisdiction, and the obligor is seeking credit for support payments not made through DCS:

(a) DCS and its attorneys have authority to approve and sign satisfactions.

(b) This authority may be exercised only when the obligee has signed a satisfaction of support award form which acknowledges that the support payment was received.

(3) DCS and its attorneys have authority to sign and approve satisfactions of support award for money paid through DCS as payment of assigned support.

(4) DCS will record, on the case record, all properly-completed satisfactions of support award not assigned, and all satisfactions ordered by a court or a hearing order, and all satisfactions for assigned support that are approved in accordance with this rule. DCS will also promptly forward the satisfaction form to the appropriate court administrator, together with a certificate stating the amount of support satisfaction entered on the case record.

(5) Except when satisfied and approved by DCS and its attorneys or by a court or hearing order, DCS will not enter a satisfaction on a case

record for support that has been assigned to the State of Oregon or another jurisdiction.

(6) When DCS rejects a satisfaction in part or in full as provided in section (5) above, DCS will send written notice to the obligor and obligee, by regular mail to the most recent address of record. Such notice will indicate the reason for the rejection.

(7) All satisfactions must contain the following:

(a) The full names of both the obligor and the obligee;

(b) The name of the Oregon county where the support award was entered;

(c) The Oregon Child Support Program support case number, or the circuit court case number;

(d) Either:

(A) The total dollar amount to be satisfied; or

(B) The period of time for which past due support is satisfied;

(e) A statement that the satisfaction is only for child support or spousal support;

(f) The signature of the obligee, except for those satisfactions approved under sections

(2) and (3) of this rule, where the obligee's signature is not required; and

(g) The date the form is signed.

(8) All signatures on "satisfactions of support award" must be notarized, except on court orders.

(9) Notwithstanding any other provision of this rule, DCS has the authority to file and execute a satisfaction, without the need to notarize such satisfaction, when all of the following are true:

(a) The obligor provides a sworn affidavit that the support award has been paid in full, and

(b) DCS certifies that it has a complete payment record for the support award and that the payment records shows no arrears. DCS will be considered to have a complete pay record if DCS has kept the pay record for the support judgment from the date of the first support payment required under the award, or if the obligee or the administrator established arrears for the time period when DCS did not keep the pay record on the case.

(10) When DCS receives a sworn affidavit under the provisions of subsection (9)(a) of this rule, DCS will examine its support records and determine if it has the authority under section (9) of this rule to execute and file a satisfaction of support award. DCS will promptly notify the obligor if DCS determines that it does not have authority to execute and file a satisfaction of support award. DCS will also determine if any amounts due for support were not assigned to the state. If DCS determines that any amounts were not assigned to the state, DCS will give notice to the obligee in the manner provided by ORS 25.085. The notice must inform the obligee that DCS will execute and file the satisfaction of support award unless DCS receives an objection and request for hearing within 30 days after the date of mailing the notice.

(11) If the obligee requests a hearing under section (10) of this rule, a contested case hearing will be conducted under ORS 183.310 to 183.502 before an administrative law judge.

(12) If support is owed to a child attending school the obligee may only satisfy arrears as defined in OAR 137-055-5120.

Stat. Auth.: ORS 18.225 & 180.345

Stats. Implemented: ORS 18.225 - 238 & 25.020

Hist.: AFS 21-1978, f. & ef. 5-30-78; AFS 26-1979(Temp), f. & ef. 8-16-79; AFS 22-1980, f. & ef. 4-3-80; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89, Renumbered from 461-035-0005; AFS 17-1991, f. & cert. ef. 8-29-91; AFS 9-1992, f. & cert. ef. 4-1-92; AFS 19-1995, f. 8-30-95, cert. ef. 9-9-95; AFS 14-1996, f. 4-24-96, cert. ef. 5-1-96; AFS 28-1996, f. & cert. ef. 7-1-96; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0155; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-5220; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-5220; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 12-2004, f. & cert. ef. 10-1-04; DOJ 9-2005, f. & cert. ef. 10-3-05; DOJ 5-2006, f. 6-29-06, cert. ef. 7-3-06; DOJ 1-2010, f. & cert. ef. 1-4-10; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11; DOJ 4-2011, f. & cert. ef. 7-1-11

## 137-055-5240

### Credit for Support Payments not made to the Division of Child Support

(1) In accordance with ORS 25.020, on any support case where the obligor is required to pay support through the Division of Child Support (DCS), DCS will not credit the obligor's support account for any payment not made through DCS, except as provided in ORS 25.020 and this rule.

(2) The other provisions of this rule notwithstanding, on any case where an order of another jurisdiction is registered in Oregon under ORS Chapter 110 for enforcement only, and either the issuing jurisdiction or the jurisdiction in which the obligee resides has an active child support accounting case open, DCS does not have authority to give credit for pay-

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ments not paid through Oregon DCS. In any such case, the obligor seeking credit must request credit from the jurisdiction with the active child support accounting case. DCS will adjust its records to reflect credit for such payments only upon receiving notification from the other jurisdiction, in writing, by electronic transmission, by telephone, or by court order, that specified payments will be credited.

(3) DCS will give credit for payments not made to DCS when:

(a) Payments are not assigned to the State of Oregon or to another jurisdiction, and

(A) The obligor, obligee and the party who received the payment agree in writing that specific payments were made and should be credited; or

(B) The obligor and the child attending school, as defined in ORS 107.108 and OAR 137-055-5110, agree in writing that specific payments were made and should be credited for amounts that accrued during the time the child was a child attending school.

(b) Payments are assigned to the State of Oregon, and all of the following additional conditions are true:

(A) The parties make sworn written statements that specific payments were made;

(B) The parties present canceled checks, or other substantial evidence, to corroborate that the payments were made; and

(C) The administrator has given written notice to the obligee or the child attending school, prior to the obligee or the child attending school making a sworn written statement under subsection (b), of any potential criminal or civil liability that may attach to an admission of receiving the assigned support. Potential criminal or civil liability may include, but is not limited to:

(i) Prosecution for unlawfully receiving public assistance benefits.

(ii) Liability for repayment of any public assistance overpayments for which the obligee or child attending school may be liable.

(iii) Temporary or permanent disqualification from receiving public assistance, food stamp, or medical assistance benefits due to an intentional program violation being established against the obligee or child attending school for failure to report, to the administrator, having received payments directly from the obligor.

(c) The administrator is enforcing the case at the request of another jurisdiction, regardless of whether or not support is assigned, and that jurisdiction verifies that payments not paid to DCS were received by the other jurisdiction or by the obligee directly. Such verification may be in writing, by electronic transmission, by telephone, or by court order.

(d) An order of an administrative law judge, or an order from a court of appropriate jurisdiction, so specifies.

(4) To receive credit for payments not made to DCS, the obligor may apply directly to the administrator for credit, by providing the documents and evidence specified in section (3) of this rule.

(5) Except as provided in section (2) of this rule if the obligee, a child attending school, or other jurisdiction does not agree that payments were made, pursuant to subsection (3)(a) or (3)(c) of this rule, or does not make a sworn written statement under subsection (3)(b), the obligor may make a written request to the administrator for a hearing.

(a) Prior notice of the hearing and of the right to object will be served upon the obligee in accordance with ORS 25.085 and the child attending school.

(b) Prior notice of the hearing and of the right to object may be served upon the obligor by regular mail to the address provided by the obligor when applying for credit.

(c) A hearing conducted under this rule is a contested case hearing in accordance with ORS 183.413 through 183.470. Any party may also seek a hearing de novo in the Oregon circuit court.

(d) After the hearing, an administrative law judge may order DCS to credit the obligor's support account for a specified dollar amount of payments not made through DCS, or for all payments owed through a specified date.

(e) The other provisions of this section notwithstanding, an administrative law judge does not have jurisdiction under this section in cases where the administrator is enforcing another jurisdiction's order.

(6) Nothing in this rule precludes DCS from giving credit for payments not made through DCS when a judicial determination has been made giving credit or satisfaction, or when the person to whom the support is owed has completed and signed a "satisfaction of support judgment" form adopted by DCS in accordance with OAR 137-055-5220.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 25.020 & 25.085

Hist.: AFS 42-1995, f. 1-28-95, cert. ef. 1-1-96; AFS 8-1996, f. 2-23-96, cert. ef. 3-1-96; AFS 7-1998, f. 3-30-98, cert. ef. 4-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0157; AFS 15-2002, f. 10-30-02, ef. 11-1-02; SSP 15-2003, f. 6-25-03, cert. ef.

6-30-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-5240; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-5240; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11; DOJ 4-2011, f. & cert. ef. 7-1-11

## 137-055-6023

### Exceptions to Distribution and Disbursement

(1) Notwithstanding the provisions of OAR 137-055-6021 to 137-055-6024, support payments received as a result of a personal or real property judgment lien may be distributed and disbursed to pay a parentage test judgment.

(2) Notwithstanding OAR 137-055-6024, DOJ may distribute and, as appropriate, disburse support payments to multiple cases as directed when the obligor or a responding jurisdiction designates in writing the amounts to be distributed and, as appropriate, disbursed to each case, if the designation is made at the time of payment.

(3) Notwithstanding OAR 137-055-6024, DOJ will distribute and, as appropriate, disburse support payments to one case, rather than proportionately, when:

(a) The obligor designates in writing a specific case for which payment is to be applied;

(b) The support payment resulted from a garnishment, issued pursuant to ORS chapter 18, on a particular case;

(c) The support payment resulted from the sale or disposition of a specific piece of property against which a court awarded a specific obligee a judgment lien for child support;

(d) The support payment resulted from a contempt order in a particular case; or

(e) Any other judicial order requires distribution and, as appropriate, disbursement to a particular case.

Stat. Auth.: ORS 25.020 & 180.345

Stats. Implemented: ORS 25.020

Hist.: DOJ 9-2005, f. & cert. ef. 10-3-05; DOJ 6-2006, f. & cert. ef. 10-2-06; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07; DOJ 4-2011, f. & cert. ef. 7-1-11

## 137-055-6120

### Satisfaction of Arrears for Less Than Full Payment

The Division of Child Support (DCS) may satisfy all or any portion of child support arrears that are assigned to the State of Oregon or to any other jurisdiction, subject to the following:

(1) DCS may satisfy all or any portion of assigned arrears only if one or more of the following circumstances apply:

(a) The arrears are a substantial hardship to the paying parent or that parent's household; or

(b) A compromise of amounts owing will result in greater collection on the case, considering the maximum amount that DCS could reasonably expect to collect from the obligor if no compromise was made and the probable costs of collecting that maximum amount; or

(c) The obligor has entered into an agreement with DCS to take steps to:

(A) Enhance the obligor's ability to pay child support; or

(B) Enhance the obligor's relationship with the child or children for whom the obligor owes the arrears.

(d) An error or legal defect has occurred that indicates a reduction may be appropriate.

(2) If all or any portion of the assigned arrears are the Astate=s temporarily-assigned arrears@ as defined in OAR 137-055-6010, DCS may satisfy the amount only if the obligee consents and signs the appropriate "satisfaction of support judgment" form.

(3) If all or any portion of the assigned arrears are assigned to another jurisdiction, DCS may satisfy that assigned amount only with the approval of that jurisdiction.

(4) DCS will not sign any satisfaction for less than full payment of arrears until:

(a) The obligor has paid the full amount agreed to as appropriate consideration, and the obligor's payment instrument has cleared the appropriate financial institutions; or

(b) DCS has determined that the obligor has satisfactorily met, or is complying with, any agreement made with DCS pursuant to this rule.

(5) DCS will record a summary of each agreement to satisfy arrears for less than full payment on the appropriate microimaging or computer file on the case.

(6) Any satisfaction executed under this rule will be made pursuant to, and in full compliance with, ORS 18.228.

(7) The provisions of this rule notwithstanding, the obligee may satisfy all or any portion of unassigned arrears due the obligee, pursuant to OAR 137-055-5220.

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(8) Nothing in this rule precludes the administrator from negotiating a satisfaction of arrears due or potentially due the obligee for less than full payment by the obligor, but such satisfaction will take effect only when the obligee consents and signs a "satisfaction of support judgment" pursuant to OAR 137-055-5220.

Stat. Auth.: ORS 180.345  
Stats. Implemented: ORS 18.400, 25.020 & 25.080  
Hist.: AFS 77-1982, f. 8-5-82, ef. 9-1-82; AFS 93-1982, f. & ef. 10-18-82; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89, Renumbered from 461-035-0025; AFS 11-2000, f. 4-28-00, cert. ef. 5-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0150; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-6120; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-6120; DOJ 9-2005, f. & cert. ef. 10-3-05; DOJ 1-2007, f. & cert. ef. 1-2-07; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11; DOJ 4-2011, f. & cert. ef. 7-1-11

## 137-055-7020

### Intergovernmental Cases

OAR 137-055-7020 through 137-055-7180 constitute the guidelines for processing intergovernmental child support cases receiving support enforcement services under ORS 25.080.

Stat. Auth.: ORS 180.345  
Stats. Implemented: ORS 25.729, 110.303 – 110.452  
Hist.: AFS 24-1994, f. 10-26-94, cert. ef. 12-1-94; AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-2300; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-7020; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-7020; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11; DOJ 4-2011, f. & cert. ef. 7-1-11

## 137-055-7040

### Central Registry

(1) The central registry required by 45 CFR 303.7 is established within the Department of Justice, Division of Child Support. It is responsible for receiving, distributing and responding to inquiries on all incoming intergovernmental requests.

(2) Within ten working days of receipt of a request from an initiating agency or other petitioner, the central registry will:

- (a) Review the documentation submitted with the request to determine completeness;
- (b) Forward the request for necessary action either to the State Parent Locator Service for location services or to the administrator for processing;
- (c) Acknowledge receipt of the request and ask the initiating agency or other petitioner to provide any missing documentation; and
- (d) Inform the initiating agency or other petitioner where the request has been sent for action.

(3) If the documentation received with a request is inadequate, the central registry will forward the request to the appropriate branch or DA office to take appropriate action pending receipt of additional documentation.

(4) The central registry must respond to inquiries about case status within five working days from receipt of the request.

Stat. Auth.: ORS 180.345  
Stats. Implemented: ORS 25.729, 110.303 – 110.452  
Hist.: AFS 24-1994, f. 10-26-94, cert. ef. 12-1-94; AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-2310; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-7040; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-7040; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11; DOJ 4-2011, f. & cert. ef. 7-1-11

## 137-055-7060

### Initiating Jurisdiction Responsibilities – General Provisions

(1) The administrator will use a one-state process, when appropriate, to establish, enforce, or modify a support order, or to determine parentage.

(2) The administrator will determine:

- (a) Whether one order exists or multiple orders exist for the same child and obligor;
- (b) If there are multiple orders, which jurisdiction should complete a controlling order determination; and
- (c) Whether a one-state process is appropriate.

(3) Within 20 calendar days of completing the actions in section (1) and after receipt of any documentation necessary to process a case, the administrator will:

- (a) Refer a request for a controlling order determination and reconciliation of arrears, if needed, to the appropriate jurisdiction;
- (b) If a one-state process is not appropriate, use federally prescribed forms and procedures to refer the case to the appropriate central registry, tribal IV-D program or central authority of a country for appropriate action.
- (4) The administrator will send any requested additional information within 30 calendar days of receipt of the request or notify the responding jurisdiction when the information will be provided.

(5) The administrator will notify the responding jurisdiction within ten working days of receipt of new case information.

(6) The administrator will notify the responding jurisdiction at least annually, and upon request, of interest charges, if any, owed on a support order issued by this state.

Stat. Auth.: ORS 25.729, 180.345  
Stats. Implemented: ORS 25.729, 110.303 – 110.452  
Hist.: AFS 24-1994, f. 10-26-94, cert. ef. 12-1-94; AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-2320; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-7060; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-7060; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11; DOJ 4-2011, f. & cert. ef. 7-1-11

## 137-055-7100

### Direct Income Withholding

(1) The administrator may send direct income withholding to an employer located in another jurisdiction when:

(a) The employer is located in a jurisdiction which has adopted the direct withholding provisions of UIFSA; and

(b) Any intergovernmental request about the same obligor and child is withdrawn and the responding agency is instructed to close their case; and

(c) If required under OAR 137-055-7180, a controlling order has been determined.

(2) The administrator must ensure that the obligor is given the notice required by ORS 25.399.

(3) If the obligor files a written contest to the income withholding order in the employer's state, the administrator may dismiss the direct income withholding order and initiate an intergovernmental request for registration and enforcement.

Stat. Auth.: ORS 180.345  
Stats. Implemented: ORS 25.729 & 110.394  
Hist.: AFS 24-1994, f. 10-26-94, cert. ef. 12-1-94; AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-2340; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-7100; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-7100; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11; DOJ 4-2011, f. & cert. ef. 7-1-11

## 137-055-7120

### Responding Jurisdiction Responsibilities – General Provisions

(1) Within 75 calendar days of receipt of an Intergovernmental Child Support Enforcement Transmittal Form, a UIFSA Action Request Form or other form and documentation from the Oregon central registry, the administrator will:

(a) Provide location services in accordance with 45 CFR 303.3 if appropriate;

(b) If unable to proceed with the case because of inadequate documentation, request any necessary additions or corrections;

(c) If the documentation received with a case is inadequate, process the case to the extent possible pending response from the initiating agency.

(2) Within ten working days of locating the obligor in a different locale within the state, if appropriate, the administrator will forward the form and documentation to the appropriate office and notify the initiating agency.

(3) Within ten working days of locating the obligor outside of Oregon, the administrator will:

(a) Return the form and documentation, including the new location, to the initiating agency, or if directed by that agency, forward the form and documentation to the central registry where the obligor has been located; and

(b) Document the Oregon case record.

(4) Within 30 days of receiving a request, the administrator must provide any order and payment record information requested by another state's child support program for a controlling order determination, or advise the requesting state when the information will be provided.

(5) The administrator must provide to the initiating agency timely advance notice of any formal hearings which may result in establishment or modification of an order.

(6) The administrator must notify the initiating agency within ten working days of receipt of new information on a case.

(7) The administrator must cooperate with requests for the following limited services:

- (a) Quick locate;
- (b) Service of process;
- (c) Assistance with discovery;
- (d) Assistance with genetic testing;
- (e) Teleconferenced hearings;
- (f) Administrative reviews;
- (g) High-volume automated administrative enforcement in interstate cases under 42 USC 666(a)(14); and
- (h) Copies of court orders and pay records; and may cooperate with other requests for limited services.



# ADMINISTRATIVE RULES

Stat. Auth.: ORS 180.345  
Stats. Implemented: ORS 25.729, 110.303 – 110.452  
Hist.: AFS 24-1994, f. 10-26-94, cert. ef. 12-1-94; AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-2350; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-7120; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-7120; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11; DOJ 4-2011, f. & cert. ef. 7-1-11

## 137-055-7140

### Oregon as Responding Jurisdiction – Establishing, Enforcing and Modifying Support and Medical Insurance Orders

(1) The registering tribunal under UIFSA is the circuit court of Oregon. This designation does not preclude action by other tribunals.

(2) Administrative contested case hearings will be conducted by an administrative law judge pursuant to the provisions of ORS 416.427.

(3) Whenever allowed under the law, the administrator will use the provisions of ORS 416.400 to 416.470 in conjunction with the provisions of ORS chapter 110 to establish, enforce and modify support orders.

Stat. Auth.: ORS 180.345  
Stats. Implemented: ORS 25.729, 110.303 – 110.452  
Hist.: AFS 24-1994, f. 10-26-94, cert. ef. 12-1-94; AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-2360; SSP 4-2003, f. 2-25-03, cert. ef. 3-1-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-7140; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-7140; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11; DOJ 4-2011, f. & cert. ef. 7-1-11

## 137-055-7160

### Oregon as Responding Jurisdiction – Establishing Paternity

(1) When a request to establish paternity is received from another jurisdiction, the administrator must receive an affidavit of a parent naming the alleged father prior to initiating legal action.

(2) The administrator will use the provisions of ORS Chapter 25, 109, 110 and 416 to establish paternity and support.

Stat. Auth.: ORS 180.345  
Stats. Implemented: ORS 25.729, 110.303 – 110.452  
Hist.: AFS 24-1994, f. 10-26-94, cert. ef. 12-1-94; AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-2370; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-7160; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-7160; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11; DOJ 4-2011, f. & cert. ef. 7-1-11

## 137-055-7180

### Determining Controlling Order

(1) The administrator will determine a single controlling order when:

(a) Services are being provided under ORS 25.080 and two or more child support orders have been issued regarding the same obligor, child and obligee; or

(b) A party or other jurisdiction requests a determination.

(2) For purposes of this rule, any order modified or issued after October 20, 1994 (the effective date of the Full Faith and Credit for Child Support Orders Act, 28 USC 1738B), will be interpreted as a modification of all orders issued prior to October 20, 1994, unless:

(a) The tribunal entering the order did not have jurisdiction to do so; or

(b) A party alleges the tribunal lacked personal or subject matter jurisdiction.

(3) When a request for a controlling order determination is received from another jurisdiction:

(a) The request is not complete until documents necessary to perform the determination are received; and

(b) The request is considered “filed with the appropriate tribunal” as required by 45 CFR 303.7(5) when the administrator receives the complete request.

(4) The administrator will determine the controlling order and issue an order setting out the determination. The order is an order in an other than contested case proceeding under ORS chapter 183. The order will be served upon the parties by certified mail, return receipt requested, at the last known address of the parties. The order must include:

(a) The basis for personal jurisdiction over the parties;

(b) The names of the parties and the child for whom support was ordered;

(c) A statement of each child support order which was considered, the jurisdiction which issued the order and the date of the order;

(d) A statement identifying the order the administrator determines is the controlling order and why;

(e) A statement that the controlling order determination is effective the date the order is issued by the administrator;

(f) A reference to ORS 110.333;

(g) A notice that a party may submit further information and petition the administrator for reconsideration of the order within 60 days of the date of the order;

(h) A notice that OAR 137-004-0080 applies to any petition for reconsideration; and

(i) A notice that a party may appeal the order as provided by ORS 183.484.

(5) If the administrator determines that no tribunal has continuing, exclusive jurisdiction under ORS chapter 110, the administrator will notify the parties and establish a new child support order.

(6) For the purposes of determining the Oregon county in which the administrator may enter the order determining the controlling order, the following provisions apply:

(a) If one or more Oregon court files exist for the same obligor and child, the order will be entered in each existing court file;

(b) If an Oregon court file does not exist, the administrator will enter the documents required by ORS 416.440 in the circuit court in the county where the party who lives in Oregon resides.

(7) Within 30 days after the expiration of the appeal or reconsideration period, the administrator will certify copies of the order determining the controlling order and file one with each tribunal that issued or registered an earlier order of child support.

(8) Upon written receipt of an order determining the controlling order that a tribunal of this or another jurisdiction properly issued, the administrator will:

(a) Adjust the Oregon case record to cease prospective accrual on any noncontrolling order and initiate accrual on any controlling order which was issued or registered by an Oregon tribunal on the date specified in the order determining controlling order or, when not specified, in accordance with OAR 137-055-5040; and

(b) When one of the noncontrolling orders was issued by an Oregon tribunal, ensure that the order determining the controlling order is entered in the Oregon circuit court for the county which issued or entered the prior order.

Stat. Auth.: ORS 25.729 & 180.345  
Stats. Implemented: ORS 110.327 & 110.333  
Hist.: AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-2385; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-7180; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-7180; DOJ 10-2004, f. & cert. ef. 7-1-04; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11; DOJ 4-2011, f. & cert. ef. 7-1-11

## 137-055-7190

### Review and Modification In Intergovernmental Cases

(1) Within 15 days of a party's request for a periodic review or a request for a modification based upon a change of circumstances, the administrator will determine in which jurisdiction the review will be sought. The administrator will follow the Uniform Interstate Family Support Act (UIFSA) provisions in ORS 110.303 through 110.452 in making this decision, including:

(a) If the controlling order is an Oregon support order and the obligor, obligee and child reside in this state, Oregon will do the review.

(b) If the controlling order is an Oregon support order and one of the parties or the child resides in this state, Oregon will do the review, presuming personal jurisdiction can be asserted for the remaining party.

(c) If Oregon does not have the controlling order but all the parties have filed in the jurisdiction which has the controlling order a written consent for Oregon to modify the order, Oregon will do the review.

(d) If an order has been registered for enforcement in Oregon and none of the parties or the child resides in the jurisdiction which issued the order, the jurisdiction where the non-requesting party resides will do the review.

(2) If the administrator determines that Oregon is not the appropriate reviewer, the administrator will:

(a) Determine and obtain the information needed;

(b) Complete any required forms; and

(c) Send all required documents to the reviewer within 20 calendar days of receipt;

(3)(a) If the reviewer is currently providing services for Oregon on the case, the documents will be transmitted to the appropriate office or agency working the case;

(b) If the request is the first contact with the reviewer for the case, the request must be sent to the reviewer's central registry.

Stat. Auth.: ORS 25.080, 25.287, 180.345  
Stats. Implemented: ORS 25.080, 25.287, 110.318, 110.327, 110.330 & 110.436  
Hist.: DOJ 10-2004, f. & cert. ef. 7-1-04; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11; DOJ 4-2011, f. & cert. ef. 7-1-11

# ADMINISTRATIVE RULES

**Rule Caption:** Calculating child support: self support reserve amount.

**Adm. Order No.:** DOJ 5-2011

**Filed with Sec. of State:** 7-1-2011

**Certified to be Effective:** 7-1-11

**Notice Publication Date:** 5-1-2011

**Rules Amended:** 137-050-0745

**Rules Repealed:** 137-050-0745(T)

**Subject:** OAR 137-050-0745 is amended to update the monthly self-support reserve amount.

**Rules Coordinator:** Vicki Tungate—(503) 986-6086

## 137-050-0745

### Self-Support Reserve

(1) A support calculation must ensure that a parent being ordered to pay support is left with enough income to meet his or her own basic needs. This is known as the Self Support Reserve and is determined as follows:

(a) Determine the parent's adjusted income as provided in OAR 137-050-0715;

(b) Calculate the parent's income available for support by subtracting a self-support reserve of \$1059 from the parent's adjusted income;

(c) Compare the amount of income available for support to the amount of support that was calculated under OAR 137-050-0710(8). The lesser of the two amounts is presumed to be the correct support amount.

(2) Any available income remaining after application of the self-support reserve in step (1)(c) is the income available for medical support.

(3) This rule does not apply to an incarcerated obligor as defined in OAR 137-055-3300.

(4) The amount of the self-support reserve (SSR) is based on the federal poverty guideline (FPG), and is adjusted to account for estimated taxes using a 1.167 multiplier. (SSR = FPG x 1.167) The self-support reserve amount will be reviewed and updated annually.

Stat. Auth.: ORS 25.275, 25.280 & 180.345

Stats. Implemented: ORS 25.275 & 25.280

Hist.: DOJ 16-2009, f. 12-1-09, cert. ef. 1-4-10; DOJ 1-2011(Temp), f. & cert. ef. 1-26-11 thru 7-24-11; DOJ 5-2011, f. & cert. ef. 7-1-11

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**Rule Caption:** Exceptions to income withholding for support.

**Adm. Order No.:** DOJ 6-2011(Temp)

**Filed with Sec. of State:** 7-1-2011

**Certified to be Effective:** 7-1-11 thru 12-27-11

**Notice Publication Date:**

**Rules Amended:** 137-055-4080

**Subject:** OAR 137-055-4080 is amended to clarify criteria for allowing exceptions to income withholding for support.

**Rules Coordinator:** Vicki Tungate—(503) 986-6086

## 137-055-4080

### Immediate Income Withholding

(1) An exception to income withholding may be granted in any case as set out in ORS 25.396.

(2) The administrator may allow payment by EFT as an exception to income withholding if:

(a) The obligee consents to payment by EFT; or

(b) The only payee on the case is a child attending school (CAS) under ORS 107.108 and OAR 137-055-5110, and the CAS consents to payment by EFT;

(c) The obligor submits a completed request for payment by EFT on a form provided by the Division of Child Support (DCS); and

(d) The obligor continues to pay the amount due for current support each month until DCS activates the EFT.

(3) If payment by EFT is allowed as provided in section (2) of this rule, payment by EPW may be allowed only if:

(a) The obligor's financial institution is a participant in the National Automated Clearinghouse Association;

(b) The request for EPW:

(A) Is signed by all signatories to the obligor's account at the financial institution; and

(B) Establishes a monthly withdrawal date, no later than the monthly support due date, and the amount to be paid on each withdrawal date.

(4) Payment by EPW will not be allowed if the order is a contingency order as provided in ORS 416.417, unless the child is in the care of the Oregon Youth Authority.

(5) If the EFT request is approved, DCS will notify the parties by mail, including the initial withdrawal date.

(6) An obligor may make additional payments by EFT even if the obligor does not qualify for an exception to withholding, as long as the obligor designates a withdrawal date.

(7) The administrator will not process a request to obtain consent to payment by EFT if the obligee or child attending school has failed to consent at any time within the previous six months.

(8) The administrator will terminate income withholding when:

(a) There is no longer a current order for support and all arrears have been paid or satisfied; or

(b) The court or administrator allows an exception to withholding pursuant to ORS 25.396 and this rule.

(9) The administrator will reinstate income withholding and cancel payment by EFT if:

(a) At least one month of arrears accrues;

(b) The obligor cancels the request to pay by EFT; or

(c) The obligee, or if appropriate, CAS, withdraws consent to the EFT and the administrator agrees EFT should be canceled.

Stat. Auth.: ORS 25.396; 25.427, 180.345

Stats. Implemented: ORS 25.378 & 25.396

Hist.: AFS 7-1994, f. & cert. ef. 4-1-94; AFS 3-1995, f. 1-27-95, cert. ef. 2-1-95; AFS 20-1995, f. 8-30-95, cert. ef. 9-9-95; AFS 3-1995, f. 1-27-95, cert. ef. 2-1-95; AFS 34-1995, f. 11-27-95, cert. ef. 12-1-95; AFS 39-1995, f. & cert. ef. 12-15-95; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0176; 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 461-200-4080; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-4080; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 6-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

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## Department of Public Safety Standards and Training Chapter 259

**Rule Caption:** Remove "rebuttable presumption" language and implement plain language standards.

**Adm. Order No.:** DPSST 7-2011

**Filed with Sec. of State:** 6-23-2011

**Certified to be Effective:** 6-23-11

**Notice Publication Date:** 6-1-2011

**Rules Amended:** 259-020-0030

**Subject:** Removes language regarding the "rebuttable presumption." The burden of proof was previously placed on the polygraph examiner who is presumed incompetent and unable to perform their duties. Per Department of Justice recommendation, that burden of proof lies with the Department. Plain language standards are also implemented.

**Rules Coordinator:** Linsay Bassler—(503) 378-2431

## 259-020-0030

### Denial, Suspension, or Revocation of Licenses

(1) The Department may deny, suspend or revoke the license of any polygraph examiner or trainee, if it finds that the person:

(a) Failed to inform an individual being examined as to the nature of the examination or failed to advise the individual or authorized representative of the results of the examination;

(b) Failed to inform an individual being examined that participation in the examination is voluntary;

(c) Made a material misstatement in the application for an original or renewal license under provisions of the Act;

(d) Willfully disregarded or violated any provision of the Act or any rule adopted pursuant to it, including, but not limited to, the willful making of a false report of a polygraph examination or failing to appear for re-examination as directed by the Director and on the recommendation of the Polygraph Licensing Advisory Committee;

(e) Made any willful misrepresentation or employed any false or misleading advertising to obtain business or the services of a trainee;

(f) Has demonstrated any inability or incompetency to carry out the duties of a polygraph examiner. The following are indicators of inability or incompetence to carry out the duties of a polygraph examiner:

(A) Illegal conduct involving moral turpitude;

(B) Conduct involving dishonesty, fraud, deceit, or misrepresentation;

(C) Conduct that is prejudicial to the administration of justice;

(D) Use of test questions relating to sexual, religious, or political matters, unless such matters relate to the issue under investigation;

(E) Deliberately using unclear, misleading, circuitous, or ambiguous language in describing or explaining any part of an examination, including, but not limited to, the results of the examination; or

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(F) Failing to maintain any or all written records, along with polygraph charts or polygrams, of all polygraph examinations which they conduct. For purposes of validation, credibility, or accreditation these records and charts are to be maintained in a manner consistent with State Archivist rules pertaining to reports of investigations conducted by Oregon State Police.

(g) Has permitted a license granted under the Act or any rule adopted pursuant to it to be used by another person;

(h) Has willfully aided or abetted any violation of provisions of the Act or any rule adopted pursuant to it; or

(i) Has failed, within a reasonable amount of time, to provide any information requested by the Director after the receipt by the Department of a complaint alleging a violation of the Act or any rule adopted pursuant to it.

(2) The Department shall suspend the trainee's license of any person who fails to pass the oral or written portion of the examination required by OAR 259-020-0015(1)(h) after three attempts in accordance with OAR 259-020-0015(3)(b). The applicant may not reapply for internship until after retaking and successfully completing a polygraph examiner's course approved by the Department.

(3) Upon receipt of written notification of the suspension or revocation by the Department of a license, a polygraph examiner or trainee shall immediately surrender the license to the Director. The Department may restore a suspended license to the prior holder or may issue a license previously denied under subsection (1) of this rule upon written application and receipt by the Department of evidence that the conditions which caused the denial or suspension have been corrected to the satisfaction of the Department. All actions taken by the Department pursuant to this section will be in conformance with the Oregon Administrative Procedures Act.

(4) The Department shall conduct all proceedings under the Act in accordance with ORS Chapter 183. Judicial review of an action by the Department shall be provided in ORS 183.480 to 183.500.

(5) Waivers of the standards will not be allowed unless the trainee or examiner can present evidence that the circumstances are so extraordinary that the rule should not apply to them and that, if approved, the waiver will not adversely affect the safety of the public. All requests for waivers will be submitted to the Polygraph Licensing Advisory Committee for approval.

Stat. Auth.: ORS 703.230

Stats. Implemented: ORS 703.230

Hist.: PS 12, f. & ef. 12-19-77; PS 1-1979, f. 10-1-79, ef. 10-3-79; PS 3-1987, f. & ef. 10-26-87; 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 7-1999, f. & cert. ef. 7-29-99; BPSST 9-2001, f. & cert. ef. 9-19-01; BPSST 14-2002, f. & cert. ef. 7-1-02; DPSST 7-2011, f. & cert. ef. 6-23-11

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**Rule Caption:** Update form names and processes pertaining to the maintenance process. Housekeeping changes.

**Adm. Order No.:** DPSST 8-2011

**Filed with Sec. of State:** 6-24-2011

**Certified to be Effective:** 6-24-11

**Notice Publication Date:** 6-1-2011

**Rules Amended:** 259-008-0060

**Subject:** Remove all reference to Forms F-15M (Multi-Discipline Maintenance Log) and F-15T (Telecommunications/EMD Maintenance Log) and replace with Form F-16 (Maintenance Training Log — Tele/EMD/Multi-Discipline). The maintenance process was changed for the 2009-2010 maintenance period, but the processes and form references in this rule were not updated. All references to training points were removed, as requirements to obtain and maintain certification reference training hours rather than converting them to points. Other obsolete rule references regarding training were also removed. Finally, this update removes obsolete statutory references, updates OAR references, and makes minor housekeeping changes for clarity.

**Rules Coordinator:** Lindsay Bassler—(503) 378-2431

## 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 must be acquired by all police officers, parole and probation officers, telecommunicators, and emergency medical dispatchers within 18 months of employment, and by all corrections officers within one year of employment unless an extension is granted by the Department.

(3) To be eligible for the award of a certificate, law enforcement officers must be full-time employees as defined by ORS 181.610 and OAR 259-008-0005 or part-time parole and probation officers, as described in ORS 181.610 and OAR 259-008-0066.

(4) To be eligible for the award of a certificate, law enforcement officers must meet the Board's prescribed minimum employment standards as established by OAR 259-008-0010.

(5) To be eligible for the award of a certificate, telecommunicators must meet the Board's prescribed minimum employment standards as established by OAR 259-008-0011.

(6) To be eligible for the award of a certificate, law enforcement officers must subscribe to and swear or affirm to abide by the Criminal Justice Code of Ethics (Form F11). Telecommunicators and emergency medical dispatchers must subscribe to and swear or affirm to abide by the Telecommunicator Code of Ethics. (Form F-11T).

(7) Application for certification must be submitted on Form F7 (Application for Certification), with all applicable sections of the form completed. The form must be signed by the applicant. In order to ensure that the applicant meets the minimum standards of employment, training, education, and experience, and is competent to hold the level of certification for which the applicant has applied, the department head or authorized representative must sign the form recommending that the certificate be issued or withheld. If the department head chooses not to recommend the applicant's request for certification, the reason for this decision must be specified in writing and must accompany the Form F7.

(8) When a department head is the applicant, the above recommendation must be made by the department head's appointing authority such as the city manager or mayor, or in the case of a specialized agency, the applicant's superior. Elected department heads are authorized to sign as both applicant and department head.

(9) In addition to the requirements set forth above, each applicant must have completed the designated education and training, combined with the prescribed corrections, parole and probation, police or telecommunications experience for the award of an Intermediate, Advanced, Supervisory, Management, or Executive Certificate.

(a) Each quarter credit unit granted by an accredited college or university which operates on a quarterly schedule will equal one (1) education credit.

(b) Each semester credit unit granted by an accredited college or university operating on a semester schedule will equal one and one half (1-1/2) education credits.

(c) The Department must receive sealed official transcripts from a college prior to entering college credit on an individual's official record.

(10) Training:

(a) Basic courses certified by the Department shall be approved by the Board.

(b) The Department may record training hours for departmental or other in-service training which is recorded and documented in the personnel files of the trainee's department. These records must include the subject, instructor, classroom hours, date, sponsor, and location.

(c) Training completed in other states, military training, and other specialized training, if properly documented, may be accepted, subject to staff evaluation and approval. These records must include the subject, date, and classroom hours, and must be certified true copies of the original.

(d) College credits earned may be counted for either training hours or education credits, whichever is to the advantage of the applicant.

(e) College credit awarded based on training completed may be applied toward either training hours or education credits, whichever is to the advantage of the applicant.

(A) Prior to applying an applicant's college credit toward any upper level of certification, the Department must receive documentation of the number of college credits awarded based on training attended.

(B) The training hours identified under paragraph (A) and submitted as college credit toward an upper level of certification will not be included in any calculation of whether the applicant has earned sufficient training hours to qualify for the requested certification level.

(i) Any college credit received for practical or skills-based training attended will be calculated at a ratio of 1:20 hours for each quarter credit, for purposes of training hour deductions.



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(ii) Any college credit received for academic training attended will be calculated at a ratio of 1:10 hours for each quarter credit, for purposes of training hour deductions.

(f) No credit can be applied toward both education credits and training hours when originating from the same training event.

(11) Experience/Employment:

(a) Experience gained as a corrections, parole and probation, or police officer employed full time with municipal, county, state, or federal agencies, may be accepted if the experience is in the field in which certification is requested and is approved by the Department. For the purpose of this rule, creditable service time for experience will not accrue under the following circumstances:

(A) When an individual is employed in a casual, seasonal, or temporary capacity;

(B) When an individual is on leave. A public safety 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;

(C) From the date a public safety professional's certification is recalled until it is reinstated by the Department; or

(D) 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 or emergency medical dispatcher as defined in OAR 259-008-0005, or part time parole and probation officer as defined under 259-008-0005 and 259-008-0066, will count on a pro-rated basis.

(d) Police, corrections, parole and probation, telecommunicator, or emergency medical dispatch experience in fields other than that in which certification is requested may receive partial credit when supported by job descriptions or other documentary evidence. In all cases, experience claimed is subject to evaluation and approval by the Department.

(12) The Basic Certificate. In addition to the requirements set forth in section (1) of this rule, the following are required for the award of the Basic Certificate:

(a) Applicants must have completed a period of service of not less than nine (9) months with one or more law enforcement units or public or private safety agencies in a certifiable position in the field in which certification is being requested;

(b) Applicants must have satisfactorily completed the required Basic Course in the field in which certification is requested or have completed equivalent training as determined by the Department; and

(c) Applicants must have valid first aid and cardiopulmonary resuscitation (CPR) cards.

(13) The Intermediate Certificate. In addition to the requirements set forth in section (1) of this rule, the following are required for the award of the Intermediate Certificate:

(a) Applicants must possess a Basic Certificate in the field in which certification is requested; and

(b) Applicants must have acquired the following combinations of education hours and training hours combined with the prescribed years of police, corrections, parole and probation or telecommunications experience, or the college degree designated combined with the prescribed years of experience: [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 must possess or be eligible to possess the Intermediate Certificate in the field in which certification is requested; and

(b) Applicants must have acquired the following combinations of education and training hours combined with the prescribed years of corrections, parole and probation, police, telecommunications experience, or the college degree designated combined with the prescribed years of experience: [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 must possess or be eligible to possess the Advanced Certificate in the field in which certification is requested;

(b) Applicants must have satisfactorily completed no less than 45 education credits as defined in section (10) of this rule;

(c) Applicants must have satisfactorily completed the prescribed Supervision Course or an equivalent number of hours of Department-approved supervisory level training within five (5) years prior to application for the Supervisory Certificate; and

(d) Applicants must be presently employed in, or have satisfactorily performed the duties associated with, the position of a first-level supervisor as defined in OAR 259-008-0005 and as attested to by the applicant's department head during the time such duties were performed for a period of one (1) year. The required experience must have been acquired within five (5) years prior to the date of application.

(e) Upon request of the employing agency, the Department may waive the requirements of subsection (c) or (d) of this section, provided the employing agency demonstrates that the applicant performs, on a regular basis, supervisory duties.

(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 must possess or be eligible to possess the Supervisory Certificate in the field in which certification is requested;

(b) Applicants must have satisfactorily completed no less than 90 education credits as defined in section (10) of this rule;

(c) Applicants must have satisfactorily completed the prescribed Middle Management Course or an equivalent number of hours of Department-approved management level training within five (5) years prior to application for the Management Certificate; and

(d) Applicants must be presently employed in and must have served satisfactorily in a Middle Management position as a Department Head or Assistant Department Head as defined in OAR 259-008-0005 for a period of two (2) years. The required experience must have been acquired within five (5) years prior to the date of application.

(e) Upon request of the employing agency, the Department may waive the requirements of subsection (c) or (d) of this section, provided the employing agency demonstrates that the applicant performs, on a regular basis, management duties.

(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 must possess or be eligible to possess the Management Certificate in the field in which certification is requested;

(b) Applicants must have satisfactorily completed no less than 90 education credits as defined in section (10) of this rule;

(c) Applicants must have satisfactorily completed 100 hours of Department-approved executive level training within five (5) years prior to application for the Executive Certificate; and

(d) Applicants must be presently employed in and must have served satisfactorily in a Middle Management position as Department Head or Assistant Department Head as defined in OAR 259-008-0005 for a period of two (2) years. The required experience must have been acquired within five (5) years prior to the date of the application.

(e) Upon request of the employing agency, the Department may waive the requirements of subsection (c) or (d) of this section, provided the employing agency demonstrates that the applicant performs, on a regular basis, the duties associated with that of a department head or assistant department head.

(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, 259-008-0011, 259-008-0025, and this rule, in the disciplines which they are requesting certification. The officer must meet the following requirements for the award of multi-discipline certification:

(a) Basic certification. A law enforcement officer who is certified in one discipline may apply for multi-discipline certification if employed in or transferred to another discipline within the same law enforcement unit. The applicant must demonstrate completion of all training requirements in the discipline in which certification is being requested.

(b) Higher levels of certification. Law enforcement officers who possess higher levels of certification in one discipline may, upon employment in or transfer to another discipline within the same law enforcement unit, apply for the same level of certification after completion of nine (9) months experience in the discipline in which they are requesting certification and meeting the requirements for those higher levels of certification as outlined

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in this rule. This section does not apply to the emergency medical dispatcher discipline since it only exists at the basic certification level.

(c) Retention of multi-discipline certification. In order to maintain multi-discipline certification, each discipline in which certification is held requires successful completion and documentation of training hours by the holders of the certificates every twelve (12) months. The training must be reported to the Department, as follows:

(A) For a law enforcement officer who also holds emergency medical dispatcher certification, a minimum of four (4) hours of training specific to the emergency medical dispatcher discipline must be reported annually as required under OAR 259-008-0064.

(B) For a law enforcement officer who also holds telecommunicator certification, a minimum of twelve (12) hours of training specific to the telecommunicator discipline must be reported annually as required under OAR 259-008-0064.

(C) A minimum of twenty (20) hours of training specific to each law enforcement discipline in which certification is held must be reported annually as required under subsections (h) through (l) of this section.

(d) The same training may be used for more than one discipline if the content is specific to each discipline. It is the responsibility of the agency head to determine if the training is appropriate for more than one discipline.

(e) The maintenance training cycle for law enforcement officers who are certified in more than one discipline begins on July 1st of each year and ends on June 30th the following year.

(f) The employing agency must maintain documentation of all required maintenance training completed.

(g) If reported on a Form F-6 (Course Attendance Roster), required maintenance training must be submitted to the Department by June 30th of each year. Training reported on a Form F-6 will result in credit for training hours. No training hours will be added to a law enforcement officer's record, unless accompanied by a Form F-6 Course Attendance Roster.

(h) On or after July 1st of each year, the Department will identify all law enforcement officers who are deficient in maintenance training according to Department records and provide notification to the individual and the employing agency.

(A) Within 30 days of receipt of notification, the agency must notify the Department of the training status of any law enforcement officer identified as deficient by submitting a Form F-16 (Maintenance Training Log) to the Department identifying the maintenance training completed during the previous one (1) year reporting period.

(B) Maintenance training hours reported to the Department on a Form F-16 will be used solely to verify completion of maintenance training requirements and will not be added to an officer's training record.

(i) 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.

(j) The Department will recall a law enforcement officer's certification for:

(A) Failure to complete or report any required maintenance training 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.

(k) A law enforcement officer with a recalled certification is prohibited from being employed in any position for which the certification has been recalled.

(l) Recertification following a recall may be obtained at the approval of the Department by submitting the following:

(A) A written request from the employing agency head requesting recertification, along with a justification of why the maintenance training was not completed; and

(B) Verification that the missing training was completed.

(m) Failure to complete the required maintenance training may not result in a recall of certification if the law enforcement officer is on leave from a public or private safety agency.

(19) Certificates and awards are the property of the Department. The Department has 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. & ef. 2-7-90; PS 1-1995, f. & ef. 3-30-95, PS 2-1995, f. & ef. 9-27-95; PS 7-1997, f. 3-20-97, cert. ef. 3-25-97; PS 10-1997(Temp), f. & ef. 11-5-97; BPSST 1-1998, f. & ef. 5-6-98; BPSST 2-1998(Temp), f. & ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & ef. 6-30-98; BPSST 1-1999, f. & ef. 3-9-99; BPSST 6-1999, f. & ef. 7-29-99; BPSST 11-2000, f. 11-13-00, cert. ef. 11-15-00; BPSST 13-2001(Temp), f. & ef.

10-26-01 thru 4-10-02; BPSST 8-2002, f. & cert. ef. 4-3-02; BPSST 21-2002, f. & cert. ef. 11-21-02; DPSST 1-2004, f. 1-16-04, cert. ef. 1-20-04; DPSST 5-2004, f. & cert. ef. 4-23-04; DPSST 2-2008, f. & cert. ef. 1-15-08; DPSST 9-2008, f. & cert. ef. 7-15-08; DPSST 22-2008, f. & cert. ef. 12-29-08; DPSST 4-2009, f. & cert. ef. 4-8-09; DPSST 1-2010, f. & cert. ef. 1-11-10; DPSST 2-2010, f. & cert. ef. 3-15-10; DPSST 4-2010, f. & cert. ef. 6-2-10; DPSST 7-2010, f. 7-15-10, cert. ef. 8-1-10; DPSST 8-2010, f. & cert. ef. 8-13-10; DPSST 8-2011, f. & cert. ef. 6-24-11

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**Rule Caption:** Update education standards for public safety personnel to include documentary evidence of post-secondary education.

**Adm. Order No.:** DPSST 9-2011

**Filed with Sec. of State:** 6-28-2011

**Certified to be Effective:** 6-28-11

**Notice Publication Date:** 6-1-2011

**Rules Amended:** 259-008-0010, 259-008-0011

**Subject:** Adds language allowing law enforcement applicants to furnish documentary evidence of a four-year, post-secondary degree from an accredited college or university to satisfy the minimum education standard.

**Rules Coordinator:** Linsay Bassler—(503) 378-2431

## 259-008-0010

### Minimum Standards for Employment as a Law Enforcement Officer

(1) Citizenship.

(a) A person may not be employed as a corrections officer for more than one year unless the person is a citizen of the United States.

(b) A person may not be employed as a police or parole and probation officer for more than 18 months unless the person is a citizen of the United States.

(2) Age. No law enforcement unit in this state shall employ as a police officer, corrections officer or parole and probation officer, any person who has not yet attained the age of 21 years.

(3) Fingerprints. On or within 90 days prior to the date of employment, each police, corrections, or parole and probation officer shall be fingerprinted on standard applicant fingerprint cards. The hiring agency is responsible for fingerprinting and shall forward two (2) cards to the Oregon State Police Identification Services Section for processing and assignment of identification number.

(a) Applicant's fingerprints will be retained and kept on file with the Oregon State Police Identification Services Section.

(b) The Oregon State Police Identification Services Section will notify the Department and the employing agency of any criminal record disclosed through processing the applicant's fingerprint card.

(c) If any procedural change is made by either the Federal Bureau of Investigation or the Oregon State Police Identification Services Section the Department shall comply with the most current requirements.

(d) If the fingerprint clearance has not been obtained prior to submission of the application for certification, a criminal history affidavit provided by the applicant pending fingerprint clearance.

(4) Criminal Records. No police, corrections, or parole and probation officer shall have been convicted:

(a) In this state or any other jurisdiction, of a crime designated under the law where the conviction occurred as being punishable as a felony or as a crime for which a maximum term of imprisonment of more than one (1) year may be imposed;

(b) Of violating any law involving the unlawful use, possession, delivery, or manufacture of a controlled substance, narcotic, or dangerous drug;

(c) In this state of violating any law subject to denial or revocation as identified in OAR 259-008-0070 or has been convicted of violating the statutory counterpart of any of those offenses in any other jurisdiction.

(5) Notification of Conviction:

(a) A law enforcement officer, instructor, telecommunicator, or EMD who is convicted of a crime, as identified in OAR 259-008-0070, while employed by a public or private safety agency must notify the agency head within 72 hours of the conviction.

(b) When an agency receives notification of a conviction from its employee, or another source, they must notify the Department within five (5) business days. The notification to the Department must be in writing and include the specific charges of the conviction, the county and state where the conviction occurred, the investigating agency and the date of the conviction.

(6) Moral Fitness (Professional Fitness). All law enforcement officers must be of good moral fitness.

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(a) For purposes of this standard, lack of good moral fitness includes, but is not limited to:

(A) Mandatory disqualifying misconduct as described in OAR 259-008-0070(3); or

(B) Discretionary disqualifying misconduct described in OAR 259-008-0070(4).

(7) Education:

(a) Applicants for the position of a law enforcement officer will be required to furnish documentary evidence of one of the following:

(A) High School diploma;

(B) Successful completion of the General Educational Development (GED) Test; or

(C) A four-year, post-secondary degree issued by an accredited, degree-granting college or university recognized by the Oregon Office of Degree Authorization under the provisions of ORS 348.604.

(i) For the purpose of determining high school graduation level as required by these rules, the applicant must have achieved a score no less than that required by the Oregon Board of Education before issuing an Oregon GED certificate.

(ii) Applicants holding a GED from another state may be required to obtain an Oregon certificate at the discretion of the Department.

(b) Evidence of the above shall consist of official transcripts, diplomas, or GED test report forms. Other documentation may be accepted, at the discretion of the Department.

(c) Reading and Writing Standard. Before beginning basic police training, challenging basic police training, or beginning the police career officer development course, each applicant shall provide evidence to DPSST that the applicant has attained a minimum of a 12th grade reading and writing level in the English language.

(A) The hiring agency is responsible for administering a reading and writing instrument, approved by DPSST, and shall forward the results to DPSST on an application for training (Form F-5) prior to the applicant being admitted to basic police training.

(B) Individuals submitting transcripts verifying that they possess at least a four-year academic degree from an institution recognized by DPSST under the provisions of OAR 259-008-0045 are exempt from completing the 12th grade reading/writing test prior to attending a course identified in this section.

(8) Physical Examination. All law enforcement officers and applicants must be examined by a licensed physician or surgeon.

(a) The medical examination shall be completed not more than 180 days prior to initial offer of employment, nor more than 90 days after initial offer of employment, and shall conform to applicable standards of the Americans with Disabilities Act (ADA). Title 42 USC 12101.

(b) Individuals who have had a successfully completed physical examination (while at the same employer) and are selected for a certifiable position in a discipline in which the individual is not yet certified must complete and pass a new physical examination.

(c) Except as provided in (e) below, the Department will not require a new physical examination when a law enforcement officer obtains employment, or re-employment, in the same discipline if the officer:

(A) Has had a successfully completed a physical examination, and

(B) Is currently certified; or

(C) Is an officer currently employed full-time in another jurisdiction who has successfully completed a comparable physical examination in that jurisdiction.

(d) Notwithstanding subsection (c), a medical examination may be required by a hiring agency at its discretion.

(e) Notwithstanding subsection (c), any law enforcement officer who is separated from employment for a reason related to a physical inability to perform an essential task of a law enforcement officer must successfully complete a physical examination prior to obtaining re-employment in a certifiable position or applying for certified retired officer status.

(f) Police, Corrections, and Parole and Probation applicants must meet the following criteria:

(A) Visual Acuity. Corrected vision must be at least 20/30 (Snellen) in each eye. Due to the demonstrated likelihood of dislodgment or breakage, candidates who are able to wear only glasses with frames must meet an uncorrected standard not worse than 20/100 (Snellen) in each eye. Those candidates who use soft contact lenses (SCLs) must have vision correctable to at least 20/30 in each eye, with no uncorrected standard, provided the employing agency will monitor compliance. Replacement glasses or lenses (as appropriate) must be on the person or readily available at all times during each work shift.

(B) Color Vision. Red or green deficiencies may be acceptable, providing the applicant can read at least nine (9) of the first thirteen (13) plates of the Ishihara Test (24 Plate Edition). Applicants who fail the Ishihara test can meet the color vision standard by demonstrating that they can correctly discriminate colors via a field test conducted by the employer and approved by DPSST.

(C) Depth Perception. Depth Perception must be sufficient to demonstrate stereopsis adequate to perform the essential tasks of the job. The recommended test is the Random Stereo Test with 60 seconds of arc.

(D) Peripheral Vision. Visual Field Performance must be 140 degrees in the horizontal meridian combined.

(E) Night Blindness. A history of night blindness should be evaluated to determine applicant's capacity to perform essential tasks at night or in dark or low light settings.

(g) Applicants for the position of police or corrections officer must have sufficient hearing in both ears to perform essential tasks without posing a direct threat to themselves or others. The applicant must have no average loss greater than 25 decibels (db) at the 500, 1,000, 2,000 and 3,000-Hertz levels in either ear with no single loss in excess of 40 db.

(h) Applicants for the position of parole and probation officer must have sufficient hearing in both ears to perform essential tasks without posing a direct threat to themselves or others. The applicant must have no average loss greater than 35 decibels (db) at the 500, 1000, 2000, and 3000 Hertz levels in either ear with no single loss in excess of 45 db.

(i) If amplification device(s) is (are) necessary to meet the criteria in (g) or (h) above, or if applicant cannot meet the above criteria and wishes to pursue application, applicant must:

(A) Obtain a hearing evaluation by a licensed audiologist or otorhinolaryngologist (ear, nose, throat) to determine current hearing aid requirement; and

(B) Achieve a Speech Reception Threshold (SRT) of no greater than 25 db for each ear;

(C) Police, corrections and parole and probation officers must achieve a Speech Discrimination test score of no less than 90% utilizing a standard 50-word presentation at 60 db Hearing Threshold Level (HTL). The Department may require an applicant to have another examination by a licensed audiologist or otorhinolaryngologist (ear, nose, and throat) designated by the Department to verify that the applicant's hearing meets the Board's minimum hearing standard. The verification examination will be at the expense of the applicant or the applicant's employing agency. The equipment utilized for all of these evaluations must be calibrated annually using current ANSI standards.

(D) Hearing amplification devices used to meet the hearing standard must be the type that protects the applicant from further hearing degradation due to amplification of loud sounds.

(j) Applicants for the position of police, corrections, or parole and probation officer must be able to use vocal chords and have significant speaking ability to perform speaking-related essential tasks. For police and corrections officers abnormalities of the nose, throat or mouth must not interfere with the applicant's breathing or proper fitting of gas mask or similar device.

(k) Applicants for the position of police, corrections, or parole and probation officer who have a history of organic cardio-vascular disease or a finding during the medical examination of organic cardio-vascular disease will necessitate further medical evaluation.

(A) Resting blood pressure must be less than or equal to 140 mmHg systolic and 90 mmHg diastolic on three successive readings.

(B) Applicants must not have a functional and therapeutic cardiac classification greater than the Heart Association's Class A.

(C) Failure to meet guidelines (k), (A) and (B) will require further medical evaluation.

(D) If the applicant has controlled hypertension not exceeding the above standards and is on medication with side effect profiles, which do not interfere with performance of duty, then the condition may not be excludable.

(E) Functional Capacity I patients with cardiac disease may not be excludable, if they have no limitations of physical activity and ordinary physical activity does not cause discomfort and they do not have symptoms of cardiac insufficiency, nor experience angina pain.

(F) Therapeutic Classification A patients with cardiac disease, whose physical activity is restricted, should be evaluated thoroughly.

(G) If further medical examination is required under (k), it will be at the expense of the applicant or hiring authority.

(l) All law enforcement applicants must submit a current-version DPSST Medical Examination Report (DPSST Form F2), or a medical



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report completed by a licensed physician containing at a minimum the information on Form F2 and a signed statement by the examining physician that the applicant does not have any condition, physical, mental, or emotional, which, in his/her opinion, suggests further examination. This Report will be furnished to the examining physician by the hiring agency. The physician must indicate that the applicant is or is not physically able to perform the duties of a law enforcement officer as prescribed by DPSST.

(m) A copy of the Medical Examination Report must be sent to the Department prior to acceptance into a basic course, or any course where such report is required by the Department.

(n) The Department may require an applicant offered conditional employment to take a subsequent examination by a licensed physician of the Department's choice at the expense of the applicant or the hiring authority.

(o) The Board may waive any physical requirement where, in its judgment, the waiver would not be detrimental to the performance of an officer's duties, including the protection of the public and the safety of co-workers. The applicant may be required to demonstrate the ability to perform the essential functions of the job.

(p) A person or department head requesting a waiver of any physical requirement set forth in section (8) of this rule shall submit the request to the Department in writing, accompanied by supporting documents or pertinent testimony which would justify the action requested. The supporting documents must include information pertinent to the waiver request. The Board or Department may require additional documentation or testimony by the person or department head requesting the waiver if clarification is needed. Any expense associated with providing documentation or testimony will be borne by the person requesting the waiver or the requesting agency. If the person requesting the waiver does not obtain employment within one (1) year from the date a waiver is granted, the waiver will be considered void.

(A) If the Board grants a waiver, it will be recorded on the certification and any subsequent certification unless removed by the Board upon proof that the condition prompting the waiver no longer exists.

(B) If the Board denies a request for a waiver of any physical requirement set forth in section (8) of this rule, the Department will issue Notice and proceed as provided in section (9) of this rule.

(9) Contested Case Hearing Process for denial of waiver.

(a) Initiation of Proceedings: Upon determination that the reason for denial of a waiver is supported by factual data meeting the statutory and administrative rule requirements, a contested case notice will be prepared.

(b) Contested Case Notice: The "Contested Case Notice" will be prepared in accordance with the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015. The Department will have a copy of the notice served on the public safety professional or individual.

(c) Response Time: A party who has been served with a "Contested Case Notice" 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.

(d) Default Order: If a timely request for a hearing is not received, the Contested Case Notice will become a final order denying the requested waiver.

(e) 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.

(f) 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.

(g) 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.

(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.

(h) Final Order: The Department will issue a final order if a public safety professional or individual fails to file exceptions and arguments in a timely manner.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 181.640, 181.644, 183.341

Stats. Implemented: ORS 181.640, 181.644, 183.341

Hist.: PS 12, f. & ef. 12-19-77; PS 1-1981, f. 9-26-81, ef. 11-2-81; PS 1-1983, f. & ef. 12-15-83; PS 1-1985, f. & ef. 4-24-85; PS 1-1987, f. & ef. 10-26-87; Renumbered from 259-010-0015, PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 2-1996, f. 5-15-96, cert. ef. 5-20-96; PS 4-1997, f. 3-20-97, cert. ef. 3-25-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 1-1999, f. & cert. ef. 3-9-99; BPSST 9-2000, f. 11-13-00, cert. ef. 11-15-00; BPSST 3-2001, f. & cert. ef. 8-22-01; BPSST 12-2001(Temp), f. & cert. ef. 10-26-01 thru 4-5-02; BPSST 5-2002(Temp), f. 4-3-02, cert. ef. 4-6-02 thru 8-1-02; BPSST 16-2002, f. & cert. ef. 7-5-2002; BPSST 20-2002, f. & cert. ef. 11-21-02; DPSST 3-2003, f. & cert. ef. 1-22-03; DPSST 6-2003, f. & cert. ef. 4-11-03; DPSST 8-2003, f. & cert. ef. 4-18-03; DPSST 14-2003, f. & cert. ef. 12-22-03; DPSST 3-2006, f. & cert. ef. 2-28-06; DPSST 12-2006, f. & cert. ef. 10-13-06; DPSST 10-2007, f. & cert. ef. 10-15-07; DPSST 13-2007(Temp), f. & cert. ef. 11-1-07 thru 4-18-08; DPSST 1-2008(Temp), f. & cert. ef. 1-15-08 thru 4-18-08; DPSST 4-2008, f. & cert. ef. 4-15-08; DPSST 21-2008, f. 12-15-08, cert. ef. 1-1-09; DPSST 10-2009, f. & cert. ef. 9-21-09; DPSST 9-2011, f. & cert. ef. 6-28-11

## 259-008-0011

### Minimum Standards for Employment as a Telecommunicator and Emergency Medical Dispatcher

(1) On or before the date of employment, each telecommunicator and emergency medical dispatcher shall be fingerprinted on standard applicant fingerprint cards.

(a) The hiring agency, if a public agency, is responsible for fingerprinting and shall forward two (2) cards to the Oregon State Police Identification Services Section for processing and assignment of identification number.

(b) If the hiring agency is a private agency it is responsible for fingerprinting and shall forward two (2) cards to the Department along with the appropriate fee.

(A) Applicant's fingerprints will be retained and kept on file with the Oregon State Police Identification Services Section.

(B) The Oregon State Police Identification Services Section shall notify the Department and the employing agency of any criminal record disclosed through processing the applicant's fingerprint card.

(C) If any procedural change is made by either the Federal Bureau of Investigation or the Oregon State Police Identification Services Section, the Department shall comply with the most current requirements.

(D) If the fingerprint clearance has not been obtained prior to submission of the application for certification, a criminal history affidavit provided by the Department shall be completed and returned to the Department by the applicant pending fingerprint clearance.

(2) Criminal Records. No telecommunicator or emergency medical dispatcher shall have been convicted:

(a) In this state or any other jurisdiction, of a crime designated under the law where the conviction occurred as being punishable as a felony or as a crime for which a maximum term of imprisonment of more than one (1) year may be imposed;

(b) Of violating any law involving the unlawful use, possession, delivery, or manufacture of a controlled substance, narcotic, or dangerous drug;

(c) In this state of violating any law subject to denial or revocation as identified in OAR 259-008-0070 or has been convicted of violating the statutory counterpart of any of those offenses in any other jurisdiction.

(3) Moral Fitness (Professional Fitness). All telecommunicators and emergency medical dispatchers must be of good moral fitness. For purposes of this standard, lack of good moral fitness includes, but is not limited to:

(a) Mandatory disqualifying misconduct as described in OAR 259-008-0070(3); or

(b) Discretionary disqualifying misconduct as described in OAR 259-008-0070(4).

(4) Education:

(a) Applicants for the position of a telecommunicator or emergency medical dispatcher will be required to furnish documentary evidence of one of the following:

(A) High School diploma;

(B) Successful completion of the General Educational Development (GED) Test; or

(C) A four-year, post-secondary degree issued by a degree-granting college or university accredited by a recognized national or regional accrediting body, or recognized by the Oregon Office of Degree Authorization under the provisions of ORS 348.604.

(i) For the purpose of determining high school graduation level as required by these rules, the applicant must have achieved a score no less than that required by the Oregon Board of Education before issuing an Oregon GED certificate.

(ii) Applicants holding a GED from another state may be required to obtain an Oregon certificate at the discretion of the Department.

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(b) Evidence of the above shall consist of official transcripts, diplomas, or GED test report forms. Other documentation may be accepted, at the discretion of the Department.

(5) Reading Standard. Before beginning basic telecommunicator or Emergency Medical Dispatcher (EMD) training or challenging basic telecommunicator training, each applicant shall provide evidence to DPSST that the applicant has attained a minimum of a 12th grade reading level in the English language.

(a) The hiring agency is responsible for administering a reading test, approved by DPSST, and shall forward the results to DPSST on an application for training (Form F-5) prior to the applicant being admitted to basic telecommunicator or EMD training.

(b) Individuals submitting transcripts verifying that they possess at least a four-year academic degree from an institution recognized by DPSST under the provisions of OAR 259-008-0045 are exempt from completing the 12th grade reading test prior to attending a course identified in this section.

(6) Physical Examination. All Telecommunicators and Emergency Medical Dispatcher applicants must be examined by a licensed physician.

(a) The medical examination must be completed not more than 180 days prior to initial offer of employment, nor more than 90 days after initial offer of employment, and must conform to applicable standards of the Americans with Disabilities Act (ADA). Title 42 USC 12101.

(b) Individuals who have had a successfully completed physical examination (while at the same employer) and are selected for a certifiable position in a discipline in which the individual is not yet certified must complete and pass a new physical examination.

(c) The Department will not require a new physical examination when a Telecommunicator or Emergency Medical Dispatcher obtains employment, or re-employment, in the same discipline if the Telecommunicator or Emergency Medical Dispatcher:

(A) Has had a successfully completed a physical examination, and

(B) Is currently certified; or

(C) Is currently employed full-time in another jurisdiction and has successfully completed a comparable physical examination in that jurisdiction.

(d) Notwithstanding subsection (c), a medical examination may be required by a hiring agency at its discretion.

(e) Telecommunicator and Emergency Medical Dispatcher applicants must meet the following criteria:

(A) Visual Acuity. Corrected vision must be at least 20/30 (Snellen) when tested using both eyes together.

(B) Color Vision. Red or green deficiencies may be acceptable, providing the applicant can read at least nine (9) of the first thirteen (13) plates of the Ishihara Test (24 Plate Edition). Applicants who fail the Ishihara test can meet the color vision standard by demonstrating that they can correctly discriminate colors via a field test conducted by the employer and approved by DPSST. The results of the field test and the methods for testing must be maintained by the employing agency.

(i) Any employing agency that conducts a field test to meet the color vision standard must also complete a Department approved affidavit attesting that the applicant can either correctly discriminate colors or is able to successfully perform the required tasks of a Telecommunicator or Emergency Medical Dispatcher, notwithstanding the applicant's inability to correctly discriminate colors.

(ii) Any affidavit required by (i), that the Department receives and accepts, is non-transferable to any subsequent employer and may not be used by any other entity for certification purposes.

(iii) Notwithstanding subsection (c) of this rule, each employer must complete an agency-specific field test and a Department approved affidavit as described in subsection (i) of this section for any Telecommunicator or Emergency Medical Dispatcher who previously met the color vision standard by completing a field test.

(C) Peripheral Vision. Visual Field Performance must be 120 degrees in the horizontal meridian combined.

(f) Applicants for the position of Telecommunicator or Emergency Medical Dispatcher must have sufficient hearing in both ears to perform essential tasks without posing a direct threat to themselves or others. The applicant must meet National Emergency Number Association (NENA) hearing standard 54-002 (June 10, 2006).

(g) Applicants for the position of Telecommunicator or Emergency Medical Dispatcher must be able to use vocal cords and exhibit normal speech patterns, sufficient to perform speaking-related essential tasks.

(7) If further medical examination is required, it will be at the expense of the applicant or the hiring authority.

(8) All Telecommunicator and Emergency Medical Dispatcher applicants must submit a current-version DPSST Medical Examination Report for Telecommunicators and Emergency Medical Dispatchers (DPSST Form F-2T), or a medical report completed by a licensed physician containing at a minimum the information on Form F-2T. This Report will be furnished to the examining physician by the hiring agency.

(9) A copy of the Medical Examination Report must be sent to the Department prior to acceptance into a basic course, or any course where such report is required by the Department.

(10) The Department may require an applicant offered conditional employment to take a subsequent examination by a licensed physician of the Department's choice at the expense of the applicant or the hiring authority.

(11) The Board may waive any physical requirement where, in its judgment, the waiver would not be detrimental to the performance of a Telecommunicator or Emergency Medical Dispatcher's duties. The applicant may be required to demonstrate the ability to perform the essential functions of the job.

(12) A person or department head requesting a waiver of any physical requirement set forth in section (11) of this rule must submit the request to the Department in writing, accompanied by supporting documents or pertinent testimony which would justify the action requested. The supporting documents must include information pertinent to the waiver request. The Board or Department may require additional documentation or testimony by the person or department head requesting the waiver if clarification is needed. Any expense associated with providing documentation or testimony will be borne by the person requesting the waiver or the requesting agency. If the person requesting the waiver does not obtain employment within one (1) year from the date a waiver is granted, the waiver will be considered void.

(a) If the Board grants a waiver, it will be recorded on the certification and any subsequent certification unless removed by the Board upon proof that the condition prompting the waiver no longer exists.

(b) If the Board denies a request for a waiver of any physical requirement set forth in section (8) of this rule, the Department will issue Notice and proceed as provided in section (13) of this rule.

(13) Contested Case Hearing Process for denial of waiver.

(a) Initiation of Proceedings: Upon determination that the reason for denial of a waiver is supported by factual data meeting the statutory and administrative rule requirements, a contested case notice will be prepared.

(b) Contested Case Notice: The "Contested Case Notice" will be prepared in accordance with the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015. The Department will have a copy of the notice served on the public safety professional or individual.

(c) Response Time: A party who has been served with a "Contested Case Notice" 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.

(d) Default Order: If a timely request for a hearing is not received, the Contested Case Notice will become a final order denying the requested waiver.

(e) 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.

(f) 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.

(g) 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.

(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.

(h) Final Order: The Department will issue a final order if a public safety professional or individual fails to file exceptions and arguments in a timely manner.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 181.640, 181.644 & 183.341

Stats. Implemented: ORS 181.640, 181.644 & 183.341

Hist.: BPSST 1-2002, f. & cert. ef. 2-6-02; DPSST 1-2004, f. 1-16-04, cert. ef. 1-20-04;

DPSST 5-2004, f. & cert. ef. 4-23-04; DPSST 3-2007, f. & cert. ef. 1-12-07; DPSST 10-2007,

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f. & cert. ef. 10-15-07; DPSST 5-2008, f. & cert. ef. 4-15-08; DPSST 21-2008, f. 12-15-08, cert. ef. 1-1-09; DPSST 6-2009, f. & cert. ef. 7-13-09; DPSST 9-2010(Temp), f. & cert. ef. 10-15-10 thru 4-12-11; DPSST 13-2010, f. & cert. ef. 12-23-10; DPSST 9-2011, f. & cert. ef. 6-28-11

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**Rule Caption:** Repeal rules allowing Department employees to act as Department representatives during contested case hearings.

**Adm. Order No.:** DPSST 10-2011

**Filed with Sec. of State:** 6-30-2011

**Certified to be Effective:** 6-30-11

**Notice Publication Date:** 6-1-2011

**Rules Repealed:** 259-008-0072, 259-009-0072, 259-060-0305

**Subject:** Oregon Revised Statutes previously allowed for Department of Public Safety Standards and Training (DPSST) employees or officers to act as Department representatives during a contested case hearing, however, the statute granting this authority has been changed. The agency is represented by the Oregon Department of Justice at all such proceedings.

**Rules Coordinator:** Linsay Bassler—(503) 378-2431

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**Rule Caption:** Update mandatory and discretionary disqualifier list; amends order or denials/revocations due process.

**Adm. Order No.:** DPSST 11-2011

**Filed with Sec. of State:** 7-1-2011

**Certified to be Effective:** 7-1-11

**Notice Publication Date:** 6-1-2011

**Rules Amended:** 259-008-0070, 259-009-0070

**Subject:** This rule filing updates the listed mandatory and discretionary disqualifiers for public safety and fire service professionals to maintain consistency between Oregon Criminal Code and Administrative Rule. Also, the order of due process for certification denials and revocations is updated as required by HB 2790.

**Rules Coordinator:** Linsay Bassler—(503) 378-2431

## 259-008-0070

### Denial/Revocation

(1) It is the responsibility of the Board to set the standards, and of the Department to uphold them, to 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.

#### Definitions

(2) For purposes of this rule, the following definitions apply:

(a) "Denial" or "Deny" means the refusal to grant a certification for mandatory grounds or discretionary disqualifying misconduct as identified in this rule, pursuant to the procedures identified in (9) of this rule.

(b) "Discretionary Disqualifying Misconduct" means misconduct identified in OAR 259-008-0070(4).

(c) "Revocation" or "Revoke" means to withdraw the certification of a public safety professional or instructor for mandatory grounds or discretionary disqualifying misconduct as identified in this rule, pursuant to the procedures identified in section (9) of this rule.

#### Grounds for Mandatory Denial or Revocation of Certification

(3) Mandatory Grounds for Denying or Revoking Certification of a Public Safety Professional or Instructor:

(a) The Department must deny or revoke the certification of any public safety professional or instructor after written notice and hearing, based upon a finding that:

(A) The public safety professional or instructor has been discharged for cause from employment as a public safety professional or instructor. 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 public safety 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; (Comment: Conduct underlying the mandatory disqualifying misdemeanors involving these elements in Subsection (D) and the Category I offenses in section (4), is illustrative of the types of conduct falling within this definition. However, misconduct need not have resulted in a criminal conviction.)

(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. (Comment: Conduct underlying the Category II offenses identified in section (4) is illustrative of the types of conduct falling within this definition. However, misconduct need not have resulted in a criminal conviction.)

(iii) Gross Misconduct: means an act or failure to act that creates a danger or risk to persons, property, or to the efficient operation of the agency, recognizable as a gross deviation from the standard of care that a reasonable public safety professional or instructor would observe in a similar circumstance; (Comment: Conduct underlying the Category IV offenses identified in section (4) is illustrative of the types of conduct falling within this definition. However, misconduct need not have resulted in a criminal conviction.)

(iv) Incompetence: means a demonstrated lack of ability to perform the essential tasks of a public safety 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. (Comment: Conduct underlying the Category III offenses identified in section (4) is illustrative of the types of conduct falling within this definition. However, misconduct need not have resulted in a criminal conviction.)

(B) The public safety professional or instructor has been convicted in this state or any other jurisdiction of a crime designated under the law where the conviction occurred as being punishable as a felony or as a crime for which a maximum term of imprisonment of more than one year may be imposed;

(C) The public safety professional or instructor has been convicted of violating any law of this state or any other jurisdiction involving the unlawful use, possession, delivery or manufacture of a controlled substance, narcotic or dangerous drug except the Department may deny certification for a conviction of possession of less than one ounce of marijuana, which occurred prior to certification; or

(D) The public safety professional or instructor has been convicted in this state of any of the following offenses, or of their statutory counterpart(s) in any other jurisdiction, designated under the law where the conviction occurred as being punishable as a crime:

162.075 (False swearing),  
162.085 (Unsworn falsification),  
162.145 (Escape in the third degree),  
162.175 (Unauthorized departure),  
162.195 (Failure to appear in the second degree),  
162.235 (Obstructing governmental or judicial administration),  
162.247 (Interfering with a peace officer),  
162.257 (Interfering with a firefighter or emergency medical technician),  
162.295 (Tampering with physical evidence),  
162.305 (Tampering with public records),  
162.315 (Resisting arrest),  
162.335 (Compounding),  
162.365 (Criminal impersonation),  
162.369 (Possession of false law enforcement identification),  
162.375 (Initiating a false report),  
162.385 (Giving false information to a peace officer for a citation or arrest warrant),  
162.415 (Official misconduct in the first degree),  
163.200 (Criminal mistreatment in the second degree),  
163.454 (Custodial sexual misconduct in the second degree),  
163.687 (Encouraging child sexual abuse in the third degree),  
163.732 (Stalking),  
164.045 (Theft in the second degree),  
164.085 (Theft by deception),  
164.095 (Theft by receiving),  
164.125 (Theft of services),  
164.235 (Possession of a burglary tool or theft device),  
164.877 (Unlawful tree spiking; unlawful possession of substance that can damage certain wood processing equipment),  
165.007 (Forgery in the second degree),  
165.017 (Criminal possession of a forged instrument in the second degree),  
165.037 (Criminal simulation),  
165.042 (Fraudulently obtaining a signature),  
165.047 (Unlawfully using slugs),  
165.055 (Fraudulent use of a credit card),  
165.065 (Negotiating a bad check),  
165.080 (Falsifying business records),  
165.095 (Misapplication of entrusted property),  
165.100 (Issuing a false financial statement),  
165.102 (Obtain execution of documents by deception),  
165.825 (Sale of drugged horse),  
166.065(1)(b) (Harassment),  
166.155 (Intimidation in the second degree),  
166.270 (Possession of weapons by certain felons),  
166.350 (Unlawful possession of armor-piercing ammunition),  
166.416 (Providing false information in connection with a transfer of a firearm),  
166.418 (Improperly transferring a firearm),  
166.470 (Limitations and conditions for sales of firearms),



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167.007 (Prostitution),  
167.054 (Furnishing sexually explicit material to a child),  
\* the above listed statute has been declared unconstitutional by the Ninth Circuit Court.  
167.075 (Exhibiting an obscene performance to a minor),  
167.080 (Displaying obscene materials to minors),  
167.132 (Possession of gambling records in the second degree),  
167.147 (Possession of a gambling device),  
167.222 (Frequenting a place where controlled substances are used),  
167.262 (Adult using minor in commission of controlled substance offense),  
167.320 (Animal abuse in the first degree),  
167.330 (Animal neglect in the first degree),  
167.332 (Prohibition against possession of domestic animal),  
167.333 (Sexual assault of animal),  
167.337 (Interfering with law enforcement animal),  
167.355 (Involvement in animal fighting),  
167.370 (Participation in dogfighting),  
167.431 (Participation in cockfighting),  
167.820 (Concealing the birth of an infant),  
475.525 (Sale of drug paraphernalia),  
475.840 (Manufacture or deliver a controlled substance),  
475.860 (Unlawful delivery of marijuana),  
475.864 (Unlawful possession of marijuana),  
475.906 (Distribution of controlled substance to minors),  
475.910 (Application of controlled substance to the body of another person),  
475.912 (Unlawful delivery of imitation controlled substance),  
475.914 (Unlawful acts, registrant delivering or dispensing controlled substance),  
475.916 (Prohibited acts involving records and fraud),  
475.918 (Falsifying drug test results),  
475.920 (Providing drug test falsification equipment),  
475.950 (Failure to report precursor substances transaction),  
475.955 (Failure to report missing precursor substances),  
475.960 (Illegally selling drug equipment),  
475.965 (Providing false information on precursor substances report or record),  
475.969 (Unlawful possession of phosphorus),  
475.971 (Unlawful possession of anhydrous ammonia),  
475.973 (Unlawful possession of ephedrine, pseudoephedrine or phenylpropanolamine; unlawful distribution),  
475.975 (Unlawful possession of iodine in its elemental form),  
475.976 (Unlawful possession of iodine matrix),  
807.520 (False swearing to receive license),  
807.620 (Giving false information to police officer),  
Any offense involving any acts of domestic violence as defined in ORS 135.230.

(b) The Department must take action on a mandatory disqualifying conviction, regardless of when it occurred, unless the Department, or the Board, has previously reviewed the conviction and approved the public safety professional or instructor for certification under a prior set of standards.

## *Discretionary Disqualifying Misconduct as Grounds for Denying or Revoking Certification*

(4) Discretionary disqualifying misconduct as Grounds for Denying or Revoking Certification(s) of a Public Safety Professional or Instructor:

(a) The Department may deny or revoke the certification of any public safety professional or instructor, after written notice, and a hearing, if requested, based upon a finding that:

(A) The public safety professional or instructor falsified any information submitted on the application for certification or on any documents submitted to the Board or Department;

(B) The public safety professional or instructor fails to meet the applicable minimum standards, minimum training or the terms and conditions established under ORS 181.640;

(C) The public safety professional or instructor has been convicted of an offense, listed in subsection (4), punishable as a crime, other than a mandatory disqualifying crime listed in section (3) of this rule, in this state or any other jurisdiction; or

(D) A public safety professional failed to attend at least one session with a mental health professional within six months after the public safety professional was involved in using deadly physical force, as required by ORS 181.789.

(b) For purposes of this rule, discretionary disqualifying misconduct includes misconduct falling within the following categories:

(A) Category I: Dishonesty: Includes untruthfulness, dishonesty by admission or omission, deception, misrepresentation, falsification; (Comment: Conduct underlying the mandatory disqualifying misdemeanors involving these elements in Subsection (D) and the Category I offenses in section (4), is illustrative of the types of conduct falling within this definition. However, misconduct need not have resulted in a criminal conviction.)

(B) Category II: Disregard for the Rights of Others: Includes violating the constitutional or civil rights of others, and conduct demonstrating a disregard for the principles of fairness, respect for the rights of others, protecting vulnerable persons, and the fundamental duty to protect and serve the public. (Comment: Conduct underlying the Category II offenses identified in section (4) is illustrative of the types of conduct falling within this

definition. However, misconduct need not have resulted in criminal conviction.)

(C) Category III: Misuse of Authority: Includes abuse of public trust, obtaining a benefit, avoidance of detriment, or harming another, and abuses under the color of office. (Comment: Conduct underlying the Category III offenses identified in section (4) is illustrative of the types of conduct falling within this definition. However, misconduct need not have resulted in a criminal conviction.)

(D) Category IV: Gross Misconduct: Means an act or failure to act that creates a danger or risk to persons, property, or to the efficient operation of the agency, recognizable as a gross deviation from the standard of care that a reasonable public safety professional or instructor would observe in a similar circumstance; (Comment: Conduct underlying the Category IV offenses identified in section (4) is illustrative of the types of conduct falling within this definition. However, misconduct need not have resulted in a criminal conviction.)

(E) Category V: Misconduct: Misconduct includes conduct that violates the law, practices or standards generally followed in the Oregon public safety profession. NOTE: It is the intent of this rule that "Contempt of Court" meets the definition of Misconduct within this category; (Comment: Conduct underlying the Category V offenses identified in section (4) is illustrative of the types of conduct falling within this definition. However, misconduct need not have resulted in a criminal conviction.) or

(F) Category VI: Insubordination: Includes a refusal by a public safety professional or instructor to comply with a rule or order, where the order was reasonably related to the orderly, efficient, or safe operation of the agency, and where the public safety professional's or instructor's refusal to comply with the rule or order constitutes a substantial breach of that person's duties. (Note: There are no category VI crimes.)

(c) For discretionary disqualifying misconduct under (a) (A) or (B), the applicable category will be determined based on the facts of each case. For discretionary disqualifying misconduct under (a)(C), the following list identifies the applicable category for each discretionary offense:

97.931 (Registration of Salesperson for Endowment Care Cemeteries, Preconstruction Sales and Prearrangement Sales) – Category V,  
97.933 (Certification of Provider of Prearrangement or Preconstruction) – Category V,  
97.937 (Deposit of Trust Funds made by Endowment Care Cemeteries) – Category V,  
97.941 (Prearrangement or Preconstruction Trust Fund Deposits) – Category V,  
97.990(4) (Maintaining a Nuisance) – Category V,  
162.405 (Official Misconduct in the Second Degree) – Category III,  
162.425 (Misuse of Confidential Information) – Category III,  
162.455 (Interfering with Legislative Operations) – Category V,  
162.465 (Unlawful Legislative Lobbying) – Category I,  
163.160 (Assault in the Fourth Degree) – Category II,  
163.187 (Strangulation) – Category II,  
163.190 (Menacing) – Category II,  
163.195 (Recklessly Endangering Another Person) – Category IV,  
163.212 (Unlawful Use of Stun Gun, Tear Gas or Mace in the Second Degree) – Category IV,  
163.415 (Sexual Abuse in the Third Degree) – Category II,  
163.435 (Contributing to the Sexual Delinquency of a Minor) – Category II,  
163.445 (Sexual Misconduct) – Category II,  
163.465 (Public Indecency) – Category II,  
163.467 (Private Indecency) – Category II,  
163.545 (Child Neglect in the Second Degree) – Category IV,  
163.693 (Failure to Report Child Pornography) – Category IV,  
163.575 (Endangering the Welfare of a Minor) – Category III,  
163.700 (Invasion of Personal Privacy) – Category II,  
163.709 (Unlawful Directing of Light from a Laser Pointer) – Category IV,  
164.043 (Theft in the Third Degree) – Category V,  
164.132 (Unlawful Distribution of Cable Equipment) – Category V,  
164.140 (Criminal Possession of Rented or Leased Personal Property) – Category V,  
164.162 (Mail Theft or Receipt of Stolen Mail) – Category I,  
164.243 (Criminal Trespass in the Second Degree by a Guest) – Category V,  
164.245 (Criminal Trespass in the Second Degree) – Category V,  
164.255 (Criminal Trespass in the First Degree) – Category V,  
164.265 (Criminal Trespass While in Possession of a Firearm) – Category IV,  
164.272 (Unlawful Entry into a Motor Vehicle) – Category V,  
164.278 (Criminal Trespass at Sports Event) – Category V,  
164.335 (Reckless Burning) – Category IV,  
164.345 (Criminal Mischief in the Third Degree) – Category V,  
164.354 (Criminal Mischief in the Second Degree) – Category V,  
164.373 (Tampering with Cable Television Equipment) – Category V,  
164.377 (Computer Crime) – Category V,  
164.775 (Deposit of Trash Within 100 Yards of Water) – Category V,  
164.785 (Placing Offensive Substances in waters/on highways or property) – Category IV,  
164.805 (Offensive Littering) – Category V,  
164.813 (Unlawful Cutting and Transporting of Special Forest Products) – Category V,  
164.815 (Unlawful Transport of Hay) – Category V,  
164.825 (Cutting and Transport of Coniferous Trees without Permit/Bill of Sale) – Category V,  
164.845 (FTA on Summons for ORS 164.813 or 164.825) – Category V,  
164.863 (Unlawful Transport of Meat Animal Carcasses) – Category V,  
164.865 (Unlawful Sound Recording) – Category V,  
164.875 (Unlawful Video Tape Recording) – Category V,

# ADMINISTRATIVE RULES

164.887 (Interference with Agricultural Operations) — Category II,  
165.107 (Failing to Maintain a Metal Purchase Record) — Category V,  
165.109 (Failing to Maintain a Cedar Purchase Record) — Category V,  
165.540 (Obtaining Contents of Communications) — Category V,  
165.555 (Unlawful Telephone Solicitation) — Category V,  
165.570 (Improper Use of Emergency Reporting System) — Category IV,  
165.572 (Interference with Making a Report) — Category II,  
165.577 (Cellular Counterfeiting in the Third Degree) — Category I,  
165.805 (Misrepresentation of Age by a Minor) — Category I,  
166.025 (Disorderly Conduct in the Second Degree) — Category IV,  
166.027 (Disorderly Conduct in the First Degree) — Category IV,  
166.075 (Abuse of Venerated Objects) — Category II,  
166.076 (Abuse of a Memorial to the Dead) — Category II,  
166.090 (Telephonic Harassment) — Category II,  
166.095 (Misconduct with Emergency Telephone Calls) — Category IV,  
166.155 (Intimidation in the Second Degree) — Category II,  
166.180 (Negligently Wounding Another) — Category IV,  
166.190 (Pointing a Firearm at Another) — Category IV,  
166.240 (Carrying a Concealed Weapon) — Category V,  
166.250 (Unlawful Possession of a Firearm) — Category V,  
166.320 (Setting of a Springgun or Setgun) — Category IV,  
166.385 (Possession of Hoax Destructive Device) — Category IV,  
166.425 (Unlawful Purchase of Firearm) — Category I,  
166.427 (Register of Transfers of Used Firearms) — Category V,  
166.480 (Sale or Gift of Explosives to Children) — Category IV,  
166.635 (Discharging Weapon or Throwing Object at Trains) — Category IV,  
166.638 (Discharging Weapon Across Airport Operational Surfaces) — Category IV,  
166.645 (Hunting in Cemeteries) — Category V,  
166.649 (Throwing Object off Overpass in the Second Degree) — Category IV,  
167.122 (Unlawful Gambling in the Second Degree) — Category V,  
167.312 (Research and Animal Interference) — Category II,  
167.315 (Animal Abuse in the Second Degree) — Category IV,  
167.325 (Animal Neglect in the Second Degree) — Category IV,  
167.340 (Animal Abandonment) — Category IV,  
167.351 (Trading in Nonambulatory Livestock) — Category V,  
167.352 (Interfering with Assistance, Search and Rescue or Therapy Animal) — Category IV,  
167.385 (Unauthorized Use of Livestock Animal) — Category II,  
167.388 (Interference with Livestock Production) — Category II,  
167.390 (Commerce in Fur of Domestic Cats and Dogs) — Category V,  
167.502 (Sale of Certain Items at Unused Property Market) — Category V,  
167.506 (Record Keeping Requirements) — Category V,  
167.808 (Unlawful Possession of Inhalants) — Category IV,  
167.810 (Creating a Hazard) — Category IV,  
167.822 (Improper Repair Vehicle Inflatable Restraint System) — Category IV,  
411.320 (Disclosure and Use of Public Assistance Records) — Category II,  
468.922 (Unlawful disposal, storage or treatment of hazardous waste in the second degree) — Category V,  
468.929 (Unlawful transport of hazardous waste in the second degree) — Category V,  
468.936 (Unlawful Air Pollution in the Second Degree) — Category V,  
468.943 (Unlawful Water Pollution in the Second Degree) — Category V,  
468.956 (Refusal to Produce Material Subpoenaed by the Commission) — Category V,  
471.410 (Providing Liquor to Person under 21 or to Intoxicated Person) — Category IV,  
Chapter 496 – 498 (When treated as a misdemeanor crime) — Category based on the elements of the specific crime,  
609.341 (Permit Requirement for Keeping of Exotic Animals; Breeding of Animals) — Category V,  
609.405 (Requirement for Destroying Dog or Cat) — Category V,  
609.505 (Unlawfully Obtaining Dog or Cat) — Category V,  
609.520(c) (Animal Dealer Failing to Turn Over Dog or Cat) — Category V,  
609.805 (Misrepresentation of Pedigree; Mutilation of Certificate or Proof of Pedigree) — Category I,  
609.990(3)(a) (Violation of ORS 609.098 – Maintaining a Dangerous Dog) — Category IV,  
717.200 to 717.320 (Any violation) — Category V,  
803.225 (Failure to Designate Replica Vehicle in Title or Registration Application) — Category I,  
807.430 (Misuse of Identification Card) — Category I,  
807.510 (Transfer of documents for the purpose of misrepresentation) — Category I,  
807.530 (False Application for License) — Category I,  
807.570 (Failure to Carry or Present License) — Category V,  
807.580 (Using Invalid License) — Category I,  
807.590 (Permitting Misuse of License) — Category I,  
807.600 (Using Another's License) — Category I,  
811.060 (Vehicular Assault of Bicyclist or Pedestrian) — Category V,  
811.140 (Reckless Driving) — Category IV,  
811.172 (Improperly Disposing of Human Waste) — Category V,  
811.182 (Criminal Driving While Suspended or Revoked) — Category V,  
811.231 (Reckless Endangerment of Highway Workers) — Category IV,  
811.540 (Fleeing or Attempt to Elude a Police Officer) — Category IV,  
811.700 (Failure to Perform Duties of Driver when Property is Damaged) — Category V,  
811.740 (False Accident Report) — Category I, and  
813.010 (Driving Under the Influence of Intoxicants) — Category IV,  
830.035(2) (Fleeing; Attempts to Elude) — Category IV,  
830.053 (False or Fraudulent Report of Theft of Boat) — Category I,  
830.315(1) (Reckless Operation) — Category IV,  
830.325 (Operation a Boat while Under the Influence of Intoxicating Liquor or Controlled Substance) — Category IV,  
830.383 (Person Required to Remedy Especially Hazardous Condition) — Category V,  
830.460(2) (Prohibited Activities — Operating a Vessel that Fails to Comply with Equipment Requirements) — Category V,  
830.460(3) (Prohibited Activities — Operating a Vessel without Liability Protection) — Category V,

830.475(1) (Failure to Perform the Duties of an Operator at Accident) — Category V,  
830.730 (False Information) — Category I,  
830.909 (Abandoning Boat, Floating Home, or Boathouse) — Category V,  
830.955(1) (Prohibition of Installation of Submersible Polystyrene Device) — Category V,  
830.992 (Purchase of a Boat or Equipment from which Hull or Component Identification Number Removed) — Category V,  
830.994 (Operates a Boat in Violation of a Court Order) — Category V

## Initial Periods of Ineligibility

(d) Upon determination to proceed with the denial or revocation of a public safety professional's or instructor's certification based on discretionary disqualifying misconduct identified in subsection (a), an initial minimum period of ineligibility to apply for certification will be determined based upon the category of misconduct (i.e., Dishonesty, Disregard for Rights of Others, Misuse of Authority, Gross Misconduct, Misconduct or Insubordination).

(e) Following review and recommendation by a Policy Committee, the Board will determine the initial minimum period of ineligibility for discretionary disqualifying misconduct identified in subsection (a) from the time frame identified below for each category of discretionary disqualifying misconduct:

- (A) Category I: Dishonesty (5 years to Lifetime).
- (B) Category II: Disregard for Rights of Others (5 years to 15 years).
- (C) Category III: Misuse of Authority (5 years to 10 years).
- (D) Category IV: Gross Misconduct (5 years to 10 years).
- (E) Category V: Misconduct (3 years to 7 years).
- (F) Category VI: Insubordination (3 years to 7 years).

## Eligibility to Reapply; Ineligibility Periods

(5) A person is not eligible to reapply for training or certification if the person had training or certification denied or revoked for:

- (a) Mandatory grounds identified in section (3) of this rule; or
- (b) Discretionary Disqualifying Misconduct identified in section (4) of this rule that is determined to be a Category I lifetime disqualifier.

(6) Eligibility to reapply for certification:

(a) In determining the initial minimum period of ineligibility within any category for discretionary disqualifying misconduct listed in section (4) of this rule, the Board will take into consideration any mitigating or aggravating factors, subject to the provisions of section (9) of this rule.

(b) The initial minimum period of ineligibility will be included in any Final Order of the Department.

(c) Any subsequent eligibility to apply for certification will be determined by the Board, after Policy Committee review, subject to the provisions of section (11) of this rule.

## Guidelines for Denial or Revocation Based on Discretionary Disqualifying Misconduct

(7) In determining whether to take action on a conviction, the Department must use the following guidelines:

(a) In making a decision on a discretionary denial or revocation, the Department will consider the implementation dates relating to new mandatory conviction notification requirements adopted in 2003 and statutory changes dealing with lifetime disqualifier convictions for public safety officers adopted in 2001.

(b) The Department will not take action on a conviction constituting discretionary disqualifying misconduct that occurred prior to January 1, 2001. However, the Department may consider such conviction as evidence that a public safety professional or instructor does not meet the established moral fitness guidelines.

(c) The Department may take action on any conviction constituting discretionary disqualifying misconduct that occurred after January 1, 2001.

(d) The Board may reconsider any mandatory conviction which subsequently becomes a conviction constituting discretionary disqualifying misconduct, upon the request of the public safety professional or instructor.

(e) The length of ineligibility for training or certification based on a conviction begins on the date of conviction.

(f) The Department will not take action against a public safety professional, instructor, or agency for failing to report, prior to January 1, 2003, a conviction that constitutes discretionary disqualifying misconduct.

(g) The Department may take action against a public safety professional, instructor, or agency for failing to report, after January 1, 2003, any conviction that constitutes discretionary disqualifying misconduct.

## Procedure for Denial or Revocation of a Certificate

(8) Scope of Revocation. Whenever the Department revokes the certification of any public safety professional or instructor under the provisions of OAR 259-008-0070, the revocation will encompass all public safety certificates, except fire certification(s), the Department has issued to that person.

(9) Denial and Revocation Procedure.

## ADMINISTRATIVE RULES

(a) Agency Initiated Review: When the entity utilizing a public safety professional or instructor requests that a public safety professional's or instructor's certification be denied or revoked, it must submit in writing to the Department the reason for the requested denial or revocation 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 public safety professional's or instructor's certification be denied or revoked.

(c) Department Staff Review: When the Department receives information, from any source, that a public safety professional or instructor may not meet the established standards for Oregon public safety 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 public safety professional or instructor may have engaged in discretionary disqualifying misconduct listed in subsection (4), the case may be presented to the Board, through a Policy Committee.

(D) The Department will seek input from the affected public safety professional or instructor, allowing him or her to provide, in writing, information for the Policy Committee and Board's review.

(E) In misconduct cases in which there has been an arbitrator's opinion related to the public safety 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 Policy Committees and Board will consider mitigating and aggravating circumstances, including, but not limited to, the following:

(A) When the misconduct occurred in relation to the public safety professional's or instructor's employment in public safety (i.e., before, during after);

(B) If the misconduct resulted in a conviction:

(i) Whether it was a misdemeanor or violation;

(ii) The date of the conviction(s);

(iii) Whether the public safety professional or instructor was a minor at the time and tried as an adult;

(iv) Whether the public safety professional or instructor served time in prison/jail and, if so, the length of incarceration;

(v) Whether restitution was ordered, and whether the public safety professional or instructor met all obligations;

(vi) Whether the public safety professional or instructor has ever been on parole or probation. If so, the date on which the parole/probation period expired or is set to expire; and

(vii) Whether the public safety professional or instructor has more than one conviction and if so, over what period of time;

(C) Whether the public safety professional or instructor has engaged in the same misconduct more than once, and if so, over what period of time;

(D) Whether the actions of the public safety professional or instructor reflect adversely on the profession, or would cause a reasonable person to have substantial doubts about the public safety professional's or instructor's honesty, fairness, respect for the rights of others, or for the laws of the state or the nation;

(E) Whether the misconduct involved domestic violence;

(F) Whether the public safety professional or instructor self-reported the misconduct;

(G) Whether the conduct adversely reflects on the fitness of the public safety professional or instructor to perform as a public safety professional or instructor;

(H) Whether the conduct renders the public safety professional or instructor otherwise unfit to perform their duties because the agency or public has lost confidence in the public safety professional or instructor; and

(I) What the public safety 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 and served on the public safety professional or instructor.

(A) All contested case notices will be prepared in accordance with OAR 137-003-0001 of the Attorney General's Model Rules or Procedures adopted under OAR 259-005-0015.

(B) In discretionary cases heard by a policy committee, the contested case notice will be served on the public safety professional or instructor prior to Board review. If the Board disapproves the policy committee's recommendation, the Department will withdraw the Contested Case Notice.

(f) 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 the "Contested Case Notice of Intent to Revoke Certification" has 20 days from the date of mailing or personal service of the notice in which to file with the Department a written request for hearing.

(g) Default Order: If a timely request for a hearing is not received, the Contested Case Notice will become a final order denying or revoking certification pursuant to OAR 137-003-0645.

(h) 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.

(i) 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.

(j) 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.

(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.

(k) Final Order:

(A) A final order will be issued pursuant to OAR 137-003-0070 if a public safety professional or instructor fails to file exceptions and arguments in a timely manner.

(B) Department-proposed amendments to the proposed order in a case that was originally heard by a policy committee must be considered and approved by the policy committee that originally reviewed the case before a final order is issued.

(l) Stipulated Order Revoking Certification: The Department may enter a stipulated order revoking the certification of a public safety 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*

(10) Appeal Procedure. A public safety 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.

(11) Reapplication Process.

(a) Any public safety professional or instructor whose certification has been denied or revoked pursuant to section (4) of this rule, may reapply for certification within the applicable timeframes described in sections (4) through (6) of this rule. The initial minimum ineligibility period will begin on the date an Order of the Department denying or revoking certification becomes final. The initial minimum ineligibility period will cease when the applicable timeframe stated in the Order has been satisfied.



# ADMINISTRATIVE RULES

(b) Any public safety 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 after the maximum initial period of ineligibility identified in (4) of this rule has been satisfied.

(ii) If the individual has satisfied the maximum initial period of ineligibility and the Board determines that an individual must remain ineligible to apply for certification, then the individual may not submit any further requests for an eligibility determination, and the original denial or revocation remains permanent.

(B) A written request for an eligibility determination has been submitted to the Department and a Policy Committee has recommended that a public safety professional's or instructor's eligibility to apply for public safety or instructor certification be restored and the Board has upheld the recommendation;

(i) A request for an eligibility determination should include documentation or information that supports the public safety professional's or instructor's request for eligibility to apply for certification.

(ii) In considering a request for an eligibility determination, the Policy Committee and the Board may consider mitigating and aggravating circumstances identified in Section 9(d) of this rule.

(iii) After reviewing a written request for an eligibility determination, the Board, through a Policy Committee, may determine that the individual's eligibility to apply for certification be restored if the criteria for certification have been met; or determine that the factors that originally resulted in denial or revocation have not been satisfactorily mitigated and the individual must remain ineligible to apply for certification.

(C) The public safety professional or instructor is employed or utilized by a public safety agency; and

(D) All requirements for certification have been met.

Stat. Auth.: ORS 181.640, 181.661, 181.662, 181.664 & 183.341

Stats. Implemented: ORS 181.640, 181.661, 181.662 & 181.664

Hist.: PS 12, f. & ef. 12-19-77; PS 1-1979, f. 10-1-79, ef. 10-3-79; PS 1-1980(Temp), f. & ef. 6-26-80; PS 2-1980, f. & ef. 12-8-80; PS 1-1981, f. 9-26-81, ef. 11-2-81; PS 1-1983, f. & ef. 12-15-83; PS 1-1985, f. & ef. 4-24-85; Renumbered from 259-010-0055, PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 2-1996, f. 5-15-96, cert. ef. 5-20-96; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 6-2000, f. & cert. ef. 9-29-00; BPSST 14-2001(Temp), f. & cert. ef. 10-26-01 thru 4-5-02; BPSST 5-2002(Temp), f. 4-3-02, cert. ef. 4-6-02 thru 8-1-02; BPSST 16-2002, f. & cert. ef. 7-5-02; BPSST 22-2002, f. & cert. ef. 11-18-02; DPSST 7-2003, f. & cert. ef. 4-11-03; DPSST 7-2004, f. & cert. ef. 4-23-04; DPSST 10-2006, f. & cert. ef. 7-6-06; DPSST 16-2008, f. & cert. ef. 10-15-08; DPSST 21-2008, f. 12-15-08, cert. ef. 1-1-09; DPSST 11-2011, f. & cert. ef. 7-1-11

## 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 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.

(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;

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- 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;  
163.684 (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.  
(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.

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(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;

(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; and

(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 by the policy committee that the reason for denial or revocation is supported by factual data meeting the statutory and administrative rule requirements, a contested case notice will be prepared and served on the fire service professional or instructor.

(A) All contested case notices will be prepared in accordance with OAR 137-003-0001 of the Attorney General's Model Rules or Procedures adopted under OAR 259-005-0015.

(B) In discretionary cases heard by a policy committee, the contested case notice will be served on the fire service professional or instructor prior to Board review. If the Board disapproves the policy committee's recommendation, the Department will withdraw the Contested Case Notice.

### *(f) 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.

(g) 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.

(h) 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.

(i) 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.

(j) 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.

(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



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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.

(k) Final Order:

(A) 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.

(B) Department-proposed amendments to the proposed order in a case that was originally heard by a policy committee must be considered and approved by the policy committee that originally reviewed the case before a final order is issued.

(l) 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 fire service 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; DPSST 1-2011, f. 2-24-11, cert. ef. 4-1-11; DPSST 11-2011, f. & cert. ef. 7-1-11

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

**Rule Caption:** Collection of Biometric Data for Driver License, Driver Permit or Identification Card.

**Adm. Order No.:** DMV 6-2011

**Filed with Sec. of State:** 6-21-2011

**Certified to be Effective:** 6-21-11

**Notice Publication Date:** 5-1-2011

**Rules Amended:** 735-062-0016

**Subject:** ORS 807.024 requires each person who applies for a driver license, driver permit or identification card to submit to the collection of biometric data. ORS 801.163 defines biometric data as the physical characteristics of a person's face that can be used to authenticate a person's identity. A person submits to the collection of biometric data by having his or her photograph taken. DMV uses facial recognition technology to determine if the person photographed is the same person who was issued previously under that identity and if the person has ever been issued under another identity. The facial recognition technology requires a clear view of the person's iris and pupil of each eye as well as the structure of the face. DMV recently updated this rule to require the removal of eye glasses or face covering, but more recent occurrences in field offices have shown that the rule needs to more clearly state what is not allowed in order to collect the biometric data with the photograph. Therefore DMV has amended the rule to include language that disallows face paint, novelty contact lenses and other products designed to distort a person's appearance.

**Rules Coordinator:** Lauri Kunze—(503) 986-3171

### 735-062-0016

#### Requirements for Establishing Identity Under ORS 807.024 and Consequences of Applicant's Failure to Establish Identity

(1) An applicant for an original, renewal or replacement driver license, driver permit or identification card must submit to the collection of biometric data, as provided in ORS 807.024, for the purpose of establishing identity, unless the applicant meets the requirements of OAR 735-062-0120 or 735-062-0125.

(2) To collect biometric data DMV will take a digital photograph of the applicant which must:

(a) Be full-faced;

(b) Clearly show the iris and pupil of each eye; and

(c) Capture the applicant's natural appearance in accordance with the requirements set forth in section (3) of this rule.

(3) To comply with Section (2) of this rule, DMV will require the applicant to:

(a) Remove any eyeglasses;

(b) Remove any contact lens that significantly changes the appearance of the applicant's eye;

(c) Remove any clothing or similar material that partially or completely covers the applicant's face;

(d) Remove any head covering, including a hat or cap, unless the head covering is for medical or religious reasons. A head covering worn for medical or religious reasons must not cover or distort the applicant's face; and

(e) Remove makeup, face paint, jewelry, sticker or other temporary substance that covers or distorts all or part of the face so as to significantly alter the applicant's natural appearance and which DMV determines is likely to affect the biometric measurements of the digital photograph.

(4) Except as provided in OAR 735-062-0120 and 735-062-0125, if an applicant's identity is not established by the biometric data submitted pursuant to subsection (1) of this rule, the applicant must provide documentation or other evidence sufficient to establish the applicant's identity to the satisfaction of DMV. The documents or other evidence may include, but are not limited to, one or more of the following:

(a) Documents listed in OAR 735-062-0020 that provide proof of the applicant's identity and date of birth to the satisfaction of DMV.

(b) The applicant's SSN and proof and verification of the SSN as provided in OAR 735-062-0005.

(c) A letter from a treating physician that identifies the person and states a medical reason for the person's change in appearance.

(d) A document or letter from a law enforcement agency verifying identity.

(e) A court document verifying identity.

(5) Except as provided in OAR 735-062-0120 and 735-062-0125, DMV will not issue a driver license, driver permit or identification card, if the applicant's identity is not established under this rule.

(6) Pursuant to ORS 809.310(3) and OAR 735-070-0004, DMV will suspend an applicant's driving privileges or identification card and the per-

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son's right to apply for driving privileges and an identification card, if the person fails to establish his or her identity as required by this rule and the failure to establish identity is the result of the applicant's committing any of the acts identified in ORS 809.310(3)(a) through (h).

(7) Pursuant to ORS 809.310(1), 807.400(14), and OAR 735-070-0004, DMV will cancel a driver license, driver permit or identification card issued to an applicant who fails to establish his or her identity as required by this rule when applying for the license, permit or identification card.

(8) Pursuant to ORS 809.310(2), 807.400(14), and OAR 735-070-0004, DMV will cancel a driver license, driver permit or identification card issued to an applicant who fails to establish his or her identity as required by this rule when applying for the license, permit or identification card, and the failure to establish identity is the result of the applicant's providing false information to DMV.

(9) If, based on the identification procedures required under section (1) or section (2) of this rule, DMV determines that an applicant has used different names to identify himself or herself in different applications submitted to DMV and the different names are not the result of the applicant's having legally changed his or her name, DMV may take the actions authorized by ORS 809.135.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.024 & 2008 OL Ch. 1  
Stats. Implemented: ORS 807.024, 807.400, 809.135, 809.310, 807.400, 809.411 & 2008 OL Ch. 1  
Hist.: DMV 16-2008, f. 6-23-08, cert. ef. 7-1-08; DMV 13-2010, f. & cert. ef. 7-30-10; DMV 6-2011, f. & cert. ef. 6-21-11

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**Rule Caption:** Medical Standards, Certificates and Waivers for Drivers of Commercial Motor Vehicles.

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**Notice Publication Date:** 5-1-2011

**Rules Amended:** 735-063-0000, 735-063-0050, 735-063-0060, 735-063-0065, 735-063-0070

**Subject:** There are federal medical standards that a person must meet to qualify for a commercial driver license (CDL) and to operate a commercial motor vehicle (CMV). The Oregon Department of Transportation, Driver and Motor Vehicle Services Division (DMV) may issue a waiver of physical disqualification to a driver who operates a CMV in Oregon intrastate commerce but does not meet all federal physical qualification standards required for a CDL. Certain drivers employed by for-hire carriers are not required to have a CDL but they are required to have a medical certificate or a waiver of physical disqualification in order to operate a CMV in Oregon. DMV has amended 735-063-0070 to specify that DMV may issue such drivers a waiver of physical disqualification if they qualify.

Other drivers, exempted under certain Federal Motor Carrier Safety Regulations from physical qualification requirements while operating in interstate commerce, but not exempt from the requirement to have a CDL, are required to have a medical certificate or a waiver of physical disqualification in order to operate a CMV in Oregon. This operation is not limited only to Oregon intrastate commerce and DMV has amended 735-063-0070 to clarify this requirement.

Other amendments were made to correct references to federal regulations or for clarity.

**Rules Coordinator:** Lauri Kunze—(503) 986-3171

## 735-063-0000

### Definitions

As used in this division the following definitions apply:

(1) "Accident/conviction records" are records used to establish when a Waiver of Physical Disqualification issued by DMV may be denied or suspended. Accident records include, but are not limited to DMV records, police reports, crash reports or other reports from motor carriers. A conviction record is an official record showing a determination of guilt by a court of law upon a plea, verdict, finding, or unvacated bail forfeiture.

(2) "CDL" means commercial driver license.

(3) "CMV" means commercial motor vehicle.

(4) "Disqualifying condition" is a medical condition(s) not meeting FMCSA physical qualification standards as set forth in FMCSR Sec. 391.41(b).

(5) "DMV" means the Driver and Motor Vehicle Services Division of the Oregon Department of Transportation.

(6) "FMCSA" means the Federal Motor Carrier Safety Administration of the United States Department of Transportation.

(7) "FMCSR" means the Federal Motor Carrier Safety Regulations of the U.S. Department of Transportation, CFR Title 49 parts 300 to 399.

(8) "Intrastate commerce" is defined in FMCSR Sec. 390.5 and includes any trade, traffic or transportation exclusively within Oregon.

(9) "Medical Determination Officer" is a physician, nurse practitioner or physician assistant, licensed to provide health care services by the State of Oregon, and employed or designated by DMV to make medical determinations of a driver's medical eligibility for driving privileges.

(10) "Medical Specialist" is a person who is licensed as a doctor of medicine, a doctor of osteopathy, an optometrist or an audiologist.

(11) "Physician" is defined in ORS 807.710.

(12) "SPE certificate" is a Skill Performance Evaluation certificate issued by the FMCSA pursuant to FMCSR Sec. 391.49 to a person who demonstrates the ability to safely operate a CMV in spite of limb impairment or loss.

(13) "Waiver of Physical Disqualification" or "waiver" means a waiver issued by the Oregon Department of Transportation to a driver who does not meet certain physical qualifications required for drivers of commercial motor vehicles as set forth in FMCSR Sec. 391.41(b). A Waiver of Physical Disqualification only authorizes the holder to operate a commercial motor vehicle in intrastate commerce.

Stat. Auth.: ORS 184.616, 184.619, 802.010

Stats. Implemented: ORS 807.040 & 807.100

Hist.: DMV 4-2009, f. & cert. ef. 2-20-09; DMV 8-2010, f. & cert. ef. 3-17-10; DMV 7-2011, f. & cert. ef. 6-21-11

## 735-063-0050

### Medical Standards for Drivers of Commercial Motor Vehicles

(1) DMV adopts FMCSR sections 391.41 through 391.49 in effect on January 31, 2011 pertaining to physical qualifications and medical examination of drivers of commercial motor vehicles. Except as provided in section (2) of this rule, to qualify for a Class A, B, or C CDL or commercial driver permit a person must obtain an approved medical certificate meeting the requirements of these federal regulations.

(2) DMV may issue a Class A, B, or C CDL or commercial driver permit to a person who does not meet all physical qualifications set forth in FMCSR Sec. 391.41(b) if the person is issued:

(a) A Waiver of Physical Disqualification for the disqualifying condition, under OAR 735-063-0070;

(b) An exemption for the disqualifying condition by the FMCSA pursuant to 49 USC sections 31136 and 31135, and FMCSR sections 381.300 to 381.330; or

(c) An SPE certificate for the disqualifying condition issued by the FMCSA pursuant to FMCSR Sec. 391.49.

(3) DMV will issue a restricted Class A, B or C CDL or commercial driver permit if the waiver, exemption or SPE certificate described in section (2) of this rule indicate any applicable restrictions, conditions or limitations for issuance of a commercial license.

(4) DMV will suspend a Class A, B or C CDL or commercial driver permit if a Waiver of Physical Disqualification is denied, not renewed or is revoked for any reason or for any length of time.

(5) DMV will suspend a Class A, B or C CDL or commercial driver permit if notified that FMCSA has revoked or not renewed the SPE certificate issued to the driver under the provisions of FMCSR Sec. 391.49.

(6) DMV will suspend a Class A, B or C CDL or commercial driver permit if notified that FMCSA has revoked or not renewed an exemption to physical qualifications issued to a driver under the provisions of 49 U.S.C. sections 31135 and 31136(e) and FMCSR sections 381.300 to 381.330.

(7) DMV will suspend a Class A, B, or C CDL or commercial driver permit if notified by the Medical Determination Officer that the driver no longer meets the physical qualifications outlined in FMCSR Sec. 391.41(b).

(8) A person suspended under section (4), (5), or (6) of this rule may reinstate commercial driving privileges if the person obtains a medical certificate as described in section (1) of this rule or is reissued a waiver by DMV or an exemption or SPE certificate by FMCSA as described in section (2) of this rule.

(9) A person suspended under section (7) of this rule may reinstate commercial driving privileges if the person is determined by the Medical Determination Officer to meet the physical qualifications for a Class A, B or C CDL or commercial driver permit.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.040 & 809.419

Stats. Implemented: ORS 807.040, 807.100 & 809.419

Hist.: MV 11-1986, f. 6-27-86, ef. 7-1-86; Administrative Renumbering 3-1988, Renumbered from 735-031-0730; MV 24-1988, f. & cert. ef. 7-1-88; MV 6-1990, f. & cert. ef. 4-2-90; MV 11-1992, f. & cert. ef. 9-28-92; DMV 16-2003, f. & cert. ef. 11-18-03, Renumbered from 735-060-0140; DMV 2-2005, f. 1-20-05, cert. ef. 1-31-05; DMV 9-2007(Temp), f. & cert. ef.

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9-17-07 thru 3-14-08; Renumbered from 735-074-0260, DMV 17-2007, f. 12-24-07, cert. ef. 1-1-08; DMV 4-2009, f. & cert. ef. 2-20-09; DMV 8-2010, f. & cert. ef. 3-17-10; DMV 7-2011, f. & cert. ef. 6-21-11

## 735-063-0060

### Approved Medical Certificates

(1) DMV approves the following as medical certificates for use when driving a CMV within Oregon:

(a) Any medical certificate that complies with FMCSR sections 391.41 through 391.49. The medical certificate must state that in accordance with these federal regulations the person is qualified; or

(b) An Oregon School Bus Driver's Certificate or Oregon School Bus Driver's Permit, issued by the Oregon Department of Education, as provided in OAR 581-053-0006.

(2) If indicated on the certificate, the medical certificate described in section (1) of this rule must also be accompanied by a current:

(a) Waiver of Physical Disqualification issued by DMV;

(b) SPE certificate issued by the FMCSA; or

(c) Exemption issued by the FMCSA.

(3) The medical certificate must not be expired.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.040

Stats. Implemented: ORS 807.040, 807.100

Hist.: MV 11-1986, f. 6-27-86, ef. 7-1-86; MV 4-1987, f. & ef. 5-18-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0750; MV 24-1988, f. & cert. ef. 7-1-88; MV 24-1989, f. & cert. ef. 10-3-89; MV 6-1990, f. & cert. ef. 4-2-90; MV 16-1991, f. 9-18-91, cert. ef. 9-29-91; DMV 16-2003, f. & cert. ef. 11-18-03; DMV 16-2003, f. & cert. ef. 11-18-03, Renumbered from 735-060-0160; DMV 9-2007(Temp), f. & cert. ef. 9-17-07 thru 3-14-08; Renumbered from 735-074-0280, DMV 17-2007, f. 12-24-07, cert. ef. 1-1-08; DMV 4-2009, f. & cert. ef. 2-20-09; DMV 8-2010, f. & cert. ef. 3-17-10; DMV 7-2011, f. & cert. ef. 6-21-11

## 735-063-0065

### Medical Certificate Procedures

(1) DMV will issue a Class A, B, or C CDL or commercial driver permit only to applicants who present an approved medical certificate as described in OAR 735-063-0060 and, if required, a Waiver of Physical Disqualification, an exemption or SPE certificate when applying for an original or renewal of a Class A, B, or C CDL or commercial driver permit.

(2) An applicant for a Class A, B, or C CDL or commercial driver permit used in interstate commerce must also certify on the application or renewal form that he or she meets all of the driver qualification requirements as required by FMCSR sections 383.71(a) and 383.71(c)(1).

(3) DMV may issue a Class C non-commercial driver license to a person who applies for the renewal of a Class A, B, or C CDL if the person does not present an approved medical certificate as required or fails to certify he or she meets the driver qualification requirements as required in subsections (1) and (2) of this rule.

(4) A driver who needs to replace a medical certificate because it is lost, mutilated, or destroyed may obtain a duplicate from the same source from which they obtained the original medical certificate.

(5) DMV is not responsible for any expenses an applicant may incur from the acquisition of an approved medical certificate or duplicate medical certificate.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 807.040

Stats. Implemented: ORS 807.040, 807.100 & 807.150

Hist.: MV 11-1986, f. 6-27-86, ef. 7-1-86; Administrative Renumbering 3-1988, Renumbered from 735-031-0760; MV 4-1987, f. & ef. 5-18-87; MV 6-1990, f. & cert. ef. 4-2-90; DMV 11-1998, f. & cert. ef. 9-14-98; DMV 16-2003, f. & cert. ef. 11-18-03, Renumbered from 735-060-0170; DMV 9-2007(Temp), f. & cert. ef. 9-17-07 thru 3-14-08; Renumbered from 735-074-0290, DMV 17-2007, f. 12-24-07, cert. ef. 1-1-08; DMV 4-2009, f. & cert. ef. 2-20-09; DMV 7-2011, f. & cert. ef. 6-21-11

## 735-063-0070

### Waiver of Physical Disqualification

(1) This rule is applicable to holders of or applicants for a CDL, CDL permit or Class C non-commercial license issued by DMV, who intend to operate a CMV only in Oregon intrastate commerce or are exempt from the physical qualification requirements in FMCSR sections 391.41 and 391.43 under FMCSR sections 390.3(f), 391.2, 391.68 or 398.3 but must have an approved medical certificate under ORS 807.100. For purposes of this rule, CMV means a commercial motor vehicle as defined in FMCSR Sec. 390.5 and includes a driver employed (or applying for employment) to operate a CMV by a for-hire carrier as defined in ORS 825.005.

(2) DMV may issue or renew a Waiver of Physical Disqualification if the person is otherwise disqualified from operating a CMV under FMCSR Sec. 391.41(b) because of one or more of the following disqualifying conditions:

(a) Loss or impairment of limb;

(b) Diabetes;

(c) Seizure disorder;

(d) Impaired vision; or

(e) Hearing loss.

(3) Except as provided in Sections (2) and (13) of this rule, DMV will not issue or renew a Waiver of Physical Disqualification to a person who does not meet the physical qualification standards set forth in FMCSR Sec. 391.41(b).

(4) To apply for a Waiver of Physical Disqualification, an applicant must do the following:

(a) Submit a completed waiver application form and:

(A) A current FMCSA medical examination report completed by a licensed physician, chiropractic physician, physician assistant or nurse practitioner. The report must show that notwithstanding the disqualifying condition, the applicant meets all other physical qualification standards as set forth in FMCSR Sec. 391.41(b);

(B) Current medical information regarding the disqualifying condition from a treating medical specialist specializing in the assessment and treatment of the type of disqualifying condition for which the applicant is requesting a waiver; and

(C) If requested by DMV, a copy of the applicant's out-of-state driver record(s) if the applicant has held a driver license in another jurisdiction during the three year period preceding the date of application.

(b) Provide additional information showing that the disqualifying condition does not impair the person's ability to safely operate a CMV in intrastate commerce, if requested by DMV.

(5) The Medical Determination Officer will review an application for an original waiver or for renewal of a waiver and make a recommendation to DMV whether to approve or deny the waiver.

(a) The Medical Determination Officer review will be conducted using medical waiver guidelines. These are criteria maintained by the Medical Determination Officer and available from DMV.

(b) The Medical Determination Officer may request additional information from DMV or the applicant before making a recommendation.

(6) Records relating to an applicant or the holder of a current waiver may be reviewed at any time by DMV to determine if the person is or remains qualified to hold the waiver and is complying with the restrictions and conditions of the waiver. The review may include a recommendation from the Medical Determination Officer. DMV may use the information from these records or a recommendation from the Medical Determination Officer as a basis for denial of a waiver or for revocation of an existing waiver as specified in OAR 735-063-0075(4). Records include but are not limited to:

(a) Driving record;

(b) Accident/conviction record; and

(c) Medical records.

(7) If DMV has reason to believe the holder of a Waiver of Physical Disqualification is no longer qualified for the waiver, DMV:

(a) May immediately revoke the waiver as specified in OAR 735-063-0075;

(b) May request in writing that the holder submit any information requested by DMV in order for DMV to determine if the holder remains eligible for the waiver. The holder must submit any requested information to DMV within 60 days of the date the written request is mailed. Failure to submit the requested information will result in revocation of the waiver as set forth in OAR 735-063-0075(3). DMV may grant an additional 30 days if:

(A) The person is seriously ill or injured and a physician requests an extension in writing;

(B) The person is temporarily out of state and a written request is received from the person; or

(C) The person can show that the information was requested from another party within the 60 day time period and the delay in submitting the information was caused by the other party.

(8) To be eligible for a Waiver of Physical Disqualification, a driver must:

(a) Qualify for commercial driving privileges, have a valid Oregon CDL or commercial driver permit, or be an Oregon licensed driver employed (or applying for employment) by a for-hire carrier to operate a CMV only in Oregon intrastate commerce;

(b) Not have driving privileges suspended, revoked, cancelled or withdrawn in Oregon or any other jurisdiction;

(c) Not have a Waiver of Physical Disqualification that is currently denied or revoked as specified in OAR 735-063-0075(1) or 735-063-0075(4);

(d) Apply for the Waiver of Physical Disqualification as explained in section (4) of this rule; and



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(e) Receive a recommendation for waiver approval from the Medical Determination Officer.

(9) Any driver issued a waiver must comply with the following conditions:

(a) Notify DMV within 10 days of any change in the driver's physical condition or any other condition pertaining to the need for the waiver, modification of the waiver or revocation of the waiver;

(b) Notify DMV of all crashes, arrests or convictions involving the use of a motor vehicle within 30 days of the crash or within 10 days of the arrest or conviction;

(c) Notify DMV within 10 days of any suspension, cancellation, revocation or withdrawal of driving privileges in a jurisdiction other than Oregon;

(d) Notify DMV within 10 days of changing employers and provide the employer with a copy of the waiver;

(e) Carry a copy of the medical waiver and any listed waiver conditions at all times while operating a CMV and make the waiver and waiver conditions available to enforcement personnel upon request;

(f) Only operate a CMV in Oregon intrastate commerce. This subsection does not apply to a driver who is exempt from the physical qualification requirements in FMCSR sections 391.41 and 391.43 under FMCSR sections 390.3(f), 391.2, 391.68 or 398.3, but must have an approved medical certificate under ORS 807.100; and

(g) Comply with all waiver conditions related to the disqualifying condition as noted on the Waiver of Physical Disqualification.

(10) The Oregon CDL or commercial driver permit of a waiver holder must have a "K" restriction limiting the driver to operating a CMV in intrastate commerce.

(a) DMV will notify waiver holders in writing of the requirement to have a CDL or commercial driver permit with a "K" restriction.

(b) Failure of the driver to add the "K" restriction within 60 days of the date of written notification will result in cancellation of the commercial driver license in accordance with ORS 807.010(1) and ORS 809.310(1). DMV is not responsible for any expenses a waiver holder may incur from the acquisition of a replacement license with the "K" restriction.

(11) The waiver is valid for a period not to exceed the expiration date of the driver's medical certificate.

(12) Incomplete waiver applications are invalid after 180 days and DMV will take no action to deny or approve the application. After this period, the person must reapply for a waiver in accordance with all of the requirements of this rule.

(13) DMV will renew a Waiver of Physical Disqualification issued for a sleep disorder or cardiac condition if the waiver was in effect on August 10, 2009 and all other requirements set forth in section (8) of this rule are met.

Stat. Auth.: ORS 184.616, 184.619 & 802.010

Stats. Implemented: ORS 807.040 & 807.150

Hist.: MCTB 4-2000, f. & cert. ef. 6-12-00; Renumbered from 740-100-0140, DMV 9-2007(Temp), f. & cert. ef. 9-17-07 thru 3-14-08; Renumbered from 740-100-0140, DMV 9-2008, f. & cert. ef. 3-21-08; DMV 4-2009, f. & cert. ef. 2-20-09; DMV 8-2010, f. & cert. ef. 3-17-10; DMV 7-2011, f. & cert. ef. 6-21-11

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**Rule Caption:** Issuing Restricted Driving Privileges for Taking Lessons when Privileges are Suspended under At-Risk Program.

**Adm. Order No.:** DMV 8-2011

**Filed with Sec. of State:** 6-21-2011

**Certified to be Effective:** 6-21-11

**Notice Publication Date:** 5-1-2011

**Rules Amended:** 735-074-0210, 735-074-0212, 735-076-0050, 735-076-0052

**Subject:** A person whose driving privileges are suspended under the At-Risk Driver Program may wish to take driving lessons prior to taking a DMV drive test. DMV may issue either a restricted license or restricted applicant temporary permit for the express purpose of taking driving lessons. DMV may issue a restricted license (under OAR 735-074-0210 or 735-076-0050) pursuant to ORS 807.120 when the person has driving privileges that are suspended. DMV may issue a restricted applicant temporary permit (under OAR 735-074-0212 or 735-076-0052) pursuant to ORS 807.310 when the person does not have driving privileges to restrict. The person's driving privileges may have expired, been surrendered, cancelled under OAR

735-062-0073 Denial of Further Testing, or the person may never have been granted Oregon driving privileges.

DMV amended OAR 735-074-0210(2) and 735-076-0050(2) to remove the requirement that all applicants provide documentation from a medical provider or rehabilitation specialist before a restricted license or permit will be issued and to remove the requirement that a person who completes driving lessons must prove they should be allowed to take a DMV drive test. It is only when a person is denied a drive test under OAR 735-062-0073 that the person must provide such proof.

DMV amended OAR 735-074-0212 and 735-076-0052 to clarify when a person whose right to apply for driving privileges has been suspended and is eligible for a restricted applicant temporary permit and the requirements for issuance. These rule amendments also clarify that the suspension will be rescinded for 60 days but will be re-imposed without further notice or hearing if the person does not pass a drive test within that time period or is not otherwise eligible for driving privileges when the permit expires.

**Rules Coordinator:** Lauri Kunze—(503) 986-3171

## 735-074-0210

### Restricted Licenses

(1) DMV may issue a restricted license to a person who passes the required tests when DMV determines a restriction on the license is necessary to insure the safe operation of a motor vehicle by the person. These restrictions may include but are not limited to the following:

(a) Daylight driving only;

(b) Driving only on a certain, restricted route;

(c) Driving only during certain hours of the day; or

(d) Driving only with certain vehicle equipment or adaptive devices.

(2) A person whose driving privileges are suspended under division 74 rules, who is otherwise eligible for driving privileges, may obtain a 60-day restricted license for the express purpose of taking driving lessons. The suspension will be rescinded for the 60-day period the restricted license is valid. Driving lessons must be provided by a commercial driving instructor, a rehabilitation specialist or other licensed driver approved by DMV as an instructor. The restricted license will only allow the person to drive with an instructor during instruction. No other driving, under any circumstances, will be allowed by the restricted license. All the following must occur before DMV will issue a restricted license under this section:

(a) If required by DMV, the person must receive a determination of medical eligibility from the Medical Determination Officer;

(b) The person must pass a DMV vision screening or submit a Certificate of Vision showing that the person's vision meets DMV standards; and

(c) The person must pass a DMV knowledge test.

(3) A restricted license issued under section (2) of this rule will include a notification that at the end of the 60-day period the suspension will be re-imposed without further notice and without the opportunity for a contested case hearing if the person has not successfully passed a driving test given by a DMV employee.

(4) If, at the end of the 60-day restricted license period under section (2) of this rule, the person has not successfully completed a driving test given by a DMV employee, DMV will re-impose the suspension of the person's driving privileges and right to apply for driving privileges. When a suspension is re-imposed under this section, DMV is not required to provide the person with further notice or an opportunity for a contested case hearing.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.120

Stat. Implemented: ORS 807.120

Hist.: DMV 8-2003, f. 5-14-03, cert. ef. 6-1-03; DMV 6-2006, f. & cert. ef. 5-25-06; DMV 8-2011, f. & cert. ef. 6-21-11

## 735-074-0212

### Restricted Applicant Temporary Permit

(1) When a person does not have Oregon driving privileges and his or her right to apply for driving privileges is suspended under OAR division 74, DMV may issue a 60-day restricted applicant temporary permit that allows the person to take driving lessons. An applicant for a permit under this section must meet all eligibility requirements listed in section (5) of this rule. The suspension will be rescinded for the 60-day period the restricted applicant temporary permit is valid. If, at the end of the 60-day restricted permit period, the person has not successfully completed a driving test given by a DMV employee, or is not otherwise eligible for driving privileges, DMV will re-impose the suspension of the person's right to

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apply for driving privileges. When a suspension is re-imposed under this section, DMV is not required to provide the person with further notice or an opportunity for a contested case hearing.

(2) If a person's driving privileges are cancelled and the driver is denied further testing under OAR 735-062-0073, the person may apply for a 60-day restricted applicant temporary permit for the express purpose of taking driving lessons if DMV determines that with driving lessons the person may learn to safely operate a motor vehicle. An applicant for a permit under this section must, in addition to meeting all eligibility requirements listed in section (5) of this rule, provide sufficient information to show that there is a reasonable likelihood that driving lessons will improve the person's ability to safely operate a motor vehicle. Such information may include, but is not limited to:

- (a) Medical information;
- (b) Information from a rehabilitation specialist that the person may benefit from lessons to learn to use an adaptive device or technique; or
- (c) An affidavit from a person(s) with information to show that with driving lessons the applicant is likely to learn to safely operate a motor vehicle.

(3) Driving lessons must be provided by a certified commercial driving instructor, rehabilitation specialist or other licensed driver approved by DMV as an instructor.

(4) A restricted applicant temporary permit only allows the person to drive with an instructor during driving lessons and at no other time.

(5) To be eligible for a restricted applicant temporary permit under section (1) and (2) of this rule, the person must:

- (a) If required by DMV, receive a determination of medical eligibility from the Medical Determination Officer;
- (b) Apply for driving privileges, and specifically request a restricted license or permit for the purpose of taking driving lessons prior to taking a drive test;

(c) Pass a DMV vision screening or submit a Certificate of Vision showing that the person's vision meets DMV standards; and

(d) Pass a DMV knowledge test.

(6) A restricted permit issued under section (1) of this rule will include a notification that at the end of the 60-day period the suspension will be re-imposed without further notice and without the opportunity for a contested case hearing if the person has not successfully passed a driving test given by a DMV employee or is not otherwise eligible for driving privileges.

(7) A restricted permit issued under section (2) of this rule will include a notification that at the end of the 60-day period the permit expires and the person no longer has driving privileges until he or she has successfully passed a DMV driving test and is eligible for driving privileges.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.120, 807.310, 807.340

Stats. Implemented: ORS 807.120, 807.310, 807.340

Hist.: DMV 6-2006, f. & cert. ef. 5-25-06; DMV 8-2011, f. & cert. ef. 6-21-11

## 735-076-0050

### Restricted License

(1) DMV may issue a restricted license to a person who passes the required tests when DMV determines a restriction on the license is necessary to insure the safe operation of a motor vehicle by the person. These restrictions may include but are not limited to the following:

- (a) Daylight driving only;
- (b) Driving only on a certain, restricted route;
- (c) Driving only during certain hours of the day; or
- (d) Driving only with certain vehicle equipment or adaptive devices.

(2) A person whose driving privileges are suspended under division 76 rules, who is otherwise eligible for driving privileges, may obtain a 60-day restricted license for the express purpose of taking driving lessons. The suspension will be rescinded for the 60-day period the restricted license is valid. Driving lessons must be provided by a commercial driving instructor, a rehabilitation specialist or other licensed driver approved by DMV as an instructor. The restricted license will only allow the person to drive with an instructor during instruction. No other driving, under any circumstances, will be allowed by the restricted license. All the following must occur before DMV will issue a restricted license under this section:

(a) If required by DMV, the person must receive a determination of medical eligibility from the Medical Determination Officer;

(b) The person must pass a DMV vision screening or submit a Certificate of Vision showing that the person's vision meets DMV standards; and

(c) The person must pass a DMV knowledge test.

(3) A restricted license issued under section (2) of this rule will include a notification that at the end of the 60-day period the suspension

will be re-imposed without further notice and without the opportunity for a contested case hearing if the person has not successfully passed a driving test given by a DMV employee.

(4) If, at the end of the 60-day restricted license period under section (2) of this rule, the person has not successfully completed a driving test given by a DMV employee, DMV will re-impose the suspension of the person's driving privileges and right to apply for driving privileges. When a suspension is re-imposed under this section, DMV is not required to provide the person with further notice or an opportunity for a contested case hearing.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.120, 807.340 & 809.419

Stats. Implemented: ORS 807.120, 807.340

Hist.: MV 19-1987, f. 9-21-87, ef. 9-27-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0490; DMV 8-2003, f. 5-14-03, cert. ef. 6-1-03; DMV 6-2006, f. & cert. ef. 5-25-06; DMV 8-2011, f. & cert. ef. 6-21-11

## 735-076-0052

### Restricted Applicant Temporary Permit

(1) When a person does not have Oregon driving privileges and his or her right to apply for driving privileges is suspended under OAR division 76, DMV may issue a 60-day restricted applicant temporary permit that allows the person to take driving lessons. An applicant for a permit under this section must meet all eligibility requirements listed in section (5) of this rule. The suspension will be rescinded for the 60-day period the restricted applicant temporary permit is valid. If, at the end of the 60-day restricted permit period, the person has not successfully completed a driving test given by a DMV employee or is not otherwise eligible for driving privileges, DMV will re-impose the suspension of the person's right to apply for driving privileges. When a suspension is re-imposed under this section, DMV is not required to provide the person with further notice or an opportunity for a contested case hearing.

(2) If a person's driving privileges are cancelled and the driver is denied further testing under OAR 735-062-0073, the person may apply for a 60-day restricted applicant temporary permit for the express purpose of taking driving lessons if DMV determines that with driving lessons the person may learn to safely operate a motor vehicle. An applicant for a permit under this section must, in addition to meeting all eligibility requirements listed in section (5) of this rule, provide sufficient information to show that there is a reasonable likelihood that driving lessons will improve the person's ability to safely operate a motor vehicle. Such information may include, but is not limited to:

(a) Medical information;

(b) Information from a rehabilitation specialist that the person may benefit from lessons to learn to use an adaptive device or technique; or

(c) An affidavit from a person(s) with information to show that with driving lessons the applicant is likely to learn to safely operate a motor vehicle.

(3) Driving lessons must be provided by a certified commercial driving instructor, rehabilitation specialist or other licensed driver approved by DMV as an instructor.

(4) A restricted applicant temporary permit only allows the person to drive with an instructor during driving lessons and at no other time.

(5) To be eligible for a restricted applicant temporary permit under sections (1) and (2) of this rule, the person must:

(a) If required by DMV, receive a determination of medical eligibility from the Medical Determination Officer;

(b) Apply for driving privileges, and specifically request a restricted permit for the purpose of taking driving lessons prior to taking a drive test;

(c) Pass a DMV vision screening or submit a Certificate of Vision showing that the person's vision meets DMV standards; and

(d) Pass a DMV knowledge test.

(6) A restricted permit issued under section (1) of this rule will include a notification that at the end of the 60-day period the suspension will be re-imposed without further notice and without the opportunity for a contested case hearing if the person has not successfully passed a driving test given by a DMV employee or is not otherwise eligible for driving privileges.

(7) A restricted permit issued under section (2) of this rule will include a notification that at the end of the 60-day period the permit expires and the person no longer has driving privileges until he or she has successfully passed a DMV driving test given by a DMV employee and is otherwise eligible for driving privileges.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.120, 807.310, 807.340

Stats. Implemented: ORS 807.120, 807.310, 807.340

Hist.: DMV 6-2006, f. & cert. ef. 5-25-06; DMV 8-2011, f. & cert. ef. 6-21-11

# ADMINISTRATIVE RULES

## Department of Transportation, Highway Division Chapter 734

**Rule Caption:** Maximum allowed tow length for mobile homes traveling on U.S. Route 95.

**Adm. Order No.:** HWD 6-2011

**Filed with Sec. of State:** 6-21-2011

**Certified to be Effective:** 6-21-11

**Notice Publication Date:** 5-1-2011

**Rules Amended:** 734-075-0010

**Subject:** A petition for rulemaking was received from the Oregon Manufactured Housing Association, requesting a revision to 734-075-0010 to make permanent allowance of mobile homes up to 80 feet in length when traveling between Idaho and Nevada on US Route 95. The rule previously limited mobile home length to 75 feet. During a temporary allowance, towed 80-foot long mobile homes traveling on U.S. Route 95 were observed in order to evaluate safety issues and road damage. There were no safety problems reported and the highway was not adversely affected by the movement of the 80-foot long mobile homes. OMHA stated that the ability to use US Route 95 to travel between Idaho and Nevada saved the carrier approximately 200 miles of out-of-route travel per trip, along with fuel and other associated cost savings.

**Rules Coordinator:** Lauri Kunze—(503) 986-3171

### 734-075-0010

#### Vehicle Combinations and Maximum Size Limitations

This rule establishes the maximum number of vehicles in combination and size of vehicles allowed when moving an over-dimensional unit:

(1) The combination must not exceed two vehicles, the towing vehicle and the unit being transported.

(2) The maximum lengths are as follows:

(a) The maximum overall length of the combination must:

(A) Not exceed 85 feet on State highways;

(B) Not exceed 95 feet on Group 1 highways; and

(C) Not exceed 110 feet on Interstate highways, multilane highways or highways approved for the longer length as authorized by a single trip permit or as authorized by written order of the Chief Engineer.

(b) The mobile home being towed must not exceed 75 feet, including the tongue, except as provided in subsection (c) or OAR 734-075-0011.

(c) The mobile home may be up to 80 feet in length, including the tongue, when the unit will be transported through Oregon on US-95.

(3) The maximum widths are as follows:

(a) Units must not exceed 14 feet overall width, unless a single trip permit or a limited duration permit is issued;

(b) Units transported under a single trip permit or limited duration permit are subject to the following:

(A) The unit must not exceed 16 feet at the base except as described in subsection (e);

(B) The overall width must not, except as described in subsection (e), exceed 18 feet.

(c) Except as prohibited by paragraph (b)(B) of this section, a unit may have an eave, provided the eave does not extend beyond either side by:

(A) More than 30 inches for units with a base width of less than 16 feet; or

(B) More than 16 inches for units with a base width of 16 feet or more.

(d) External appurtenances such as doorknobs, window fasteners, eave cap, clearance lights and load securement devices may exceed the width of the unit by a distance not greater than two inches on each side;

(e) A unit that exceeds 16 feet wide at the base may be allowed if the Administrator of MCTD determines that the public interest requires the impending movement, and the movement can be performed safely.

(4) Except as provided in subsection (5), the maximum height for the combination, while in transit, must not exceed 14 feet unless proper route clearance has been obtained and is so indicated on the single trip permit.

(5) A continuous trip permit may be issued for a combination height up to 14 feet six inches over specifically authorized routes.

Stat. Auth.: ORS 184.616, 814.619, 810.060 & 818.200

Stats. Implemented: ORS 818.200 & 818.220

Hist.: HC 1287, f. 3-14-73; 1 OTC 19a, f. & ef. 1-24-74; 1 OTC 9-1978(Temp), f. & ef. 7-19-78; 1 OTC 11-1979(Temp), f. & ef. 6-20-79; 1 OTC 12-1979(Temp), f. & ef. 6-20-79; 1 OTC 13-1979(Temp), f. & ef. 6-20-79; 1 OTC 24-1979, f. & ef. 10-24-79; 2 HD 7-1982(Temp), f. & ef. 11-22-82; 2HD 15-1983, f. & ef. 8-18-83; HWY 4-1988(Temp), f. & cert. ef. 6-23-88;

HWY 4, 1989, f. & cert. ef. 5-23-89; HWY 6-1990, f. & cert. ef. 3-13-90; HWY 5-1992, f. & cert. ef. 3-25-92; HWY 7-1996, f. & cert. ef. 12-19-96; TO 2-1998, f. 3-10-98, cert. ef. 4-1-98; TO 3-1999, f. & cert. ef. 10-13-99; TO 2-2001, f. & cert. ef. 6-14-01; HWD 3-2008(Temp), f. & cert. ef. 4-24-08 thru 10-21-08; HWD 9-2008, f. & cert. ef. 9-11-08; HWD 5-2009, f. & cert. ef. 3-20-09; HWD 6-2011, f. & cert. ef. 6-21-11

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**Rule Caption:** Modular building unit trailer lengths.

**Adm. Order No.:** HWD 7-2011

**Filed with Sec. of State:** 6-21-2011

**Certified to be Effective:** 6-21-11

**Notice Publication Date:** 5-1-2011

**Rules Amended:** 734-075-0025

**Subject:** This amendment provides an exception to allow an over-dimensional permit to authorize modular building trailers in lengths up to 75 feet that are fixed in length to be used for unladen (empty) return trips. The industry has modified trailers that are fixed in length to transport modular buildings units. The rule change is necessary to accommodate modified trailers needed to transport increasingly larger modular buildings.

**Rules Coordinator:** Lauri Kunze—(503) 986-3171

### 734-075-0025

#### Hauling Vehicles for Modular Building Units

The following requirements apply to vehicles hauling modular building units:

(1) Modular Building Units must be hauled with a truck-tractor and semitrailer or trailer combination.

(2) Equipment weights of the combination and the sizes and ratings of all its components must be comparable to those commonly used by the motor carrier industry in general over-the-road trucking operations.

(3) When operating unladen, the overall length of the combination must not exceed the length authorized by statute or rule, except as authorized in the permit.

(4) Modifications are permitted to the conventional equipment necessary for hauling modular building units. This may include "stretch-trailer" features, adjustable trailer heights from inflatable air bags, steering capabilities for the semitrailer axles or other modifications. These features must be stipulated in the permit.

(5) Requests for moves using trailers more than 53 feet in length will be on an individual basis, and permits will be issued for a single trip only. The authorized trailer length must be stipulated in the permit and must not exceed 75 feet in length, except when using a stretch trailer. When not operating under the terms of a permit issued under this rule a stretch trailer must be reduced to dimensions authorized by statute or rule.

(6) The modular building unit must be securely fastened to the semitrailer or trailer. It may be secured by steel cables and winch tighteners, steel cables or chains and chain binders, or by adequate bolting directly to the semitrailer or trailer frame. Alternate securing methods approved by the United States Department of Transportation regulations may be used.

Stat. Auth.: ORS 184.616, 814.619 & 818.200

Stats. Implemented: ORS 818.200 & 818.220

Hist.: HC 1287, f. 3-14-73; 1 OTC 19a, f. & ef. 1-24-74; 1 OTC 9-1978(Temp), f. & ef. 7-19-78; 1 OTC 11-1979(Temp), f. & ef. 6-20-79; 1 OTC 12-1979(Temp), f. & ef. 6-20-79; 1 OTC 13-1979(Temp), f. & ef. 6-20-79; 1 OTC 24-1979, f. & ef. 10-24-79; 2HD 15-1983, f. & ef. 8-18-83; HWY 6-1990, f. & cert. ef. 3-13-90; TO 3-1999, f. & cert. ef. 10-13-99; TO 5-2001, f. & cert. ef. 10-18-01; HWD 7-2011, f. & cert. ef. 6-21-11

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**Rule Caption:** Permits for vehicles that exceed the legal vehicle height.

**Adm. Order No.:** HWD 8-2011

**Filed with Sec. of State:** 6-21-2011

**Certified to be Effective:** 6-21-11

**Notice Publication Date:** 5-1-2011

**Rules Amended:** 734-082-0025

**Subject:** The amended rule specifies the Department of Transportation Bridge Section as the responsible group for providing accurate vertical clearance measurements under all structures. Department policy for vertical clearance is to provide a 4-inch buffer zone between the structure and the load for cautionary purposes. In addition, the amendment allows the Chief Engineer to authorize the Administrator of the Motor Carrier Transportation Division to approve routes and issue permits for loads that encroach on the prescribed 4-inch buffer on a case by case exception basis taking into account the measurements provided by the Bridge Section. The



# ADMINISTRATIVE RULES

amended rule assigns responsibility to the MCTD Administrator to research and approve over-height permits for the rare cases where the load will encroach on the 4-inch buffer and an alternative route is either not desirable or readily available.

**Rules Coordinator:** Lauri Kunze—(503) 986-3171

## 734-082-0025

### Height

(1) Permits are required for all vehicles or combinations of vehicles, including any load, which exceeds 14 feet in height. Unless specifically stated on the permit as authorized by ORS Chapter 818 or rule, over height permits will not be valid for loads or items placed or stacked one on top of another or overlapping.

(2) The height of a permitted load is measured from the ground to the highest point as it is ready for transport on the highway.

(3) Vertical clearance through or under structures for over height permitted loads is allowed to be up to, but within no more than four inches of the lowest determined physical clearance for each traffic lane of each structure. Over height loads are routed under or around structures according to this maximum buffered vertical clearance.

(4) The Department of Transportation Bridge Engineering Section is responsible for obtaining and maintaining accurate vertical clearance measurements under all Oregon highway structures.

(5) The Chief Engineer authorizes the Administrator of the Motor Carrier Transportation Division to approve a route and issue a permit resulting in maintaining less than a four inch buffer distance between the load and the structure on a case by case basis only after reviewing vertical clearance measurements and determining issuance of the permit is reasonable. Permits issued under this subsection will be valid only for the single specific movement requested and approved unless otherwise authorized by the Administrator. Permits issued under such conditions may require coordination and monitoring by Department of Transportation staff as designated.

Stat. Auth.: ORS 184.616 & 184.619

Stats. Implemented: ORS 818.220 & 818.225

Hist.: HWY 1-1990(Temp), f. & cert. ef. 1-5-90; HWY 17-1990, f. & cert. ef. 12-28-90; TO 7-1998, f. & cert. ef. 8-20-98; TO 3-2000, f. & cert. ef. 2-11-00; HWD 5-2009, f. & cert. ef. 3-20-09; HWD 8-2011, f. & cert. ef. 6-21-11

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## Employment Department Chapter 471

**Rule Caption:** Defines “against equity and good conscience”.

**Adm. Order No.:** ED 4-2011(Temp)

**Filed with Sec. of State:** 6-29-2011

**Certified to be Effective:** 6-29-11 thru 12-15-11

**Notice Publication Date:**

**Rules Amended:** 471-030-0053

**Subject:** Senate Bill 725 allows for benefits overpaid under ORS 657.315 to be waived if recovery is “against equity and good conscience”. The rule change defines “against equity and good conscience” by taking into account the individual’s financial ability to repay the overpaid benefits.

The proposed change makes additional plain language and consistency updates. It removes the definition of ‘Recovery’ which is defined in statute. It also replaces in the text of the rule the Manager of Benefits with the Director as the one who authorizes employees to waive overpayments under ORS 657.317. This change is consistent with other rules in this chapter.

**Rules Coordinator:** Courtney Brooks—(503) 947-1724

## 471-030-0053

### Waiver of Overpayments

(1) Purpose: This rule establishes policy to be used when waiving overpayments pursuant to ORS 657.317.

(2) Definitions: For purposes of ORS 657.317:

(a) “Establishment” means the issuance of an administrative decision which would result in an overpayment under ORS 657.310 or ORS 657.315.

(b) “Amount of the overpayment” means the accumulated amount of potentially overpaid benefits in a single benefit year resulting from the application of ORS 657.150(6) and/or ORS 657.150(7).

(c) “Against equity and good conscience” means that recovery of the overpaid benefits would cause a financial hardship on the individual.

(3) In applying ORS 657.317(2):

(a) An authorized representative of the Employment Department shall determine that a financial hardship exists when the total household expenses equal or exceed 90% of the total household income less unemployment benefits.

(b) Notwithstanding the provisions of subsection (3)(a) of this section, if an individual is paid twice for the same week(s), only the amount in excess of the final entitlement is eligible to be waived.

(4) In applying ORS 657.317(4):

(a) No waiver shall be granted if the overpayment is a result of willful misrepresentation or fraud as established in ORS 657.215.

(b) No waiver shall be granted if the overpayment results from a decision which has been issued and become final under Chapter 657.

(c) No waiver shall be granted if the overpayment results from the negotiation of an original and a replacement check which were issued for the same period pursuant to OAR 471-030-0049.

(5) The determination to waive overpayments in accordance with the provisions of ORS 657.317 and this rule shall be made by employees authorized by the Director.

Stat. Auth.: ORS 105 Sec. 7, ORS 183, ORS 657.610, ORS 657.266, ORS 657.317 & ORS 657.270

Stats. Implemented: ORS 215

Hist.: ED 2-1995, f. 8-29-95, cert. ef. 9-3-95; ED 4-2011(Temp), f. & cert. ef. 6-29-11 thru 12-15-11

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**Rule Caption:** Allow employer hearing requests relating to Unemployment Insurance tax by email and secure website.

**Adm. Order No.:** ED 5-2011

**Filed with Sec. of State:** 7-14-2011

**Certified to be Effective:** 7-14-11

**Notice Publication Date:** 6-1-2011

**Rules Amended:** 471-040-0005

**Rules Repealed:** 471-040-0005(T)

**Subject:** Add email and secure web submission as alternate means for employers to request a hearing. The date of request is defined as the date received by the Employment Department. UI Tax hearings can no longer be requested directly from the Office of Administrative Hearings.

**Rules Coordinator:** Courtney Brooks—(503) 947-1724

## 471-040-0005

### Request for Hearing

(1) A Request for hearing may be filed on forms provided by the Employment Department or similar offices in other states. Use of the form is not required provided the party specifically requests a hearing or otherwise expresses a present intent to appeal.

(2) A request for hearing on an administrative decision related to the payment or amount of unemployment insurance benefits may be filed:

(a) By mail, by fax or by telephone with any Employment Department Unemployment Insurance (UI) Center or UI Section in Oregon; or

(b) In person at any publicly accessible Employment Department office in Oregon; or

(c) By mail or fax with the Office of Administrative Hearings in Oregon.

(3) A request for hearing on an administrative decision related to unemployment insurance taxes pursuant to ORS 657.683, 657.663, 657.485, and 657.457, must be in writing and may be filed:

(a) By mail or by fax with any Employment Department UI Center or UI Tax Section office in Oregon; or

(b) In person at any publicly accessible Employment Department office in Oregon.

(c) By e-mail to the Employment Department’s e-mail address as provided on the appealable document.

(d) Through the use of the Employment Department’s secured website as provided on the appealable document.

(4) The filing date for any request for hearing shall be determined as follows:

(a) When delivered in person to any Employment Department office in the state of Oregon, the date of delivery, as evidenced by the receipt date stamped or written by the agency employee who receives the document, shall be the date of filing.

(b) When filed by mail, the date of filing shall be the postmarked date affixed by the United States Postal Service or, in the absence of a post-marked date, the most probable date of mailing.

(c) When filed by fax, the date of filing shall be the encoded date on the fax document unless such date is absent, illegible, or improbable, in

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which case the fax receipt date stamped or written by the agency employee, if available, shall be the date of filing. If a filing date cannot otherwise be determined, the most probable date of faxing shall be the date of filing.

(d) When filed by telephone, the date of filing shall be the date marked or stamped by the agency employee accepting the request for hearing.

(e) When filed by e-mail, the date of filing shall be the date of delivery, as evidenced by the receipt date on the Employment Department's e-mail system, according to Pacific Time.

(f) When filed through the secured website, the date of filing shall be the date indicated in the confirmation e-mail sent to the requestor by the Employment Department, according to Pacific Time.

(g) When filed by any other means, the date of filing shall be the date of delivery, as evidenced by the receipt date stamped or written by the employee of the Employment Department, Office of Administrative Hearings or Employment Appeals Board who receives the document.

(5) A request for hearing with respect to a claim for benefits shall not stay the payment of any benefits not placed in issue by the request for hearing, nor shall it stay an order previously entered allowing benefits.

(6) This rule is effective for all hearing requests filed after the effective date of this rule.

Stat. Auth.: ORS 183.335, 657.260, 657.265 - 657.270, 657.335, 657.610 & OL 1993, Ch. 729

Stats. Implemented: ORS 657.280, 657.610 & 657

Hist.: 1DE 150, f. & ef. 2-9-76; 1DE 5-1979, f. & ef. 8-27-79; ED 4-1994, f. & cert. ef. 9-2-94; ED 3-1999, f. 6-29-99, cert. ef. 7-4-99; ED 7-2003, f. 4-25-03, cert. ef. 4-27-03; ED 4-2004, f. 7-30-04, cert. ef. 8-1-04; ED 2-2005, f. 4-29-05, cert. ef. 5-1-05; ED 6-2005(Temp), f. 9-16-05, cert. ef. 9-18-05 thru 2-14-06; ED 8-2005, f. 12-23-05, cert. ef. 12-25-05; ED 1-2011(Temp), f. & cert. ef. 2-9-11 thru 7-31-11; ED 5-2011, f. & cert. ef. 7-14-11

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**Employment Department,  
Child Care Division  
Chapter 414**

**Rule Caption:** Suspend rules which modified background check requirements for recorded programs.

**Adm. Order No.:** CCD 3-2011(Temp)

**Filed with Sec. of State:** 6-30-2011

**Certified to be Effective:** 6-30-11 thru 10-20-11

**Notice Publication Date:**

**Rules Amended:** 414-425-0010, 414-425-0030, 414-450-0010, 414-450-0030

**Rules Suspended:** 414-425-0010(T), 414-425-0030(T), 414-450-0010(T), 414-450-0030(T)

**Subject:** Suspend rules which modified background check requirements for individuals working in school age and preschool recorded programs.

**Rules Coordinator:** Courtney Brooks—(503) 947-1724

## 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; CCD 1-2011(Temp), f. 4-28-11, cert. ef. 5-1-11 thru 10-20-11; CCD 3-2011(Temp), f. & cert. ef. 6-30-11 thru 10-20-11

## 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; CCD 1-2011(Temp), f. 4-28-11, cert. ef. 5-1-11 thru 10-20-11; CCD 3-2011(Temp), f. & cert. ef. 6-30-11 thru 10-20-11

## 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.

Stat. Auth.: ORS 657A.030(7)

Stats. Implemented: ORS 657A.030

Hist.: CCD 6-2010, f. 6-30-10, cert. ef. 7-1-10; CCD 1-2011(Temp), f. 4-28-11, cert. ef. 5-1-11 thru 10-20-11; CCD 3-2011(Temp), f. & cert. ef. 6-30-11 thru 10-20-11

## 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; CCD 1-2011(Temp), f. 4-28-11, cert. ef. 5-1-11 thru 10-20-11; CCD 3-2011(Temp), f. & cert. ef. 6-30-11 thru 10-20-11

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**Employment Relations Board  
Chapter 115**

**Rule Caption:** Amends fees charged for unfair labor practice and mediation services.

**Adm. Order No.:** ERB 1-2011(Temp)

**Filed with Sec. of State:** 6-30-2011

**Certified to be Effective:** 7-1-11 thru 12-28-11

**Notice Publication Date:**

# ADMINISTRATIVE RULES

**Rules Amended:** 115-035-0000, 115-035-0035, 115-035-0045, 115-040-0005, 115-070-0000, 115-070-0035, 115-070-0050, 115-080-0010

**Subject:** Amends agency rules to conform with SB 5556, which was adopted by the 2011 Legislature and is effective July 1, 2011. Filing fees for unfair labor practice complaints and charges, answers, and intervention and for mediation services are increased. Mediation fees are based on a sliding scale.

**Rules Coordinator:** Leann G. Wilcox—(503) 378-8610

## 115-035-0000

### Filing an Unfair Labor Practice Complaint

(1) Who may file. An injured party may file a complaint alleging that a person(s) has engaged in or is engaging in an unfair labor practice as defined in ORS 243.672. Such complaint shall be filed in triplicate with the Board on forms approved by the Board.

(2) Contents of Complaint. The complaint shall contain the following information:

(a) The name and address of the person(s) making the complaint (referred to in these rules as complainant);

(b) The name and address of the person(s) against whom the complaint is made (referred to in these rules as respondent);

(c) A clear and concise statement of the facts constituting each alleged violation followed by the specific section and subsection of the law allegedly violated. Such statements shall include the names of persons committing specific complained of acts and the dates when such acts allegedly occurred; and

(d) The signature of the person filing the complaint.

(3) Supporting Data. At the time the complaint is filed, the complainant shall submit a written statement setting forth its version of the relevant facts, including names, dates, and places together with any documentary evidence which may be relevant to the issues raised by the complaint.

(4) Filing fee. A filing fee of \$300 must be paid at the time the complaint is filed. Complaints that are filed without a filing fee are subject to dismissal for that reason.

Stat. Auth.: ORS 240.086(3) & 243.766(7)

Stats. Implemented: ORS 243.672(3)

Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 1-1994, f. 6-23-94, cert. ef. 7-1-94; ERB 2-1995(Temp), f. 7-17-95, cert. ef. 8-1-95; ERB 4-1995, f. 11-30-95, cert. ef. 12-1-95; ERB 3-1998, f. & cert. ef. 1-26-98; ERB 1-2011(Temp), f. 6-30-11, cert. ef. 7-1-11 thru 12-28-11

## 115-035-0035

### Answer to Complaint

(1) Answer. The respondent shall have 14 days from date of service of the complaint in which to file an answer. All allegations in the complaint not denied by the answer, unless the respondent states in the answer that it is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown. Complainant shall be required to establish a prima facie case. The answer will be deemed sufficient if it generally denies all allegations of the complaint. Respondent shall specifically admit by way of answer any undisputed allegations and set forth any affirmative defenses.

(2) Service of Answer. Upon filing an answer, the respondent shall serve a copy upon the complainant or its representative of record. Proof of such service, setting forth the time and manner thereof, shall be filed with the answer.

(3) Failure to File. If the respondent fails to file a timely answer, absent a showing of good cause, it will not be allowed to present evidence at the hearing, and will be restricted to making legal arguments.

(4) Filing Fee. A filing fee of \$300 must be paid by the respondent when the answer is filed. The answer will not be considered to be filed until the fee is paid.

**NOTE:** Former (2) Motion to Make More Definite is now renumbered as 115-035-0007.

Stat. Auth.: ORS 240.086(3) & 243.766(7)

Stats. Implemented: ORS 243.672(3) & 243.676

Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 8-1985, f. 10-29-85, ef. 10-31-85; ERB 2-1995(Temp), f. 7-17-95, cert. ef. 8-1-95; ERB 4-1995, f. 11-30-95, cert. ef. 12-1-95; ERB 3-1998, f. & cert. ef. 1-26-98; ERB 1-2000, f. & cert. ef. 12-1-00; ERB 1-2007(Temp), f. 6-29-07, cert. ef. 7-1-07 thru 12-27-07; ERB 3-2007, f. 12-17-07, cert. ef. 12-26-07; ERB 1-2011(Temp), f. 6-30-11, cert. ef. 7-1-11 thru 12-28-11

## 115-035-0045

### Motions; Intervention

(1) Motions. All motions, including motions for intervention, shall be typewritten or, if made at the hearing, may be stated orally on the record and shall briefly state the order or relief sought and the grounds for such motion. Written motions shall be filed with the Board agent, together with proof of service of a copy thereof upon the other parties.

(2) Motions to Intervene. Any person desiring to intervene in any proceeding shall make a motion for intervention no later than seven days before the date set for hearing, stating the grounds upon which such person claims to have an interest in the proceeding. The Board agent may permit intervention to such extent and upon such terms as he/she may deem proper.

(3) Filing Fee. A filing fee of \$300 must be paid by the intervenor when the motion for intervention is filed. The motion will not be considered to be filed until the fee is paid.

Stat. Auth.: ORS 240.086(3) & 243.766(7)

Stats. Implemented: ORS 243.676(1)(c) & 243.672(3)

Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 1-2011(Temp), f. 6-30-11, cert. ef. 7-1-11 thru 12-28-11

## 115-040-0005

### Conciliation Service Fees

(1) Interest Mediation: When mediation concerns negotiations over the terms of a collective bargaining agreement, the board will charge a fee for mediation services. The local public employer and the exclusive representative shall each pay one-half of the amount of the fee to the board. The fee charged by the board may not exceed:

(a) \$1,000 for the first two mediation sessions (\$500 per party);

(b) \$500 for the third mediation session (\$250 per party);

(c) \$750 for the fourth mediation session (\$375 per party); and

(d) \$1,000 for each additional mediation session (\$500 per party).

(2) Grievance Mediation: When mediation concerns a grievance arising under a collective bargaining agreement, a local public employer and an exclusive representative each will be charged \$250.

(3) Unfair Labor Practice Mediation: When mediation concerns a pending unfair labor practice complaint, a local public employer and an exclusive representative each will be charged \$250.

(4) Interest-Based Training: The Conciliation Service shall offer training in interest-based bargaining, labor/management cooperation, problem solving and similar programs specifically designed for particular local public employer/exclusive representative needs. Fees for such training shall be \$2,500 for two-day training programs, \$1,500 for one-day refresher training, and \$700 for half-day training programs. The fees for facilitations and related travel time shall be \$60 per hour.

(5) Billing: For mediation services, parties will be billed when the first mediation session occurs. For training, parties will be billed when the training session occurs, with the employer and exclusive representative sharing equally the costs unless the parties agree otherwise.

(6) Definitions: "Local public employer" means any political subdivision in this state, including a city, county, community college, school district, special district, mass transit district, metropolitan service district, public service corporation or municipal corporation and a public and quasi-public corporation. "Exclusive representative" has the meaning given that term in ORS 243.650(8).

Stat. Auth.: ORS 240.086(3) & 243.766(7)

Stats. Implemented: ORS 240.610(2)

Hist.: ERB 1-1995(Temp), f. 6-26-95, cert. ef. 7-1-95; ERB 5-1995, f. 11-30-95, cert. ef. 12-1-95; ERB 1-2007(Temp), f. 6-29-07, cert. ef. 7-1-07 thru 12-27-07; ERB 3-2007, f. 12-17-07, cert. ef. 12-26-07; ERB 1-2011(Temp), f. 6-30-11, cert. ef. 7-1-11 thru 12-28-11

## 115-070-0000

### Filing an Unfair Labor Practice Charge

(1) Who May File. An injured party may file a charge alleging that a person(s) has engaged in or is engaging in an unfair labor practice. Such charge shall be filed in triplicate with the Board on forms provided by the Board.

(2) Content of Charge. The charge shall contain the following information:

(a) The name and address of the person making the charge;

(b) The name and address of the person(s) against whom the charge is made;

(c) A description of the nature of the business involved;

(d) A clear and concise statement of the facts constituting each alleged violation followed by the specific section and subsection of the law allegedly violated. Such statements shall include the names of persons committing specific complained of acts and the dates when such acts allegedly occurred; and

(e) The signature of the person filing the charge.

(3) Supporting Data. At the time the charge is filed, the charging party shall submit a written statement setting forth its version of the relevant facts, including names, dates, and places, together with any documentary evidence which may be relevant to the issues raised by the charge.



# ADMINISTRATIVE RULES

(4) Service of Charge. Concurrent with the filing of the charge, the filing party shall serve a copy of the charge upon the person against whom the charge is made and certify such service to the Board.

(5) Filing fee. A filing fee of \$300 must be paid at the time the charge is filed. Charges that are filed without a filing fee are subject to dismissal for that reason.

Stat. Auth.: ORS 240.086(3) & 243.766(7)  
Stats. Implemented: ORS 663.175 & 663.180  
Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 1-2007(Temp), f. 6-29-07, cert. ef. 7-1-07 thru 12-27-07; ERB 3-2007, f. 12-17-07, cert. ef. 12-26-07; ERB 1-2011(Temp), f. 6-30-11, cert. ef. 7-1-11 thru 12-28-11

## 115-070-0035

### Answer to the Complaint

(1) Answer. The respondent shall have 14 days from date of service of the complaint in which to file an answer. All allegations in the complaint not denied by the answer, unless the respondent shall state in the answer that he/she is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown. The answer will be deemed sufficient if it generally denies all allegations of the complaint. Respondent shall specifically admit by way of answer any undisputed allegations and shall set forth any affirmative defenses.

(2) Service of Answer. Upon filing an answer, the respondent shall serve a copy upon the charging party or his/her attorney of record. Proof of such service, setting forth the time and manner thereof, shall be filed with the answer.

(3) Filing Fee. A filing fee of \$300 must be paid by the respondent when the answer is filed. The answer will not be considered to be filed until the fee is paid.

Stat. Auth.: ORS 240.086(3) & 243.766(7)  
Stats. Implemented: ORS 663.185(2)  
Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 1-2007(Temp), f. 6-29-07, cert. ef. 7-1-07 thru 12-27-07; ERB 3-2007, f. 12-17-07, cert. ef. 12-26-07; ERB 1-2011(Temp), f. 6-30-11, cert. ef. 7-1-11 thru 12-28-11

## 115-070-0050

### Motions; Intervention

(1) Motions. All motions, including motions for intervention, shall be typewritten or, if made at the hearing, may be stated orally on the record and shall briefly state the order or relief sought and the grounds for such motion. Written motions shall be filed with the Board agent, together with proof of service of a copy thereof upon the other parties.

(2) Motions to Intervene. Any person desiring to intervene in any proceeding shall make a motion for intervention no later than seven days before the date set for hearing, stating the grounds upon which such person claims to have an interest in the proceeding. The Board Agent may permit intervention to such extent and upon such terms as he/she may deem proper.

(3) Filing Fee. A filing fee of \$300 must be paid by the intervenor when the motion for intervention is filed. The motion will not be considered to be filed until the fee is paid.

Stat. Auth.: ORS 240.086(3) & 243.766(7)  
Stats. Implemented: ORS 663.185(2) & ORS 663.190  
Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 1-2011(Temp), f. 6-30-11, cert. ef. 7-1-11 thru 12-28-11

## 115-080-0010

### Mediation

(1) Upon a request for mediation, the Board may, in its discretion, assign a mediator to the dispute, or it may decline and direct the parties to resume good faith bargaining. When a mediator is assigned to the dispute, both parties shall participate actively and in good faith in the mediation of the dispute.

(2) When mediation concerns negotiations over the terms of a collective bargaining agreement, the board will charge a fee for mediation services. The employer and the exclusive representative shall each pay one-half of the amount of the fee to the board. The fee charged by the board may not exceed:

- (a) \$1,000 for the first two mediation sessions (\$500 per party);
- (b) \$500 for the third mediation session (\$250 per party);
- (c) \$750 for the fourth mediation session (\$375 per party); and
- (d) \$1,000 for each additional mediation session (\$500 per party).

Stat. Auth.: ORS 240.086(3) & 243.766(7)  
Stats. Implemented: ORS 662.425(1)  
Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 1-2011(Temp), f. 6-30-11, cert. ef. 7-1-11 thru 12-28-11

## Landscape Contractors Board Chapter 808

**Rule Caption:** Adopt 2011–2013 Budget.

**Adm. Order No.:** LCB 5-2011

**Filed with Sec. of State:** 6-17-2011

**Certified to be Effective:** 6-17-11

**Notice Publication Date:** 5-1-2011

**Rules Amended:** 808-001-0008

**Subject:** 808-001-0008 — Adopts 2011–2013 budget.

**Rules Coordinator:** Kim Gladwill-Rowley—(503) 378-5909

### 808-001-0008

#### Operating Budget

Pursuant to ORS 182.462, the Board adopts the budget, for the biennium beginning July 1, 2011 and ending June 30, 2013, as approved at the Regular Board Meeting held June 16, 2011. The Board Administrator will amend budgeted accounts as necessary, within the approved budget for the effective operation of the Board. Copies of the budget are available at the Board's office.

Stat. Auth.: ORS 670.310 & 671.670  
Stats. Implemented: ORS 182.462  
Hist.: LCB 3-2003, f. 5-27-03, cert. ef. 6-1-03; LCB 3-2005, f. & cert. ef. 6-1-05; LCB 1-2006, f. 3-27-06, cert. ef. 4-1-06; LCB 2-2007, f. & cert. ef. 5-16-07; LCB 4-2009, f. 6-1-09 cert. ef. 7-1-09; LCB 5-2011, f. & cert. ef. 6-17-11

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**Rule Caption:** Adds requirement to show intention to subcontract work to contract standards.

**Adm. Order No.:** LCB 6-2011

**Filed with Sec. of State:** 6-17-2011

**Certified to be Effective:** 6-17-11

**Notice Publication Date:** 5-1-2011

**Rules Amended:** 808-002-0020

**Rules Repealed:** 808-002-0020(T)

**Subject:** 808-002-0020 — Adds requirement to show intention to subcontract work to contract standards

**Rules Coordinator:** Kim Gladwill-Rowley—(503) 378-5909

### 808-002-0020

#### Minimum Standards for Written Contracts and Billings

Landscaping contracts and subcontracts shall include, but not be limited to, the following:

- (1) Landscape contracting business name, license number, business address and telephone number;
- (2) Consumer's name and address;
- (3) Address or location of work to be performed if different from the consumer's address;
- (4) A list of plant materials, if any, together with the size and quantity;

- (5) General description of the work to be performed;
- (6) Estimated time for completion or estimated completion date;
- (7) Price and payment schedule;
- (8) Description of guarantee; if no guarantee such a statement shall be included;
- (9) Signatures of the authorized business representative and consumer;

(10) Statement that the business is licensed by the State Landscape Contractors Board and the current address and phone number of the board.

(11) Effective January 1, 2012: If subcontractors will be used for the performance of landscaping work, the contract must include a statement notifying the consumer that there will be subcontractors used to perform landscaping work.

Stat. Auth.: ORS 183, 671.670 & 670.310  
Stats. Implemented: ORS 671.625  
Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LC 2-1984, f. & ef. 10-2-84; LC 1-1985, f. & ef. 7-1-85; LC 1-1986, f. & ef. 1-3-86; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-020-0010 & 808-020-0020; LCB 1-1991, f. & cert. ef. 7-22-91; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LCB 1-2000, f. & cert. ef. 2-1-00; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08; LCB 7-2010, f. & cert. ef. 10-25-10; LCB 8-2010(Temp), f. 10-25-10, cert. ef. 10-26-10 thru 4-24-11; LCB 1-2011(Temp), f. 1-27-11, cert. ef. 1-28-11 thru 7-27-11; LCB 6-2011, f. & cert. ef. 6-17-11

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**Rule Caption:** Adds criteria for allowing continuing education hours for preparation and research for teaching or presenting.

**Adm. Order No.:** LCB 7-2011

**Filed with Sec. of State:** 6-17-2011

# ADMINISTRATIVE RULES

**Certified to be Effective:** 6-17-11

**Notice Publication Date:** 5-1-2011

**Rules Amended:** 808-040-0025, 808-040-0040

**Subject:** 808-040-0025 — Adds preparation and research for teaching or presenting criteria for determining the number of continuing education hours allowed.

808-040-0040 — Adds preparation and research for teaching or presenting as acceptable subject matter for continuing education hours.

**Rules Coordinator:** Kim Gladwill-Rowley—(503) 378-5909

## 808-040-0025

### Continued Education Programs

In order to qualify for CEH credit under these rules, a CEH program must be a formal program or board approved program of learning that contributes directly to the professional competence of the licensee

(1) Eligible Programs and Activities. The following programs will qualify for CEH credit provided they also meet the requirements of section (2) through (5) of this rule:

(a) Programs presented by national, state or local landscape industry organizations.

(b) Programs offered by a firm to licensees.

(c) Programs sponsored by organizations that provide professional educational programs.

(d) Correspondence courses or other individual independent study programs and activities do not qualify for CEH credit unless both the CEH sponsor and the specific CEH program or activity are approved by the Board prior to the offering of, presentation of, attendance of, or participation in the program or activity.

(e) Volunteering activities for industry related boards, commissions, and designated committees.

(f) Making presentations or teaching courses related to approved subjects for the CEH credit.

(2) Sponsored Program and Activity requirements. Sponsored CEH programs must meet the following requirements to qualify for CEH credit:

(a) An outline of the program is prepared in advance and preserved;

(b) The program must cover at least one of the topic areas listed in 808-040-0040;

(c) The program is at least one hour (fifty-minute period) in length;

(d) A record of attendance is maintained by the provider;

(e) The program is conducted by a qualified instructor or presenter whose background, training, education or experience qualifies the person to teach or lead a discussion on the subject matter of the particular program.

(f) Evidence of completion is provided to participating licensees in the form of a certificate that must include:

(A) Name of sponsoring institution, association or organization;

(B) Title of the presentation;

(C) Name of instructor or presenter;

(D) Date of presentation;

(E) Type of CEH;

(F) Number of approved CEH; and

(G) Signature of the instructor or presenter or official stamp of the sponsor signifying attendance and completion of the course.

(3) Correspondence and Independent Study courses. Correspondence courses or other individual independent study programs and activities must meet the following requirements to qualify for CEH credit:

(a) An outline of the program is prepared in advance and preserved;

(b) The program must cover at least one of the topic areas listed in 808-040-0040;

(c) The program is at least one hour (fifty-minute period) in length;

(d) A record of attendance is maintained by the provider; and

(e) The provider of the correspondence or independent study course is a qualified instructor or presenter whose background, training, education or experience qualifies the person to teach or lead a discussion on the subject matter of the particular course.

(4) Volunteering. Education opportunities that engage the licensee in volunteering must meet the following requirements to qualify for CEH credit. The volunteer activity must be directly related to the landscape construction industry, such as but not limited to:

(a) Serving on industry related boards, commissions or committees; or

(b) Providing a not-for-profit service to local or state entities for the enhancement and preservation of the environment or natural resources through landscape planning, installation and maintenance.

(5) Teaching and Presenting. Activities that engage the licensee in teaching and presenting courses must meet the following criteria to qualify for CEH credit:

(a) The licensee must be an actively licensed landscape construction professional;

(b) The licensee must have been actively licensed for a period of not less than five (5) years;

(c) An outline of the course is prepared in advance and preserved;

(d) The course must cover at least one of the topic areas listed in 808-040-0040;

(e) The course is at least one hour (fifty-minute period) in length;

(f) A record of attendance is maintained by the licensee;

(g) The course is presented for an education provider; a school, university or college; a landscape contracting business, or any industry related organization or association.;

(h) CEH credit is allowed for each 50 minute period completed as an instructor or discussion leader for the first presentation of the subject material;

(i) CEH credit for preparation and research time allowed for an instructor, discussion leader, or a speaker shall be calculated on the basis of two CEH hours of preparation and research in the CEH type of the presentation for each hour of presenting or teaching.

(j) The maximum CEH credit allowed for preparation and research under this section must not exceed one-half of the total number of CEH hours required for the renewal period;

(k) Preparation and research CEH may be available only for teaching a course or making a presentation in its initial presentation. CEH credit may be allowed for additional preparation and research if the substantive content of the program was substantially changed and the licensee provides evidence that such change required significant additional study or research;

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: Ch. 550 OL 2007

Hist.: LCB 8-2007, f. 12-24-07, cert. ef. 1-1-08; LCB 7-2011, f. & cert. ef. 6-17-11

## 808-040-0040

### Acceptable Subject Matter

The subjects listed in this rule serve as examples only, and are not all-inclusive.

(1) Technical Subjects. Subjects that may qualify for technical subjects include, but are not limited to:

(a) The construction and installation techniques for lawns, trees, vines, shrubs, nursery stock, erosion control, retaining walls, patios, decks, fences, driveways, walkways, arbors, landscape edging, drainage systems, water features, low voltage lighting, irrigation systems including backflow and backflow testing; and

(b) Subjects related to soil science, pesticide application; landscape design; landscape architecture; arboriculture; or horticulture; and

(c) Subjects related to landscape practices for sustainability and environmental issues including but not limited to:

(A) Storm water management,

(B) Living soils management;

(C) Water-wise site design and principles;

(D) Smart technologies;

(E) Low volume irrigation installation and management; or

(F) Integrated pest management.

(d) Preparation and Research for teaching or presenting; or

(e) Any other subject the Board determines applicable.

(2) Business Practice Subjects. Subjects that may qualify for business related subjects are:

(a) Accounting (cash flow, budgeting, pricing);

(b) Business law (liens, tax, employment, etc);

(c) Production and operation management;

(d) Client communication;

(e) Human resource management;

(f) Business management, marketing;

(g) Business ethics;

(h) Leadership;

(i) Storm water management;

(j) Smart technologies;

(k) Integrated pest management; or

(L) Preparation and research for teaching or presenting; or

(m) Any other subject the Board determines applicable.

(3) Other Acceptable Subjects. Subjects that may qualify as other subjects include, but are not limited to:

(a) Safety meetings;

(b) Voluntary OSHA inspections;

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- (c) First aid training;
  - (d) Classroom or seminar teaching of related subjects;
  - (e) Serving as a volunteer on landscape related Boards and Commissions or designated committees;
  - (f) providing a not-for-profit service to local or state entities for the enhancement and preservation of the environment or natural resources through landscape planning, installation and maintenance; or
  - (g) Any other subject the Board determines applicable.
- Stat. Auth.: ORS 670.310 & 671.670  
Stats. Implemented: Ch. 550 OL 2007  
Hist.: LCB 8-2007, f. 12-24-07, cert. ef. 1-1-08; LCB 7-2011, f. & cert. ef. 6-17-11

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**Oregon Board of Dentistry**  
**Chapter 818**

**Rule Caption:** Amends Administrative Rules regarding Fees and Continuing Education for Dentists and Dental Hygienists.

**Adm. Order No.:** OBD 3-2011(Temp)

**Filed with Sec. of State:** 6-30-2011

**Certified to be Effective:** 7-1-11 thru 12-27-11

**Notice Publication Date:**

**Rules Amended:** 818-001-0087, 818-021-0060, 818-021-0070

**Subject:** The Board is amending 818-001-0087 Fees to allow the Board to increase the Biennial License fees for Dentists and Dental Hygienists, to increase the fees for Limited Access Permit Dental Hygienists, and to create a fee for Expanded Practice Dental Hygienists effective July 1, 2011.

The Board is amending 818-021-0060 Continuing Education — Dentists to clarify that continuing education credit for volunteer pro bono dental services must be in Oregon.

The Board is amending 818-021-0070 Continuing Education — Dental Hygienists to clarify that continuing education credit for volunteer pro bono dental hygiene services must be in Oregon.

**Rules Coordinator:** Sharon Ingram—(971) 673-3200

## 818-001-0087

### Fees

- (1) The Board adopts the following fees:
  - (a) Biennial License Fees:
    - (A) Dental — \$315;
    - (B) Dental — retired — \$0;
    - (C) Dental Faculty — \$260;
    - (D) Volunteer Dentist — \$0;
    - (E) Dental Hygiene — \$155;
    - (F) Dental Hygiene — retired — \$0;
    - (G) Volunteer Dental Hygienist — \$0.
  - (b) Biennial Permits, Endorsements or Certificates:
    - (A) Nitrous Oxide Permit — \$40;
    - (B) Minimal Sedation Permit — \$75;
    - (C) Moderate Sedation Permit — \$75;
    - (D) Deep Sedation Permit — \$75;
    - (E) General Anesthesia Permit — \$140;
    - (F) Radiology — \$75;
    - (G) Expanded Function Dental Assistant — \$50;
    - (H) Expanded Function Orthodontic Assistant — \$50;
    - (I) Instructor Permits — \$40;
    - (J) Dental Hygiene, Limited Access Permit — \$75;
    - (K) Dental Hygiene Restorative Functions Endorsement — \$50;
    - (L) Restorative Functions Dental Assistant — \$50;
    - (M) Anesthesia Dental Assistant — \$50;
    - (N) Dental Hygiene, Expanded Practice Permit — \$75.
  - (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 requests a refund in writing within one year of payment to the Board.

Stat. Auth.: ORS 679 & 680  
Stats. Implemented: ORS 293.445, 679.060, 679.120, 679.250, 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. 10-21-09, cert. ef. 11-1-09; OBD 1-2010, f. 6-22-10, cert. ef. 7-1-10; OBD 3-2011(Temp), f. 6-30-11, cert. ef. 7-1-11 thru 12-27-11

## 818-021-0060

### Continuing Education — Dentists

(1) Each dentist must complete 40 hours of continuing education every two years. Continuing education (C.E.) must be directly related to clinical patient care or the practice of dental public health.

(2) Dentists must maintain records of successful completion of continuing education for at least four licensure years consistent with the licensee's licensure cycle. (A licensure year for dentists is April 1 through March 31.) The licensee, upon request by the Board, shall provide proof of successful completion of continuing education courses.

(3) Continuing education includes:

(a) Attendance at lectures, study clubs, college post-graduate courses, or scientific sessions at conventions.

(b) Research, graduate study, teaching or preparation and presentation of scientific sessions. No more than 12 hours may be in teaching or scientific sessions. (Scientific sessions are defined as scientific presentations, table clinics, poster sessions and lectures.)

(c) Correspondence courses, videotapes, distance learning courses or similar self-study course, provided that the course includes an examination and the dentist passes the examination.

(d) Continuing education credit can be given for volunteer pro bono dental services provided in the state of Oregon; community oral health instruction at a public health facility located in the state of Oregon; authorship of a publication, book, chapter of a book, article or paper published in a professional journal; participation on a state dental board, peer review, or quality of care review procedures; successful completion of the National Board Dental Examinations taken after initial licensure; a recognized specialty examination taken after initial licensure; or test development for clinical dental, dental hygiene or specialty examinations. No more than 6 hours of credit may be in these areas.

(4) At least three hours of continuing education must be related to medical emergencies in a dental office. No more than four hours of Practice Management and Patient Relations may be counted toward the C.E. requirement in any renewal period.

(5) All dentists licensed by the Oregon Board of Dentistry will complete a one-hour pain management course specific to Oregon provided by the Pain Management Commission of the Oregon Health Authority. All applicants or licensees shall complete this requirement by January 1, 2010 or within 24 months of the first renewal of the dentist's license.

Stat. Auth.: ORS 679  
Stats. Implemented: ORS 679.250(9)  
Hist.: DE 3-1987, f. & ef. 10-15-87; DE 4-1987(Temp), f. & ef. 11-25-87; DE 1-1988, f. 12-28-88, cert. ef. 2-1-89; DE 1-1989, f. 1-27-89, cert. ef. 2-1-89; Renumbered from 818-020-0072; DE 1-1990, f. 3-19-90, cert. ef. 4-2-90; OBD 9-2000, f. & cert. ef. 7-28-00; OBD 16-2001, f. 12-7-01, cert. ef. 4-1-02; OBD 3-2007, f. & cert. ef. 11-30-07; OBD 2-2009, f. 10-21-09, cert. ef. 11-1-09; OBD 3-2011(Temp), f. 6-30-11, cert. ef. 7-1-11 thru 12-27-11

## 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.



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(2) Dental hygienists must maintain records of successful completion of continuing education for at least four licensure years consistent with the licensee's licensure cycle. (A licensure year for dental hygienists is October 1 through September 30.) The licensee, upon request by the Board, shall provide proof of successful completion of continuing education courses.

(3) Continuing education includes:

(a) Attendance at lectures, study clubs, college post-graduate courses, or scientific sessions at conventions.

(b) Research, graduate study, teaching or preparation and presentation of scientific sessions. No more than six hours may be in teaching or scientific sessions. (Scientific sessions are defined as scientific presentations, table clinics, poster sessions and lectures.)

(c) Correspondence courses, videotapes, distance learning courses or similar self-study course, provided that the course includes an examination and the dental hygienist passes the examination.

(d) Continuing education credit can be given for volunteer pro bono dental hygiene services provided in the state of Oregon; community oral health instruction at a public health facility located in the state of Oregon; authorship of a publication, book, chapter of a book, article or paper published in a professional journal; participation on a state dental board, peer review, or quality of care review procedures; successful completion of the National Board Dental Hygiene Examination, taken after initial licensure; or test development for clinical dental hygiene examinations. No more than 6 hours of credit may be in these areas.

(4) At least three hours of continuing education must be related to medical emergencies in a dental office. No more than two hours of Practice Management and Patient Relations may be counted toward the C.E. requirement in any renewal period.

(5) Dental hygienists who hold a Nitrous Oxide Permit must meet the requirements contained in OAR 818-026-0040(9) for renewal of the Nitrous Oxide Permit.

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; OBD 3-2011(Temp), f. 6-30-11, cert. ef. 7-1-11 thru 12-27-11

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## Oregon Business Development Department Chapter 123

**Rule Caption:** These rules update the Strategic reserve Fund, First Source Hiring Agreement section.

**Adm. Order No.:** OBDD 3-2011

**Filed with Sec. of State:** 6-30-2011

**Certified to be Effective:** 7-1-11

**Notice Publication Date:** 6-1-2011

**Rules Amended:** 123-090-0050

**Subject:** First source hiring agreements are necessary when a firm receives an award of more than \$50,000 through the Strategic Reserve Fund. This amendment changes the \$50,000 amount to \$100,000. This amendment will now coincide with the First Source Hiring Agreement rules under 123-070-1150.

**Rules Coordinator:** Mindee Sublette—(503) 986-0036

**123-090-0050**

**First Source Hiring**

Any firm receiving an award of more than \$100,000 through the Strategic Reserve Fund shall enter into a first source agreement in accordance with division 70 of this chapter of administrative rules.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.266

Hist.: EDD 7-2000, f. & cert. ef. 4-11-00; EDD 7-2007, f. & cert. ef. 8-30-07; OBDD 3-2011, f. 6-30-11, cert. ef. 7-1-11

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## Oregon Department of Education Chapter 581

**Rule Caption:** Modifies rule relating to administration of state assessments by school district.

**Adm. Order No.:** ODE 7-2011

**Filed with Sec. of State:** 7-1-2011

**Certified to be Effective:** 7-1-11

**Notice Publication Date:** 2-1-2011

**Rules Amended:** 581-022-0610

**Subject:** Removes paper-based Braille as an administration option for Oregon Assessment of Knowledge and Skills (OAKS). Starting in 2011–12, ODE will provide access to OAKS for students using Braille through the OAKS Online System. ODE proposes this rule to go into effect in upon filing.

**Rules Coordinator:** Diane Roth—(503) 947-5791

**581-022-0610**

**Administration of State Assessments**

(1) Definitions. As used in this rule:

(a) "Accommodations" means practices and procedures in presentation, response, setting, and timing or scheduling that, when used in an assessment, provide equitable access to all students. Accommodations do not compromise the learning expectations, construct, grade-level standard, or measured outcome of the assessment as determined by the Oregon Accommodations Panel established by the Oregon Department of Education (ODE).

(b) "Allowable resources" means subject-specific resources identified as allowable in the Test Administration Manual that are made available to students by a test administrator during a testing event. Allowable resources are not student-specific, and their use does not invalidate test results. Allowable resources are the only resources that districts may give to students during administration of an Oregon Statewide Assessment.

(c) "District test coordinator" (DTC) means district personnel who ensure secure administration of Oregon Statewide Assessments as defined by Oregon Revised Statute, Administrative Rules, and the Test Administration Manual, including but not limited to supervising the work of the school test coordinators and test administrators.

(d) "Force majeure" means an extraordinary circumstance (e.g., power outage or network disturbance lasting at least one full school day) or act of nature (e.g., flooding, earthquake, volcano eruption) which directly prevents a school district from making reasonable attempts to adhere to the Test Schedule.

(e) "Impropriety" means the administration of an Oregon Statewide Assessment in a manner not in compliance with the Test Administration Manual, Oregon Revised Statute, or this rule.

(f) "Invalidation" means the act of omitting test results and student responses from the testing, reporting, and accountability systems for a given testing event for which the student may not retest.

(g) "Irregularity" means an unusual circumstance that impacts a group of students who are testing and may potentially affect student performance on the assessment or interpretation of the students' scores. A force majeure is an example of a severe irregularity.

(h) "Modification" means practices and procedures that compromise the intent of the assessment through a change in the achievement level, construct, or measured outcome of the assessment.

(i) "OAKS Online" means the secure web-based testing application used to deliver the Oregon Assessment of Knowledge and Skills (OAKS) and the English Language Performance Assessment (ELPA).

(j) "Oregon Statewide Assessments" means:

(A) The Oregon Assessment of Knowledge and Skills (OAKS) in:

(i) Reading/Literature;

(ii) Mathematics;

(iii) Science;

(iv) Social Sciences;

(B) The Writing Performance Assessment;

(C) The English Language Proficiency Assessment (ELPA); and

(D) The Extended Assessment in:

(i) Reading/Literature;

(ii) Mathematics;

(iii) Science

(k) "Reset" means the removal of student responses from the web-based testing application for a given testing event for which the student may retest.

(l) "School building" means facilities owned, leased, or rented by a school district, educational service district, public charter school, private school, or private alternative program.

(m) "School district" means:

(A) A school district as defined in ORS 332.002;

(B) The Oregon School for the Deaf;

(C) The Juvenile Detention Education Program as defined in ORS 326.695;

(D) The Youth Corrections Education Program as defined in ORS 326.695;

(E) The Long Term Care Program as defined in ORS 343.961; and

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(F) The Hospital Education Programs as defined in ORS 343.261.

(n) "School test coordinator" (STC) means school personnel who provide comprehensive training to test administrators and monitor the testing process.

(o) "Test Administration Manual" means a manual published annually by ODE that includes descriptions of the specific policies and procedures that school districts are required to follow when administering any component of the Oregon Statewide Assessments. References to the Test Administration Manual refer to the edition in effect at the time of test administration and include appendices and any addenda published in accordance with ODE's revision policy.

(p) "Test administrator" (TA) means an individual trained to administer the Oregon Statewide Assessments in accordance with the Test Administration Manual.

(q) "Test Schedule" means the Test Schedule and Required Ship Dates published annually by ODE that includes the windows in which school districts must offer their students the Oregon Statewide Assessments and the deadline by which DTCs must ship or postmark test materials.

(2) (a) School districts, as defined in ORS 332.002, must enforce the assessment policies described in this rule for all students enrolled in a school operated by the district or enrolled in a public charter school that is located within the boundaries of the school district.

(b) School districts, as defined in ORS 332.002, must enforce the assessment policies described in this rule for all resident students enrolled in a private alternative education program, regardless of whether the private alternative education program is located within the boundaries of the school district.

(c) The Oregon School for the Deaf must enforce the assessment policies described in this rule for all students enrolled in that school.

(d) The Juvenile Detention Education Program and the Youth Corrections Education Program must enforce the assessment policies described in this rule for all students enrolled in that program.

(e) The Long Term Care Program and the Hospital Education Programs must enforce the assessment policies described in this rule for all students enrolled in that program.

(f) School districts may delegate responsibility for enforcing the assessment policies described in this rule to another school district or education service district under the conditions specified in the Test Administration Manual.

(3) School districts must administer Oregon Statewide Assessments in accordance with the Test Administration Manual and Test Schedule published by ODE. School districts must use student assessment data in accordance with the Adequate Yearly Progress (AYP) Policy and Technical Manual published annually by ODE. The results of these assessments are used to satisfy the requirements specified in OAR 581-022-1670 and 581-022-0606 and as a method to evaluate compliance with OAR 581-022-1210.

(4) School districts must ensure that students are administered the proper Oregon Statewide Assessment and that the testing environment satisfies the following testing conditions:

(a) School districts must ensure that Oregon Statewide Assessments are administered by a trained TA who has signed an Assurance of Test Security form for the current school year on file in the district office;

(b) School districts must administer Oregon Statewide Assessments in a school building or in an environment that otherwise complies with the Test Administration Manual;

(c) School districts must apply the following criteria in deciding whether to provide a student with an accommodation during administration of an Oregon Statewide Assessment:

(A) School districts must decide whether to provide accommodations during an assessment on an individual student basis and separately for each content area to be assessed; and

(B) For students with an Individualized Education Plan (IEP) or 504 Plan, school districts must implement the assessment decision made by a student's IEP or 504 team and documented in the IEP or 504 Plan;

(d) School districts may only administer modifications to students with an IEP or 504 Plan and only in accordance with the assessment decision made by the student's IEP or 504 team and documented in the IEP or 504 Plan. Before administering an assessment using a modification, a student's IEP or 504 team must inform the student's parent that the use of a modification on an OAKS assessment will result in an invalid assessment;

(e) School districts must provide only those subject-specific allowable resources listed in the Test Administration Manual;

(f) School districts must ensure that students do not access electronic communication devices such as cellular phones or personal digital assistants (PDAs) during an assessment; and

(g) School districts must follow all additional testing conditions specified in the Test Administration Manual.

(5) Failure by a school district to comply with Section (4) of this rule constitutes an impropriety as defined in Section 1(e) of this rule. DTCs must report all potential improprieties or irregularities to ODE within one business day of learning of the potential impropriety or irregularity in accordance with the reporting procedures contained in the Test Administration Manual.

(6) The ODE may invalidate assessment results and student responses for assessments administered under conditions not meeting the assessment administration requirements specified in Sections 3 and 4 of this rule. In rare instances, ODE may reset a student assessment at the request of the school district if ODE determines that a reset would not compromise the security or validity of the assessment.

(7) ODE counts assessments that meet the following conditions as non-participants in ODE calculations of participation and does not include such assessments in ODE calculations of performance:

(a) OAKS Assessments administered using modifications as defined in Section 1(h) of this rule;

(b) Invalidated assessments;

(c) Assessments administered outside the testing window specified in the Test Schedule; or

(d) Assessments shipped or postmarked after the dates identified in the Test Schedule.

(8) ODE only allows extensions to the testing window or shipping deadlines identified in the Test Schedule in cases where a force majeure occurs within three days of the close of the testing window or shipping deadline and prevents a school district from meeting the deadline. Upon receiving a force majeure extension request from the school district, ODE may permit a one-day extension of the testing window or shipping deadline for each day of the force majeure, for up to five days. The force majeure extension begins on the first school day after normal operations resume and ends no later than the last school day in the month in which the testing window closes.

(9) (a) School districts must use OAKS Online when administering OAKS and ELPA.

(b) School districts may only assess students using the Extended Assessment instead of OAKS if the student has an IEP Plan and the student's Plan indicates separately for each content area to be assessed that the student requires the Extended Assessment.

(10) School districts may only provide students with access to printed test items or reading passages from OAKS Online if:

(a) The TA administering the testing session approves the student's request to print a test item or reading passage;

(b) The printer used to print test items or reading passages is monitored by staff who have received test security training and signed an Assurance of Test Security Form for the current school year;

(c) Staff who have received test security training and signed an Assurance of Test Security Form for the current school year securely shred the printed test items or reading passages immediately after the testing session in which the test was administered in accordance with the Test Administration Manual.

(11) School districts must administer ELPA annually to all students determined by the school district to be eligible for English language development (ELD) services under Title III of the No Child Left Behind Act of 2001 (NCLB), regardless of whether an eligible student actually receives ELD services.

Stat. Auth.: ORS 326.051 & 329.075

Stats. Implemented: ORS 329.075 & 329.485

Hist.: IEB 2-1985, f. 1-4-85, ef. 1-7-85; EB 14-1990(Temp), f. & cert. ef. 3-5-90; ODE 6-2002(Temp), f. & cert. ef. 2-15-02 thru 6-30-02; ODE 16-2002, f. & cert. ef. 6-10-02; ODE 30-2008, f. 12-16-08, cert. ef. 12-19-08; ODE 12-2009, f. & cert. ef. 12-10-09; ODE 7-2010, f. & cert. ef. 5-27-10; ODE 7-2011, f. & cert. ef. 7-1-11

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**Rule Caption:** Modifies requirements relating to local assessment options.

**Adm. Order No.:** ODE 8-2011

**Filed with Sec. of State:** 7-1-2011

**Certified to be Effective:** 7-1-11

**Notice Publication Date:** 2-1-2011

**Rules Amended:** 581-022-0615

# ADMINISTRATIVE RULES

**Subject:** The proposed revision to OAR 581-22-0615 (Assessment of Essential Skills) serves a twofold purpose:

Eliminates the requirement for the Assessment of Essential Skills Review Panel (AESRP) to recommend criteria for the local assessment option; and

Requires school districts to make public certain documentation, should they elect to utilize the local assessment option.

**Rules Coordinator:** Diane Roth—(503) 947-5791

## 581-022-0615

### Assessment of Essential Skills

(1) Definitions. As used in this rule:

(a) "Assessment option" means an assessment approved to assess proficiency in the Essential Skills for the purpose of earning a high school diploma or a modified diploma.

(b) "Essential Skills" means process skills that cross academic disciplines and are embedded in the content standards. The skills are not content specific and can be applied in a variety of courses, subjects, and settings.

(c) "Local performance assessment" means a standardized measure (e.g., activity, exercise, problem, or work sample scored using an official state scoring guide), embedded in the school districts' and public charter schools' curriculum that evaluates the application of students' knowledge and skills.

(d) "Official state scoring guide" means an evaluation tool designed for scoring student work that includes specific, consistent assessment criteria for student performance and a 1-6 point scale to help rate student work. It is used by Oregon teachers to evaluate student work samples.

(e) "Student-initiated test impropriety" means student conduct that:

(A) Is inconsistent with:

(i) The Test Administration Manual; or

(ii) Accompanying guidelines; or

(B) Results in a score that is invalid.

(f) "Work sample" means a representative sample of individual student work (e.g., research papers, statistical experiments, speaking presentations, theatrical performances, work experience) that may cover one or more content areas and therefore may be scored using one or more official state scoring guide(s). At the high school level, a work sample can be used to fulfill both the local performance assessment requirement described in Section 2 of this rule and the Essential Skills requirement described in Section 3 of this rule.

(2) School districts and public charter schools that offer grades 3 through 8 or high school shall administer local performance assessments for students in grades 3 through 8 and at least once in high school. For each skill area listed in section (17) of this rule, the assessments shall consist of:

(a) One work sample per grade scored using official state scoring guides; or

(b) Comparable measures adopted by the district.

(3) School districts and public charter schools shall require high school students to demonstrate proficiency in the Essential Skills using assessment options that are approved by the State Board of Education for the purpose of student eligibility for:

(a) The high school diploma as established in OAR 581-022-1130; or

(b) The modified diploma as established in OAR 581-022-1134.

(4) Pursuant to ORS 339.115 and 339.505, school districts and public charter schools shall provide any eligible student with instruction in and multiple assessment opportunities to demonstrate proficiency in the Essential Skills for the purpose of achieving the high school diploma or the modified diploma.

(5) To be eligible to receive a high school diploma or a modified diploma:

(a) For students first enrolled in grade 9 during the 2008-2009 school year, school districts and public charter schools shall require students to demonstrate proficiency in the Essential Skill listed in section (16)(a) of this rule: Read and comprehend a variety of text.

(b) For students first enrolled in grade 9 during the 2009-2010 school year, school districts and public charter schools shall require students to demonstrate proficiency in the Essential Skills listed in sections (16)(a)-(b) of this rule:

(A) Read and comprehend a variety of text; and

(B) Write clearly and accurately.

(c) For students first enrolled in grade 9 during the 2010-2011 school year, school districts and public charter schools shall require students to demonstrate proficiency in the Essential Skills listed in section (16)(a)-(c) of this rule:

(A) Read and comprehend a variety of text;

(B) Write clearly and accurately; and

(C) Apply mathematics in a variety of settings.

(d) For students first enrolled in grade 9 during the 2011-2012 school year or first enrolled in grade 9 in any subsequent school year, school districts and public charter schools shall require students to demonstrate proficiency in the Essential Skills listed in Section 16(a)-(c) of this rule and any additional Essential Skills for which:

(A) The State Board of Education has adopted the determination to phase in for inclusion in the high school diploma and modified diploma requirements; and

(B) The State Board of Education has adopted assessment options by March 1 of the student's 8th grade year.

(e) School districts and public charter schools may require students to demonstrate proficiency in additional Essential Skills beyond the minimum requirements described in section (5)(a)-(d) of this rule.

(6) The Superintendent of Public Instruction shall establish an Assessment of Essential Skills Review Panel (AESRP) to make recommendations on:

(a) The phasing in of Essential Skills for inclusion in the high school diploma and the modified diploma requirements;

(b) The adoption of assessment options to measure students' proficiency in the approved Essential Skills for the purpose of the high school diploma or the modified diploma; and

(c) The achievement standards used to determine student eligibility for the high school diploma or the modified diploma.

(7) The AESRP shall work toward the goal of a system with a high degree of technical adequacy and equivalent rigor between assessment options as practicable.

(8) The AESRP shall base its recommendations on evidence provided by:

(a) School districts;

(b) Research organizations; and

(c) Other experts.

(9) The AESRP shall consist of assessment experts from:

(a) School districts, including but not limited to:

(A) Superintendents;

(B) Principals;

(C) Curriculum Directors;

(D) Educators;

(E) Special education educators; and

(F) English Language Learners (ELL) educators;

(b) Post-secondary education institutions; and

(c) Business partners who have expertise in:

(A) Assessment design;

(B) Assessment administration; or

(C) Use of assessments

(10) The State Board of Education shall make the determination to adopt the AESRP's recommended assessment options, and achievement standards for the purpose of conferring high school diplomas and modified diplomas. The determination of the State Board of Education will be final and not subject to appeal.

(11) The ODE shall issue the State Board of Education's intentions regarding the AESRP's recommendations by December 15 of each year and formal notice of the State Board of Education's final determination regarding the AESRP's recommendations by March 1 of each year as an addendum to the Test Administration Manual, which the ODE shall issue by August 1 of each year.

(12) School districts and public charter schools shall adhere to the requirements set forth in the Test Administration Manual to:

(a) Administer;

(b) Score;

(c) Manage; and

(d) Document the district and school assessments of students' proficiency in the Essential Skills required to receive a high school diploma or a modified diploma.

(13) School districts and public charter schools shall establish conduct and discipline policies addressing student-initiated test impropriety.

(14) School districts and public charter schools shall allow students to use assessment options and achievement standards adopted by the State Board of Education in a student's ninth through twelfth grade years as follows:

(a) Students may demonstrate proficiency in the Essential Skills using assessment options adopted in their ninth through twelfth grade years.



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(b) Students may use achievement standards adopted in their 9th through 12th grade years that are equal to or lower than the achievement standards approved as of March 1 of the students' 8th grade year.

(15) Districts may develop and administer a local assessment option for students to demonstrate proficiency in the Essential Skills, using established professional and technical standards in place of the assessment options adopted by the State Board of Education as described in section 14 of this rule. Districts that choose this option are required to publish:

(a) A communication strategy to ensure stakeholders are notified of the district's approach to the local assessment option; and

(b) Materials written in plain language that contain descriptions of the

(A) Purpose of the assessment;

(B) Scoring methodology;

(C) Method by which students and parents will receive results from the assessment;

(D) Criteria for determining student proficiency using the assessment; and

(E) Criteria for determining which students will have access to the assessment

(16) The ODE shall publish the subset of Essential Skills assessment options and the associated performance levels which may be used by each of Oregon's post-secondary institutions as defined by those institutions' policies provided to the ODE by October 15 of each year.

(17) The Essential Skills identified by the State Board of Education as of July 1, 2008 are as follows:

(a) Read and comprehend a variety of text;

(b) Write clearly and accurately;

(c) Apply mathematics in a variety of settings;

(d) Listen actively and speak clearly and coherently;

(e) Think critically and analytically;

(f) Use technology to learn, live, and work;

(g) Demonstrate civic and community engagement;

(h) Demonstrate global literacy; and

(i) Demonstrate personal management and teamwork skills.

(18) School districts and public charter schools shall include one or more local performance assessments for grades 3 through 8 and for high school for each of the following skill areas:

(a) Writing;

(b) Speaking;

(c) Mathematical problem-solving; and

(d) Scientific inquiry.

(19) School districts and public charter schools may include one social science analysis work sample that is administered in accordance with school district or public charter school policies as a local performance assessment for grades 3 through 8 and for high school.

(20) For students on an Individualized Education Plan (IEP) or 504 Plan, if a student's IEP or 504 Team determines that the nature of a student's disability prevents the student from demonstrating proficiency in an Essential Skill using any of the approved assessment options listed in the Test Administration Manual, the student's IEP Team may exempt the student from the requirement as listed in the Test Administration Manual and determine an appropriate replacement assessment option for the student to use that addresses the Essential Skill in a manner that is consistent with:

(a) The student's instructional plan; and

(b) The state assessment criteria adopted by the State Board of Education.

(21) For students seeking a modified diploma, school districts and public charter schools may modify the assessment options adopted by the State Board of Education when the following conditions are met:

(a) For students on IEP or 504 Plans:

(A) School districts and public charter schools must comply with all requirements established by the student's IEP or 504 Plan when implementing modifications for work samples;

(B) School districts and public charter schools must comply with OAR 581-022-0610 section (4)(d) when implementing modifications for a statewide assessment.

(b) For students not on IEP or 504 Plans:

(A) School districts and public charter schools may only implement modifications for work samples that are consistent with the modifications the student has received during instruction in the content area to be assessed in the year in which the work sample is administered.

(B) School districts and public charter schools must obtain approval from the school team responsible for monitoring the student's progress toward the modified diploma before implementing modifications for work samples.

(C) Consistent with OAR 581-022-0610, school districts and public charter schools may not implement modifications for statewide assessments for students who are not on an IEP or 504 Plan.

Stat. Auth.: ORS 329.451, 338.025, 339.115 & 339.505

Stats. Implemented: 329.045, 329.075, 329.451, 329.485 & 338.115

Hist.: ODE 17-2008, f. & cert. ef. 6-27-08; ODE 10-2009(Temp), f. & cert. ef. 9-1-09 thru 2-28-10; ODE 19-2009, f. & cert. ef. 12-10-09; ODE 8-2011, f. & cert. ef. 7-1-11

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**Rule Caption:** Updates minimum standards for retrofit of school buses.

**Adm. Order No.:** ODE 9-2011

**Filed with Sec. of State:** 7-1-2011

**Certified to be Effective:** 7-1-11

**Notice Publication Date:** 5-1-2011

**Rules Adopted:** 581-053-0516

**Rules Amended:** 581-053-0512

**Rules Repealed:** 581-056-0517

**Subject:** Updates minimum standards for school buses that are used for the first time in Oregon and combines chassis and body requirements into one rule.

Repeals separate rule regarding minimum standards for school bus bodies. Creates separate minimum standards that apply to all buses regardless of purchase or manufacture date.

Oregon Revised Statute 820.100 directs the State Board of Education to adopt vehicle standards for school buses consistent with national standards. National standards are updated every five years at the National Congress on School Transportation. Oregon is an active participant in this congress. Updates in this rule ensure that our standards are in line with national standards.

In the past, school bus bodies were purchased separately from chassis that were normally made by a truck manufacturer. Because of this process, rules were adopted for both parts of the school bus separately. School bus manufacturing has become more streamlined and most school buses are built from the ground up by one company and all school buses use chassis that are purpose built for the school bus industry.

Currently retrofit standards are part of OAR 581-053-0512 "Minimum Standards for School Bus Chassis" and OAR 581-053-0517 "Minimum Standards for School Bus Bodies." In order to make our rules more understandable, both of these OARs have been combined. Removing the retrofit standards out of the minimum standards for new school buses into their own rule, will further clarify the Department's intent in rule.

**Rules Coordinator:** Diane Roth—(503) 947-5791

## 581-053-0512

### Minimum Standards for School Bus Chassis

(1) Air Cleaner:

(a) The engine intake air cleaner shall be furnished and properly installed by the chassis manufacturer to meet engine specifications;

(b) All Type C and Type D buses equipped with diesel engines shall have an air cleaner restriction indicator properly installed by the chassis manufacturer to meet engine specifications.

(2) Air System: All buses equipped with air systems for brakes shall provide and identify an appropriate air port for plumbing in air powered accessories.

(3) Air-Operated Accessories: Air-operated accessories shall be plumbed into the vehicle's air supply system in compliance with all the following:

(a) Safeguarded by a check valve or equivalent device located between the air supply system and the accessory to prevent air loss due to accessory failure. This shall include the supply line for a designated accessory air tank;

(b) Connected to the air supply system in compliance with all applicable Federal Motor Vehicle Safety Standards;

(c) Connected in the manner prescribed by the vehicle manufacturer.

(4) Aisle: Minimum clearance of all aisles shall be 12 inches;

(5) Axles: The front and rear axles and suspension systems shall have a gross axle weight rating at ground commensurate with the respective front and rear weight loads of the bus loaded to the rated passenger capacity;

(6) Back-up camera: A back-up camera may be installed. The camera housing shall not block any signage or lights that are required. The monitor

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for the back-up camera system shall not block the view of any window, gauges, or required indicator lights. The monitor shall only work when the transmission is in reverse.

(7) Body Construction:

(a) Construction shall be of prime commercial quality steel, or other metal, or other material with strength at least equivalent to all-steel as certified by bus body manufacturer;

(b) Construction shall provide a water-tight and reasonably dustproof unit;

(c) Must meet or exceed applicable federal motor vehicle safety standards for construction, effective December 2, 1993.

(8) Body Sizes: Body manufacturer shall determine the vehicle's maximum designed and equipped passenger capacity and post it on the vehicle with the GVWR and vehicle compliance information.

(9) Brakes:

(a) Air brakes are required on all buses having a manufacturer's gross vehicle weight rating of 26,001 pounds or greater;

(b) Buses using air or vacuum in the operation of the brake system shall be equipped with warning signals, readily audible and visible to the driver, that will give a continuous warning when the air pressure available in the system for braking is 60 psi (pounds per square inch) or less or the vacuum in the system available for braking is 8 inches of mercury or less. An illuminated gauge shall be provided that will indicate to the driver, the air pressure in pounds per square inch available for the operation of the brake.

(A) Vacuum-assist brake systems shall have a reservoir used exclusively for brakes which shall be adequate to ensure loss in vacuum at full stroke application of not more than 30 percent with engine not running. Brake system on gas-powered chassis shall include suitable and convenient connections for the installation of separate vacuum reservoir;

(B) Any brake system dry reservoir shall be so safeguarded by a check valve or equivalent device, that in the event of failure or leakage in its connection to the source of compressed air or vacuum, the stored dry air or vacuum shall not be depleted by the leakage or failure.

(c) Buses using a hydraulic assist-booster in the operation of brake system shall be equipped with a warning signal, readily audible and visible to the driver, which will provide continuous warning in the event of a loss of fluid pressure from primary source or loss of electric source powering the backup system;

(d) The brake lines and booster-assist lines shall be protected from excessive heat and vibrations and be so installed as to prevent chafing;

(e) All brake systems shall be designed to permit visual inspection of brake lining wear without removal of any chassis components except for inspection dust covers or wheels;

(f) Air brake systems shall be equipped with manual drain valves on all air tanks. A provision shall be made to operate manual drain valve(s) on first (wet) reservoir(s) from the side of the bus unless one of the following options is provided:

(A) Automatic moisture ejector on the first (wet) reservoir;

(B) An air dryer that has the drying ability to insure an adequate margin of safety under normal and adverse operating conditions;

(C) Skirt-mounted controls for manual drain valve(s) shall not extend beyond the outer side of bus skirt panel.

(10) Bumper (Front):

(a) The bumper on Type A-2, B, C, and D buses shall be equivalent in strength and durability to pressed steel channel at least 3/16 inches thick and not less than 8 inches wide (high). It shall extend beyond the forward-most part of the body, grille, hood and fenders and shall extend to the outer edges of the fenders at the bumper's top line.

(b) Type A-1 buses may be equipped with an OEM-supplied bumper.

(c) The bumper shall be of sufficient strength to permit pushing or being pushed by another vehicle with the same GVWR on a smooth surface with a five degree (8.7 percent) grade, without permanent distortion to the bumper, chassis, or body.

(d) The bumper shall be designed or reinforced so that it will not deform when the bus is lifted by a chain that is attached to both tow hooks when the bus is empty and positioned on a level, hard surface and both tow hooks share the load equally.

(e) Deer guards may be added to a front bumper to protect the front grill. Deer guards shall not be in any portion of the driver's forward view, including use of all mirrors.

(11) Bumper (Rear):

(a) Rear bumper for all body on chassis units shall be of pressed steel channel or equivalent material at least 3/16-inch thick and eight inches wide

(high), and of sufficient strength to permit pushing by another vehicle without distortion;

(b) Bumper for all body on chassis units shall wrap around back corners of bus. It shall extend forward at least 12 inches, measured from rear-most point of body at floor line;

(c) Bumper shall be attached to chassis frame in such manner that it may be easily removed, shall be so braced as to develop full strength of bumper section from rear or side impact, and shall be so attached as to prevent the insertion of small fingers between the body and bumper;

(d) Bumper shall extend beyond rear-most part of body surface at least one inch, measured at floor line;

(e) An energy absorbing rear bumper may be used providing a self-restoring energy absorbing bumper system so attached as to prevent the hitching of rides and of sufficient strength to permit pushing by another vehicle without permanent distortion to the bumper, chassis, or body;

(f) The manufacturer of the energy absorbing system shall provide evidence from an approved test facility (capable of performing the above FMVSS tests) that their product conforms to the above.

(12) Certification: Manufacturer will, upon request, certify to the Oregon Department of Education that their product meets minimum standards on items not covered by FMVSS certification requirements of 49 CFR, Part 567.

(13) Chains, Automatic: Automatic tire chains (traction) may be installed at drive wheels in conformance with manufacturer specifications and any applicable chassis manufacturer standards. (Note: Air-applied chain systems must comply with air-operated accessory requirement included in this rule.)

(14) Clutch:

(a) Clutch torque capacity shall be equal to or greater than, the engine torque output;

(b) A starter interlock shall be installed to prevent actuation of the starter if the clutch is not depressed on all buses manufactured after January 1, 1999.

(15) Color:

(a) Chassis and bumpers shall be black; Wheels may be painted either black or National School Bus Yellow. Type A-1, A-2, and B buses may have manufacturer standard color wheels.

(b) The school bus body shall be painted a uniform National School Bus Yellow. The body exterior paint trim, bumper, lamp hoods, and emergency door lettering shall be black. The engine hood may be painted low-luster yellow. The roof of the bus may be painted white. The white color may extend across the roof down to the drip rails or within 6 inches above the passenger windows on the sides of the bus except that front and rear caps shall remain National School Bus Yellow. Retroreflective material may be used as trim on rear bumper;

(16) Crossing Arm: A crossing arm may be mounted on the front of a school bus in accordance with the following specifications:

(a) Installed on the front bumper as close as practicable to the right (curb) side, opening left to right and providing an extension of the curbside of bus;

(b) Arm shall be located at least 18 inches but not more than 32 inches above ground level and in the closed position; arm shall not cover numbers on license plate;

(c) Installed in a manner to limit the outward deployment to 90 degrees from the front bumper;

(d) Arm shall extend 70 inches from the front bumper in its extended position;

(e) Arm shall be activated through the existing bus safety light system assuring the driver is required to take no additional action to either deploy or retract the arm. No outward movement of the arm may occur before red flashing sequence begins;

(f) Override switches are prohibited;

(g) Crossing arm must be safeguarded from damage due to pushing or pulling by hand through the use of a clutch-like device or equivalent, double spring hinges are not acceptable);

(h) The arm may be equipped with an amber flashing light that functions only when the arm is in the fully extended position;

(i) Entire unit shall have no sharp edges or other projections that could injure children or others due to casual contact;

(j) Unit shall provide secure mounting opportunities to prevent misalignment or failure due to extreme weather conditions;

(k) Shall be either air, vacuum, or electrically operated and in conformance to section (39)(g) of this rule;

(l) Crossing arm color shall be yellow or yellow and black;

(m) All components and connections shall be weatherproofed.

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## (17) Defrosters:

(a) Defrosting and defogging equipment shall direct a sufficient flow of heated air onto the windshield, the window to the left of the driver and the glass in the viewing area directly to the right of the driver to reduce the amount of frost, fog and snow;

(b) The defrosting system shall conform to SAE performance standards J-381 and 382;

(c) The defroster and defogging system shall be capable of furnishing heated outside ambient air, except that part of the system furnishing additional air to the windshield, entrance door and stepwell may be of the recirculation air type;

(d) Auxiliary fans, if used, shall not be considered as a defrosting and defogging system:

(A) Auxiliary fans shall be mounted above the windshield, so as not to interfere with the driver's vision of the roadway, mirrors or students outside the bus;

(B) The fan blades shall be covered with a protective cage.

## (18) Doors:

(a) Service door shall be under the driver's control, designed to afford easy release and to provide a positive latching device on manual operating doors to prevent accidental opening. When hand lever is used, no part shall come together so as to shear or crush fingers. Manual door controls shall not require more than 25 pounds of force to operate at any point throughout the range of operation, as tested on a 10% grade, both up hill and downhill;

(b) Service door shall be located on right side of bus opposite driver and within direct view;

(c) Service door shall have minimum horizontal opening of 24 inches and minimum vertical opening of 68 inches;

(d) Service door shall be a split-type door and shall open outward;

(e) If service door is power operated, pressure shall be controlled by a regulator valve or switch and provision shall be made for opening the door manually in the event of driver disability or mechanical failure. Emergency release valve or switch for power operated doors shall be located in an accessible place, in plain view, as near the service door as practicable. Valve or switch shall be properly identified and "open" and "closed" position plainly marked;

(f) All service door windows shall be approved laminated safety glass. Bottom of lower glass panel shall not be more than ten inches from top surface of bottom step. Top of upper glass panel shall not be more than six inches from top of door.

(g) Vertical closing edges on the service door shall be equipped with flexible material to protect children's fingers.

(h) There shall be no door to left of driver. (This shall not be interpreted to conflict with emergency doors or windows.) Type A-1 and A-2 and B buses may be equipped with chassis manufacturers' left side driver's door;

(i) All doors shall be equipped with an energy absorbing pad at the top edge of each door opening. Pad shall be at least 3 inches wide and 1 inch thick and extend the full width of the door opening.

(19) Drive Shaft: Drive shafts over 24 inches in length shall be protected by metal guard or guards around circumference of drive shaft to reduce the possibility of the shaft whipping through floor or dropping to ground if broken. Guards shall be mounted around front half of each drive shaft section.

## (20) Electrical System:

### (a) Battery(ies):

(A) Battery shall have a minimum cold cranking capacity rating equal to the cranking current required for 30-seconds at 0° Fahrenheit (-17.8c) and a minimum reserve capacity rating of 120-minutes at 25 amp. Higher capacities may be needed dependent upon optional equipment and local environmental conditions;

(B) The manufacturer shall securely attach the battery(ies) on a slide-out or swing-out tray in a closed, vented compartment in the body skirt so that the battery(ies) is accessible for convenient servicing from the outside. Battery compartment(s) door or cover shall be hinged at front or top and secured by adequate and conveniently operated latch or other type fastener. Type A-1 and A-2 buses may have battery(ies) mounted under the hood in an accessible location;

(C) Access to battery shall not be through body floor;

(D) Buses may be equipped with a battery shut-off switch. The switch shall be placed in a battery compartment or the engine compartment.

(b) Circuits: An appropriate identifying diagram (color and number coded) for electrical circuits shall be provided to the body manufacturer for distribution to the end user;

### (c) Generator or Alternator:

(A) All buses with a GVWR of 14,500 pounds or less shall have a generator or alternator with a minimum rating of at least 130 amperes (in accordance with Society of Automotive Engineer rating) with minimum charging of 50 percent of maximum rated output at manufacturer's recommended engine idle speed (12 volt system), and shall be ventilated and voltage-controlled and, if necessary, current-controlled;

(B) All buses with a GVWR greater than 14,500 pounds shall have a generator or alternator with a minimum rating of at least 160 amperes (in accordance with Society of Automotive Engineer rating) with minimum charging of 50 percent of maximum rated output at manufacturer's recommended engine idle speed (12 volt system), and shall be ventilated and voltage-controlled and, if necessary, current-controlled;

(C) Generator or alternator may be direct/gear driven or belt driven. Belt driven generator or alternators shall be capable of handling the rated capacity of the generator or alternator with no detrimental effect on other belt driven components;

### (d) Wiring, Chassis:

(A) General — All wiring shall conform to current applicable recommended practices of the Society of Automotive Engineers. All wiring shall use a standard color coding and each chassis shall be delivered with a wiring diagram that coincides with the wiring of the chassis;

(B) Chassis manufacturer shall install a readily accessible terminal strip or plug on the body side of the cowl, or at accessible location in engine compartment of vehicles designed without a cowl, which shall contain the following terminals for the body connections:

(i) Main 100 amp body circuit;

(ii) Tail lamps;

(iii) Right turn signal;

(iv) Left turn signal;

(v) Stop lamps;

(vi) Back up lamps;

(vii) Instrument panel lights (controlled by dimmer switch).

### (e) Wiring, Body:

(A) All wiring shall conform to current standards of Society of Automotive Engineers;

### (B) Circuits:

(i) Wiring shall be arranged in circuits, as required, with a circuit protection system. A system of color or number coding shall be used for all buses purchased after September 1, 1993 and an appropriate identifying diagram shall be provided the end user along with the wiring diagram provided by the chassis manufacturer. The following interconnecting circuits shall be color coded as noted:

(I) Left rear directional light — yellow;

(II) Right rear directional light — dark green;

(III) Stop lights — red;

(IV) Back-up lights — blue;

(V) Tail lights — brown;

(VI) Ground — white;

(VII) Ignition feed, primary feed — black;

(VIII) The color of cables shall correspond to SAE J1128.

(ii) Wiring shall be arranged in at least seven regular circuits, as follows:

(I) Head, tail, stop (brake) and instrument panel lamps;

(II) Clearance and stepwell lamps (stepwell lamp shall be activated when service door is opened);

(III) Dome lamp;

(IV) Ignition and emergency door signal;

(V) Turn signal lamps;

(VI) School Bus Safety Lights;

(VII) Heaters and defrosters.

(iii) Any of above combination circuits may be subdivided into additional independent circuits;

(iv) Whenever possible, all other electrical functions (such as sanders and electric-type windshield wipers) shall be provided with independent and properly protected circuits.

(C) The entire electrical system of the body shall be designed for the same voltage as the chassis on which the body is mounted;

(D) All wiring shall have an amperage capacity equal to or exceeding the designed load. All wiring splices are to be done at an accessible location and noted as splices on wiring schematic;

(E) Each body circuit shall be coded by number or letter on a diagram of easily readable size and be furnished with each bus body or affixed in an area convenient to the electrical accessory control panel;



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(F) Body power wire is to be attached to special terminal on the chassis;

(G) All wires passing through metal openings shall be protected by a grommet;

(H) Wires not enclosed within body shall be fastened securely at intervals of not more than 18 inches. All joints shall be soldered or joined by equally effective connectors and shall be moisture and corrosion resistant.

(I) A 12-volt power port may be installed in the driver's area;

(J) There shall be a non-momentary manual noise suppression switch installed in the control panel. The switch shall be clearly labeled and distinguishable from other switches. This switch shall be an on/off type that deactivates body equipment that produces noise, including the AM/FM/audio radio, heaters, air conditioners, fans and defrosters. The switch shall not deactivate safety systems such as windshield wipers or lighting systems.

(21) Emergency Equipment:

(a) Belt cutter: Each bus equipped with passenger seat belts or webbed restraining devices shall have a belt cutter mounted in the driver's compartment within reach of a driver sitting in the driver's seat. Belt cutter shall be of a design offering protected cutting edges to prevent accidental or intentional injury to drivers or passengers;

(b) Emergency road reflectors:

(A) Each bus shall be equipped with at least three reflex reflective triangle vehicle warning devices that conform to 49 CFR 581.125;

(B) Reflectors must be in a container securely mounted with nut-and-bolt fasteners enhanced with large flat (fender) washers or held in place by a nut-and-bolt mounted metal bracket that also protects and secures the container lid. Both shall be located in an accessible location. Reflectors shall not be mounted in any engine compartment;

(c) Body fluid cleanup kit: Buses shall have a removable moisture proof and dust proof body fluid cleanup kit, mounted in an accessible place within the driver's compartment. Contents shall include at least the following items:

(A) Two pair rubber/latex gloves;

(B) Two four-ounce packages of stabilized chlorine absorbent deodorant (or equivalent) capable of stabilizing at least 1 liter/36 fl. oz. of body fluids;

(C) One spatula for pick up of congealed fluid;

(D) One plastic bag in which to place congealed fluid;

(E) One red plastic bag with tie, identified for infectious waste and as a bio-hazard;

(F) One two-ounce bottle of germicidal detergent to apply to a contaminated area;

(G) Four paper towels to wipe up contaminated area;

(H) One one-ounce antiseptic alcohol hand rinse (or equivalent);

(I) One placard of step by step use instructions;

(J) Germicidal detergents, stabilized chlorine absorbent deodorant, alcohol hand rinse, or their equivalents shall provide documentation of EPA approval regarding their microbiological efficacy for at least the following:

(i) *Staphylococcus aureus*;

(ii) *Pseudomonas aeruginosa*;

(iii) *Salmonella choleraesuis*;

(iv) *Streptococcus* species;

(v) Herpes simplex Type II;

(vi) HIV (Associated with AIDS);

(vii) Fungi (athlete's foot);

(viii) Poliovirus; and

(ix) Tuberculosis.

(K) Documentation of efficacy for Hepatitis B may be hospital or test studies. The certified effective shelf life of these products shall be a minimum of 12 months. Product expiration date shall be clearly displayed on all time-sensitive products.

(d) Fire extinguishers:

(A) Each bus shall be equipped with at least one pressurized, dry, chemical type fire extinguisher, mounted in a bracket, located in the driver's compartment, and readily accessible. A pressure gauge shall be mounted on the extinguisher so as to be readily read without removing the extinguisher from its mounted position;

(B) The fire extinguisher shall be of a type approved by the Underwriters Laboratories, Inc., with a rating of not less than 2 A-10 BC. The extinguisher shall have a minimum five pound capacity and equipped with a hose and nozzle;

(C) The operating mechanism shall be sealed with a type of seal that will not interfere with the use of the fire extinguisher;

(D) Extinguishers with plastic heads are not permitted.

(e) First aid kit:

(A) Each bus shall have a readily removable, moisture proof and dust-proof first-aid kit container mounted in an accessible place within driver's compartment;

(B) The first aid kit contains a minimum of 24 units that shall include the following:

(i) One 1" adhesive compress — 16 per unit;

(ii) Two 2" bandage compress — 4 per unit;

(iii) Two 3" bandage compress — 2 per unit;

(iv) Two 4" bandage compress — 1 per unit;

(v) Two 3" x 3" plain gauze pads — 4 per unit;

(vi) Two 2" x 6 yards gauze roller bandage — 1 per unit;

(vii) Three 1/2 square yard gauze;

(viii) Three 24" x 72" gauze;

(ix) Four triangular bandages;

(x) One 1/2 x 5 yard adhesive tape-one per unit;

(xi) One round nose scissors and tweezers. Latex gloves-one pair; and

(xii) One micro shield for mouth to mouth airway (to lay on top of other contents).

(C) Specific local requirements may be substituted in lieu of 2 units of 1/2 square yard gauze.

(f) Any piece of emergency equipment may be mounted in an enclosed compartment, provided the compartment is labeled in not less than 1 inch letters, identifying each piece of equipment contained therein. If emergency road reflectors are stored outside the driver's compartment, the location of the triangles shall be displayed in a readily viewable location by the driver in minimum 1 inch letters.

(22) Emergency Exits:

(a) All emergency exits and doors shall comply with the design and performance requirements of FMVSS No. 217, Bus Emergency Exits and Window Retention and Release applicable to that type of exit.

(b) In addition to the requirements of FMVSS No. 217, all emergency exits and doors shall meet the additional requirements:

(A) Doors:

(i) Upper portion of emergency door shall be equipped with approved safety glazing, exposed area of not less than 400 square inches;

(ii) Lower portion of rear emergency door shall be equipped with approved safety glass and shall have an exposed area of not less than 350 square inches of approved safety glazing;

(iii) There shall be no steps leading to emergency door;

(iv) Clearance between outside emergency door handle and emergency door shall not exceed 1/4 inch when handle is in the closed position. Handle shall not provide a firm handhold for someone trying to "hitch" a ride. Handles shall be positioned to prevent snagging of clothing or pinching of fingers;

(v) Emergency door hinge shall not provide an opening for insertion of fingers when door is closed;

(vi) An adequately padded head bumper shall be placed on the interior directly above any emergency exit door opening. The pad shall extend the full width of the door opening and shall be at least three inches wide and one inch thick;

(vii) If emergency door is lockable, provision must be made to prevent the bus from starting while the door is locked. An audible warning which does not affect engine operation shall be provided to alert the driver should the door be locked while the bus is in operation; and

(viii) Emergency doors shall be labeled "Emergency Door" in minimum 2 inch letters that contrast with the background at the top of, or immediately above, the emergency door on both the inside and outside of the bus;

(B) Rear Push-Out Window:

(i) Rear push-out window shall be operable from inside or outside the bus;

(ii) Rear push-out window shall have a lifting assistance device that will aid in lifting and holding the rear emergency window open; and

(iii) If rear push-out window is lockable, provision must be made to prevent the bus from starting while the exit is locked. An audible warning which does not affect engine operation shall be provided to alert the driver should the exit be locked while the bus is in operation;

(C) Swing-Out Windows:

(i) Swing-out windows are windows along the side of the bus with a hinge that is opposite of the emergency release so that it "swings-out" when opened. Swing-out windows may be hinged along any edge of the window. If the hinge is installed vertically, it shall be installed on the forward side of the window;

(ii) Swing-out windows shall not be located above a stop arm;

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(iii) Swing-out windows shall provide a minimum clear opening of 18" x 24"; and

(iv) Swing-out windows that are inoperable from the outside shall include the message "Operates From Inside Only" adjacent to the outside "Emergency Exit" labeling required under FVMSS No. 217;

(D) Roof Hatches:

(i) Roof hatch shall be waterproof and provide a minimum clear opening of 16" x 16";

(ii) When a release mechanism on the roof hatch is open and the vehicle's ignition is in the "on" position, a continuous warning shall be audible at the drivers seating position; and

(iii) Roof hatch may also serve as a roof ventilator; however, this shall not be used in place of the required static vent.

(c) Each bus shall be equipped with:

(A) A rear emergency exit door and one roof hatch; or

(B) A left side emergency exit door, a rear emergency push out window, and one roof hatch.

(d) Buses equipped with a rear emergency exit door and roof hatch (as in (c)(A) above) require additional emergency exits based on the maximum design passenger capacity listed below:

(A) Buses designed or equipped with a maximum design passenger capacity of 1 to 22 shall also provide:

(i) 2 swing-out windows placed at approximately the midpoint of the passenger compartment; or

(ii) Side windows with a 12 inch vertical drop.

(B) Buses designed or equipped with a maximum design passenger capacity of 23 to 45 shall also provide:

(i) Left side emergency door; or

(ii) 2 swing-out windows at approximately the midpoint of the passenger compartment.

(C) Buses designed or equipped with a maximum design passenger capacity of 46 and above shall also provide one additional roof hatch and:

(i) Left side emergency door; or

(ii) 4 swing-out windows at approximately the midpoint of the passenger compartment, but not immediately adjacent to each other.

(e) Buses equipped with a left side door and rear push-out window (as in (c)(B) above) require additional emergency exits based on the maximum design passenger capacity listed below:

(A) Buses designed or equipped with a maximum design passenger capacity of 1 to 22 shall also provide:

(i) 2 swing-out windows placed at approximately the midpoint of the passenger compartment; or

(ii) Side windows with a 12 inch vertical drop.

(B) Buses designed or equipped with a maximum design passenger capacity of 23 to 45 shall also provide two swing out windows.

(C) Buses designed or equipped with a maximum design passenger capacity of 46 and above shall also provide one additional roof hatch and:

(i) Right side emergency door; or

(ii) Four swing-out windows.

(f) Any additional emergency exits necessary to comply with the "additional emergency exit area" requirements of FMVSS No. 217 shall be made by the vehicle purchaser.

(g) Manufacturer shall identify all emergency exits used for calculations relating to this rule and FMVSS No. 217 compliance and list the daylight (clear) opening for each exit.

(h) All emergency exits shall be marked on the exterior perimeter with one inch retroreflective yellow material that meets the retroreflectivity requirements of section (53) of this rule. The color of the retroreflective material may be white for a roof hatch on a white roof.

(23) Engine Compartment Fire Suppression System: Automatic fire extinguisher systems may be installed in the engine compartment on buses. System shall have a visible gauge easily read from the driver's seat and a manual activation switch clearly identified and located in the driver's compartment. The entire system must be UL (Underwriters Laboratories) approved and assure protection from passenger compartment. Extinguisher system manual activation switch/control shall be safeguarded from accidental activation by a pull-pin or equivalent device. The extinguisher, if mounted in the passenger compartment, shall not be readily removable for use elsewhere, but dedicated for the engine compartment.

(24) Exhaust System:

(a) Exhaust pipe, muffler, and tailpipe shall be outside bus body compartment and attached to chassis;

(b) Tailpipe shall be constructed of a corrosion-resistant tubing material at least equal in strength and durability to 16 gauge steel tubing;

(c) Tailpipe shall meet one of the following options:

(A) Tailpipe may exit in the rear of the bus provided it:

(a) Does not create a hand hold.

(b) Does not create a step.

(c) Exhaust is defused away from passenger compartment.

(B) Tailpipe may extend to, but not beyond the body limits on the left side of the bus forward or rearward of the rear tires outboard of chassis centerline as described in sub-section (c)(C) of this section. If the tailpipe terminates forward of the rear tires it shall terminate not more than 24 inches or less than 6 inches forward of rear tires. No tailpipe shall terminate beneath any emergency exit or fuel fill receptacle;

(C) Tailpipe shall not exit the right side of the vehicle.

(d) Exhaust system shall be properly insulated from fuel tank and connections by securely attached metal shield at any point where it is 12 inches or less from tank or tank connections;

(e) Muffler shall be constructed of corrosion-resistant material.

(25) Fenders, Front:

(a) Total spread of outer edges of front fenders, measured at fender line, shall exceed total spread of front tires when front wheels are in straight-ahead position;

(b) When equipped, front fenders shall be properly braced and free from any body attachments.

(26) Floor:

(a) Floor in under seat area, including tops of wheel housing, driver's compartment and toe board, shall be covered with rubber floor covering or equivalent having minimum overall thickness of .125 inch:

(A) Floor covering in aisle shall be of aisle-type fire-resistant rubber or equivalent, wear-resistant and ribbed or equivalent non-slip material. Minimum overall thickness shall be .1875 inch measured from tops of ribs;

(B) Floor covering shall be permanently bonded to floor and shall not crack when subjected to sudden changes in temperature. Bonding or adhesive material shall be waterproof and shall be of type recommended by manufacturer of floor-covering material. All seams shall be sealed with waterproof sealer.

(b) Edge of floor at stepwell shall be treated as a step edge and shall be protected as required in section (59)(f)(C) of this rule;

(c) A vapor and liquid proof inspection plate provided for access to the fuel tank sending may be installed;

(d) A subfloor of 5-ply plywood, at least 5/8 inch nominal thickness or equivalent, shall be installed over the standard school bus floor. Plywood shall equal or exceed properties of exterior grade C-C plywood as specified in NIST PS 1. Floor shall be level from front to back and from side to side except for wheel housing, toe board and driver's seat platform areas;

(e) Plywood sub-floor may be replaced with an equivalent material provided it has equal or greater insulation R-value, sound abatement, deterioration-resistant, and moisture-resistant properties.

(27) Frame:

(a) Frame shall be of such design and strength characteristics as to correspond at least to standard practice, for trucks of same general load characteristics which are used for highway service;

(b) Any secondary manufacturer that modifies the original chassis frame shall guarantee the performance of workmanship and materials resulting from such modification;

(c) Any frame modification shall not be for the purpose of extending the wheelbase;

(d) Holes in top or bottom flanges of frame side rail shall not be permitted except as provided in original chassis frame. There shall be no welding to frame side rails except by manufacturer;

(e) Frame lengths shall be established in accordance with the design criteria for the complete vehicle.

(28) Fuel System:

(a) The following fuels may be used:

(A) Diesel, including biodiesel blends,

(B) Gasoline, including ethanol blends,

(C) Liquefied Petroleum Gas (LPG),

(D) Compressed Natural Gas (CNG),

(E) Dual fuel systems using any combination of (A) through (D)

above, provided that the system:

(i) Meets Environmental Protection Agency specifications;

(ii) Meets vehicle manufacture specifications; and

(iii) Has been approved by the Oregon Department of Education.

(F) Other fuels may be approved by the Oregon Department of Education upon request.

(b) Buses with a capacity of 57 or less shall be equipped with one or more fuel tanks that provide a combined liquid capacity of not less than 30 gallons.

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(c) Buses with a capacity of 58 or more shall be equipped with one or more fuel tanks that provide a combined liquid capacity of not less than 60 gallons.

(d) The actual draw capacity of each fuel tank shall be a minimum of 83 percent of the tank capacity.

(e) No portion of the fuel system, which is located outside of the engine compartment, except the filler tube, shall extend above the top of the chassis frame rail. Fuel lines shall be mounted to obtain maximum possible protection from the chassis frame;

(f) Fuel filter with replaceable element shall be installed between fuel tank and engine;

(g) Tank(s) shall be mounted, filled and vented outside of body. The tank(s) location shall not permit fuel spillage to drip or drain on any portion of the exhaust system.

(i) Liquefied Petroleum Gas (LPG) systems shall comply with National Fire Protection Association (NFPA) 58, Liquefied Petroleum Gas Code.

(29) G.P.S. Navigation: A G.P.S. navigation unit may be installed. The unit shall not block any windows, gauges or indicator lights that are required. Portable units shall use an installed 12 volt power port.

(30) Governor:

(a) An electronic engine speed limiter shall be provided and set to limit engine speed, not to exceed the maximum revolutions per minute, as recommended by the engine manufacturer.

(b) When it is desired to limit road speed, a road-speed governor should be installed;

(31) Heaters:

(a) At least one heater of hot water type shall be required;

(b) If only one heater is used, it shall be of fresh-air or combination fresh-air and recirculation type;

(c) If more than one heater is used, additional heaters may be of recirculation air type;

(d) The heating system shall be capable of maintaining throughout the bus a temperature of not less than 50 degree Fahrenheit at average minimum January temperature as established by the National Weather Service, for the area in which the vehicle is to be operated;

(e) All heaters shall bear a name plate which shall indicate the heater rating in accordance with SBMTC Standard No. 001, said plate to be affixed by the heater manufacturer which shall constitute certification that the heater performance is as shown on the plate;

(f) Heater hoses shall be adequately supported to guard against excessive wear due to vibration. The hoses shall not dangle or rub against the chassis or sharp edges, and shall not interfere with or restrict the operation of any engine function. Heater hose shall conform to SAE J20c. Heater hoses on the interior of the bus shall be shielded to prevent scalding of the driver or passengers;

(g) Each hot water heater system installed by a body manufacturer shall include a shutoff valve installed in the pressure and return lines near the engine in an accessible location. There shall be a water flow regulating valve or airflow regulating door for the front heater installed for convenient operation by the driver while seated;

(h) Return heater lines on body company installed heaters shall be equipped with bleeder valves in an accessible location to allow for removal of heater line air;

(i) Auxiliary fuel-fired combustion heating systems may be installed, provided that:

(A) The auxiliary heating system shall be marked plainly with certification stating "Meets FMCSA Bus Heater Requirements"

(B) The auxiliary heating system shall utilize the same type of fuel as specified for the vehicle engine;

(C) The auxiliary heating system may be direct, hot air-type or may be connected to the engine coolant system;

(D) When connected to the engine coolant system, the auxiliary heating system may be used to preheat the engine coolant or preheat and add supplementary heat to the heating system, or both;

(E) Auxiliary heating systems shall be installed pursuant to the manufacturer's recommendations outside of the passenger compartment;

(F) Exhaust from auxiliary heating system shall not exit the right side of the bus;

(G) Installation of auxiliary heating system shall not compromise the requirements of Title 49 CFR Part 579.301 Fuel System Integrity

(j) Portable heaters shall not be used.

(32) Horn: Bus shall be equipped with horn or horns of standard make, each horn capable of producing complex sound in bands of audio fre-

quencies between approximately 250 and 2,000 cycles per second and test per SAE Standard J-377.

(33) Identification:

(a) School buses shall bear the words "SCHOOL BUS" in black capital series letters at least eight inches high and of proportionate width on both front and rear of bus. Lettering shall be placed as high as possible without impairment of its visibility. The background shall be a maximum of 12 inches by 36 inches and shall be either:

(A) Retroreflective material that conforms to the retroreflectivity requirements of section (53); or

(B) Illuminated

(b) A warning sign shall be installed on the rear of all school buses calling attention to the school bus stop law. It shall be located in the most attainable vertical center of the rear emergency door, between the upper and lower windows. Signs on rear engine transit type buses shall be vertically centered and horizontally adjacent to the left and right upper brake lights. Sign shall be either:

(A) A decal with white retroreflectorized letters that conform to the retroreflective requirements listed in section (53) of this rule mounted on a flat black background. The word message shall be centered horizontally and vertically on the decal. The decal shall have the lettering shown below: UNLAWFUL TO PASS (3 inches in height) WHEN (1 inches in height) RED LIGHTS FLASH (3 inches in height) or:

(B) An electronic sign that displays warning messages to motorists. The electronic sign:

(i) Shall be sealed weather tight construction approximately 23½" X 8¾" X 1½" in size.

(ii) Shall be connected to the school bus safety lights;

(iii) Shall alternately flash the word message "CAUTION" and the word message "STOPPING" when the amber school bus safety lights are active. The letters in the word messages shall be amber with a minimum height of three inches;

(iv) Shall alternately flash the word message "STOP" and the word message "DO NOT PASS" when the red school bus lights are active. The letters in the word messages shall be red with a minimum of three inches;

(v) May flash or display the word message "CAUTION" or the word message "CAUTION STOPPING" when the hazard lights are activated. The letters in the word message shall be amber with a minimum height of three inches;

(vi) May flash or display the word message "CAUTION" when the backup lights are activated. The letters in the word message shall be amber with a minimum height of three inches;

(vii) Shall have a minimum viewing angle of 15 degrees on each side of the perpendicular axis;

(viii) Flashing messages may be controlled by the hazard light and school bus safety light flashers; and

(ix) Word and picture messages shall be clearly visible in direct sunlight from a distance of 500 ft along the axis of the vehicle;

(x) L.E.D. lights, if used, shall be of sufficient quantity to result in a clear and legible message.

(C) An electronic sign that displays warning messages to motorists may be placed on the front of the bus provided that:

(i) There is an electronic sign on the back of the bus per section (B) above;

(ii) The sign shall only be wired to the amber and red bus safety lights; and

(iii) The sign shall be mounted below the windshield, vertically centered.

(c) The name of the school district, private school, or parochial school, and contractor name if applicable, shall be placed on the left and right sides of the bus. The name shall appear in the area directly below the side windows and the letters and figures in the name shall not be less than four inches nor more than seven inches in height and of proportionate width;

(d) School team name or contractor's insignia may be placed above the side windows on the front portion of the bus body. All such lettering must be approved by the Pupil Transportation Section of the Oregon Department of Education;

(e) One bus identification number at least four inches in height shall be placed on a flat vertical surface on each side and on the front and rear of the bus. At least one complete bus identification number shall be visible from any point 50 feet from the bus. Type A-1 and A-2 bus numbers may be three inches in height.



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(f) Only signs and lettering approved by state law or by the regulations of the Department of Education shall appear on the inside or outside of a school bus.

(g) Optional identification and lettering may be added to the vehicle as outlined below:

(i) Bus identification number on top of the bus. Numbers shall be black and a minimum of 12 inches high;

(ii) The location of the battery(ies) identified by the word "BATTERY" or "BATTERIES" in black letters on the battery compartment door in 2 inch capitol series letters;

(iii) Manufacture or dealer identification or logos. Placement must be approved by the Pupil Transportation Section of the Oregon Department of Education;

(iv) Identification of fuel type on or adjacent to the fuel filler opening in 2 inch black capitol series letters;

(v) Symbols, letters, or numbers not to exceed 64 square inches of total display near the entrance door, displaying information for identification by the students of the bus or route served;

(34) Inside Height:

(a) Clear inside body height for type A-1 buses shall be a minimum of 62 inches measured at any point on the longitudinal center line from the front vertical bow to the rear vertical bow.

(b) Clear inside body height for all other buses shall be a minimum of 72 inches, or more measured at any point on the longitudinal center line from front vertical bow to rear vertical bow.

(c) Height requirements do not apply to air conditioning units installed in the passenger compartment when installed to manufacture's specifications.

(35) Instruments, Gauges, and Indicators:

(a) Bus shall be equipped with following instruments and gauges. (Telltale warning lights in lieu of gauges are not acceptable except as noted):

(A) Speedometer;

(B) Odometer, which will give accrued mileage including tenths of miles;

(C) Voltmeter: A graduated charge and discharge ammeter compatible with generating capacities is permitted in lieu of or in addition to a voltmeter;

(D) Oil-pressure gauge;

(E) Water temperature gauge;

(F) Fuel gauge;

(G) High beam headlight indicator light;

(H) Air pressure or vacuum gauge according to brake system used: Light indicator or gauge required on vehicle equipped with hydraulic-over hydraulic brake system;

(I) Turn signal indicator light;

(J) Tachometer on type B, C, or D buses. Tachometer is optional on Type A buses;

(K) Glow plug indicator light, where appropriate.

(L) Fog light indicator, if fog lights are installed.

(M) Bus safety light pilot lamps / monitors: Each bus shall be equipped with 2 illuminated pilot lamps, one amber and one red. The placement of these lamps shall be in accordance with other telltale light placement requirements in 49 CFR 571.101 Controls and Displays. Pilot lamps shall provide an unmistakable indication that the flasher system is operating and an unmistakable indication if any circuit is broken, any lamp is not operating or the system is not otherwise functioning normally.

(b) All instruments shall be easily accessible for maintenance and repair;

(c) Above instruments and gauges shall be mounted on instrument panel in such a manner that each is clearly visible to and lies within a 140 degree field of vision for a 95th percentile female anthropomorphic dummy while in normal seated position;

(d) Instrument panel shall have lamps of sufficient candlepower to illuminate all instruments and gauges and shift selector indicator for automatic transmission.

(e) All control and indicator lights shall be dimmable except telltale lights. Control and indicator lights may be controlled by one or two dimmer switches.

(36) Insulation:

(a) Ceiling and walls shall be insulated with proper material to deaden sound and to reduce vibration to a minimum.

(b) Thermal insulation that is fire-resistant, non-water absorbing, UL approved, with a minimum R-value of 5.5 shall be installed in the ceiling and walls;

(c) If floor insulation is desired it shall be installed in accordance with the floor section of this rule.

(37) Interior:

(a) Interior of bus shall be free of all projections, including but not limited to luggage/book racks or attendant hand holds, that can cause injury in the event of a collision or rollover.

(b) The ceilings and walls shall have an inner lining.

(c) If ceiling is constructed with lap joints, forward panel shall be lapped by rear panel and exposed edges shall be beaded, hemmed, flanged or otherwise treated to minimize sharp edges;

(d) Buses shall assure noise level taken at the ear of the occupant nearest to the primary vehicle noise source shall not exceed 85 DBA when tested according to the Noise Test Procedure.

(38) Lamps and Signals:

(a) All lamps, signals, and reflectors shall comply with the design and performance requirements of FMVSS No. 108, Lamps, reflective devices, and associated equipment; Oregon Revised Statutes, Chapter 816, Vehicle Equipment: Lights; and Oregon Administrative rules, Chapter 735, Division 108, Lighting Equipment applicable to that type of lamp, signal or reflector.

(b) The following lights shall be installed with any additional requirements listed:

(A) Back-up lamps: The bus shall be equipped with 2 white rear back-up lamps that have a minimum illuminated area of 12 square inches. If back up lamps are placed in the same horizontal line as the tail-stop lamps and turn signal lamps, they shall be to the inside.

(B) Back-up warning alarm: An automatic audible alarm shall be installed on the rear of the bus that complies with SAE 994 Back-Up Alarm Standard specifying a minimum of 97±4db(A).

(C) Bus Safety Lights:

(i) Shall have red and amber flashing lights installed in accordance with SAE Standard J887. Each amber light shall be located near each red signal lamp, at the same level, but closer to the vertical centerline of the bus.

(ii) The area around each lens of the bus safety lights shall be painted black, extending outward a minimum of 3 inches where practicable.

(iii) The front bus safety lights shall be visible either directly or indirectly from inside the bus.

(iv) A separate fuse or circuit breaker, adequate to prevent damage to the system in the event of a short circuit, shall be provided between the power source and flasher system.

(v) The system shall be wired so that the system is activated by a manually operated spring-loaded switch that is clearly labeled and distinguishable from other switches.

(vi) A circuit master switch, if installed, shall be part of the activation switch outlined in (v) above.

(vii) Buses equipped with power-controlled entrance doors may have an additional spring loaded switch that will activate the red school bus safety lights prior to opening the entrance door or keep the red bus safety lights on after closing the entrance door.

(viii) The flashing mechanism shall be capable of carrying the full current load of the signal system.

(ix) Each lamp shall have a minimum illumination area of 38 square inches, flash a minimum of 60 times per minute, and be clearly visible in direct sunlight from a distance of 500ft along the axis of the vehicle.

(x) The Bus Safety Light System shall operate as follows:

(I) The bus safety light activation switch shall activate the amber safety lights when the entrance door is closed or red safety lights when the entrance door is open;

(II) When amber safety lights are activated, they shall automatically deactivate and the red safety lights shall automatically activate when the entrance door is opened;

(III) Once active, the red safety lights shall automatically deactivate when the entrance door is closed;

(IV) No bus safety lights shall activate when the entrance door is opened without first pressing the bus safety light activation switch;

(V) Buses equipped with power-controlled entrance doors may have an additional spring loaded switch that will activate the red school bus safety lights prior to opening the entrance door or keep the red bus safety lights on after closing the entrance door.

(VI) The amber bus safety lights and red bus safety lights shall not flash at the same time.

(VII) There shall be a canceling switch that will deactivate the bus safety lights and activation sequence if they are accidentally activated or if the driver discovers there is no need to make a stop after activating the switch.

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- (D) Clearance lamps;
- (E) Headlamps;
- (F) Identification Lamps;
- (G) Fog lamps may be installed:
  - (i) Fog lamps shall be mounted symmetrically around the front centerline of the bus, below the headlights not less than 12 inches no more than 30 inches above the ground;
  - (ii) Fog lamps shall be wired to a separate switch, pilot light and shall only come on when the low beam head lights are on.
- (H) Interior dome lamps: Interior lamps shall be provided which will adequately illuminate interior aisles. There shall be at least one interior lamp for every two rows of passenger seats. One or two rear dome lamp(s) shall be wired through a separate switch unless there are less than five rows of seats.
  - (I) Reflectors
  - (J) Side Marker Lamps;
  - (K) Stepwell Lamp: A stepwell lamp shall be provided which will adequately illuminate the entire stepwell. The lamp circuit shall be wired through the headlamp or clearance lamp system and shall be activated only when the door is opened.
  - (L) Strobe Lamp: A white flashing strobe lamp may be installed on the longitudinal center of the roof on the rear third of the bus, but no closer than one foot from the rear of the bus.
    - (i) The lamp shall have a single clear lens emitting light 360 degrees around its vertical axis and may not extend above the roof more than 6-1/2 inches, or exceed maximum legal vehicle height.
    - (ii) The lamp shall have a separate switch and be wired through the vehicle hazard lamp system. A pilot lamp to indicate when the light is in operation is required.
  - (F) Tail lamps & Stop lamps: Buses shall be equipped with four combination red tail-stop lamps.
    - (i) Two combination lamps with a minimum 38 square inches of illuminated area shall be mounted immediately inside of, and in line with, the rear turn signal lamps.
    - (ii) Two combination lamps with a minimum 12 square inches of illuminated area shall be placed on the rear of the bus between the beltline and the floor line. The horizontal centerline of the lights shall be a maximum of 12 inches above the floor line.
    - (iii) Stop lamps shall be activated by the service brakes and shall emit a steady light when illuminated.
  - (M) Turn Signals:
    - (i) Front signals shall either
      - (I) have a minimum illuminated area of 38 square inches; or
      - (II) be manufacturer's standard front turn signals for Type A.
    - (ii) Rear signals shall have a minimum illuminated area of 38 square inches and be placed as wide apart as practical with the horizontal centerline a maximum of 12 inches below the rear window.
      - (iii) Side signals: A turn signal lamp with a minimum of 4 candlepower shall be mounted on each side of the bus at approximately seat level height, located to the rear of the entrance door on the right side, and to the rear of the stop arm on the left side. Side turn signals should be in approximately the same location on each side of the bus. Additional side turn signals may be installed if the horizontal centerline is the same for all side turn signals, and additional signals are in the same approximate location on each side of the bus.
        - (iv) All turn signal lamps shall be amber in color.
        - (v) All turn signal lamps shall be independent units and connected to turn signal switch and four-way hazard warning switch that will cause all turn signals to flash simultaneously.
  - (39) Metal Treatment:
    - (a) All metal used in construction of bus body shall be zinc- or aluminum-coated or treated by equivalent process before bus is constructed. Included are such items as structural members, inside and outside panels and floor sills; excluded are such items as door handles, grab handles, interior decorative parts and other interior plated parts;
    - (b) All metal parts that will be painted shall be (in addition to above requirements) chemically cleaned, etched, zinc-phosphate coated and zinc-chromate or epoxy primed or conditioned by equivalent process;
    - (c) In providing for these requirements, particular attention shall be given lapped surfaces, welded connections of structural members, cut edges, punched or drilled hole areas in sheet metal, closed or box sections, un-vented or un-drained areas and surfaces subjected to abrasion during vehicle operation;

(d) As evidence that above requirements have been met, samples of materials and sections used in construction of bus shall be subjected to a cyclic corrosion testing as outlined in SAE J1563.

## (40) Mirrors:

### (a) Exterior Mirror Systems:

(A) Bus shall be equipped with mirror systems complying with 49 CFR Part 571, FMVSS 111 as adopted by the National Highway Traffic Safety Administration for December 3, 1993 implementation, plus all applicable standards specified in this rule;

(B) Manufacturer shall certify compliance with mirror and direct/indirect visibility standards listed in the aforementioned FMVSS 111.

### (b) Interior Mirror:

(A) Interior mirror shall be either laminated or tempered. Mirror shall be a minimum of 6" x 30". Mirror shall have rounded corners and protected edges;

(B) Type A buses shall be equipped with a mirror that is 6" x 16" or providing at least 96 square inches of flat mirror surface;

(C) Bus seller shall certify compliance with mirror and direct/indirect visibility standards listed in the aforementioned FMVSS 111 and provide a copy to used bus purchasers when certification is not available from manufacturer for all buses manufactured prior to January 1, 1994.

## (41) Mounting:

(a) Chassis frame shall support rear body cross member. Bus body shall be attached to chassis frame at each main floor sill, except where chassis components interfere, in such a manner as to prevent shifting or separation of body from chassis under severe operating conditions;

(b) Body front shall be attached and sealed to chassis in such manner as to prevent entry of water, dust or fumes through joint between chassis cowl and body;

(c) When floor is provided by bus body manufacturer, adequate insulating padding shall be placed at all contact points between body and chassis frame. Insulating material shall be approximately 1/4-inch thick and shall be so attached as to prevent movement under severe operating conditions.

## (42) Mud Flaps:

(a) Mud flaps or splash aprons are required for rear wheels on all school buses;

(b) Flaps shall be of heavy-duty rubberized material or equivalent and shall extend at least the full width of tires from a point above the center of the tires to a point not more than ten inches above the surface of the highway when such vehicle is empty.

(43) Oil Filter: Oil filter of replaceable element or cartridge type shall be provided and shall be connected by flexible oil lines if it is not built-in or engine mounted design. Oil filter shall have a capacity in accordance with the engine manufacturer's recommendation.

(44) Openings: All openings in floorboard or firewall between chassis and passenger-carrying compartment, such as for gearshift lever and parking brake lever, shall be sealed. Access plates to cover openings shall have adequate gaskets and be fastened securely.

(45) Overall Length: Maximum length for school buses shall be limited to 45 feet.

(46) Overall Width: Overall width of bus shall not exceed 8.5 feet. The mirrors may exceed the maximum allowable width by a distance of not greater than five inches on each side of the vehicle.

(47) Overhang: Body shall be so mounted as to comply with requirements described in chassis weight distribution standard. Body length extending beyond the rear axle shall not exceed three-fourths the length of the vehicle's wheel base per Oregon Vehicle Code.

## (48) Passenger Load:

(a) Actual gross vehicle weight (GVW) is the sum of the chassis wet weight, plus the body weight, plus the driver's weight, plus total seated pupil weight:

(A) For purposes of calculation, the driver's weight is 250 pounds;

(B) For purposes of calculation, the pupil weight is 120 pounds per pupil.

(b) Actual gross vehicle weight (GVW) shall not exceed the chassis manufacturer's gross vehicle weight rating (GVWR) or gross axle weight rating (GAWR) for the chassis;

(c) Manufacturer's gross vehicle weight rating and other chassis information shall be furnished by the manufacturer, the manufacturer's representative or seller to the Oregon Department of Education on forms furnished by the department.

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(49) Power and Gradeability: Gross vehicle weight (GVW) shall not exceed 165 pounds per net published horsepower of the engine at the manufacturer's recommended maximum number of revolutions per minute.

(50) Racks: The installation of any kind of exterior luggage rack outside the bus is prohibited. This does not prohibit enclosed luggage compartments.

(51) Radios and Public Address Systems:

(a) Buses shall be equipped with a public address system having interior and exterior speakers and a switch to separate inside and outside speaker systems.

(b) AM/FM/audio radio may be installed

(c) Interior speakers mounted in the ceiling panels or side panels shall be either flush mounted or may protrude not more than 1-1/2 inches if the speaker housing is free of any corners or projections which can cause injury by striking with the head or in the event of a collision or rollover. Speakers protruding more than 1-1/2 inches may be mounted in the vertical end panels above the windshield or back windows as long as speakers are free of corners or projections that could cause injury;

(d) Speakers shall not be placed above any aisle or within four feet of the driver's seat back in its rearmost upright position;

(52) Retarder System: Retarder system, if installed, shall maintain the speed of the fully loaded school bus at 19.0 MPH on a seven percent grade for 3.6 miles without incurring damage to the retarder or vehicle.

(53) Retroreflective Material and Placement:

(a) Red: when used or required, red retroreflective material shall meet or exceed ASDM D4956 standards for type V super high-intensity sheeting and have a coefficient of retroreflection equal to or greater than:

(A) 120 for an observation angle of 0.2 degrees and a light entrance angle of -4 degrees; and

(B) 72 for an observation angle of 0.2 degrees and a light entrance angle of +30 degrees; and

(C) 28 for an observation angle of 0.5 degrees and a light entrance angle of -4 degrees; and

(D) 13 for an observation angle of 0.5 degrees and a light entrance angle of +30 degrees;

(b) White: when used or required, white retroreflective material shall meet or exceed ASDM D4956 standards for type V super high-intensity sheeting and have a coefficient of retroreflection equal to or greater than:

(A) 700 for an observation angle of 0.2 degrees and a light entrance angle of -4 degrees; and

(B) 400 for an observation angle of 0.2 degrees and a light entrance angle of +30 degrees; and

(C) 160 for an observation angle of 0.5 degrees and a light entrance angle of -4 degrees; and

(D) 75 for an observation angle of 0.5 degrees and a light entrance angle of +30 degrees;

(E) Exception: white retroreflective material on the "unlawful to pass" sign shall meet or exceed ASDM D4956 standards for type I engineering grade sheeting and have a coefficient of retroreflection equal to or greater than:

(i) 70 for an observation angle of 0.2 degrees and a light entrance angle of -4 degrees; and

(ii) 30 for an observation angle of 0.2 degrees and a light entrance angle of +30 degrees; and

(iii) 30 for an observation angle of 0.5 degrees and a light entrance angle of -4 degrees; and

(iv) 15 for an observation angle of 0.5 degrees and a light entrance angle of +30 degrees;

(c) Yellow: when used or required, yellow retroreflective material shall meet or exceed ASDM D4956 standards for type V super high-intensity sheeting and have a coefficient of retroreflection equal to or greater than:

(A) 470 for an observation angle of 0.2 degrees and a light entrance angle of -4 degrees; and

(B) 270 for an observation angle of 0.2 degrees and a light entrance angle of +30 degrees; and

(C) 110 for an observation angle of 0.5 degrees and a light entrance angle of -4 degrees; and

(D) 51 for an observation angle of 0.5 degrees and a light entrance angle of +30 degrees;

(d) All retroreflective material shall maintain at least 50 percent of the coefficient of retroreflection for a minimum of six years.

(e) Bumpers may be marked diagonally 45 degrees down to centerline of pavement with two-inch wide strips of black retroreflective material.

(f) Rub Rails may have retroreflective black material.

(g) The rear of the bus body shall be marked with strips of retroreflective yellow material that is a minimum of 1 inch and a maximum of 2 inches to outline the perimeter of the back of the bus. The horizontal strips shall be placed above the rear windows, and immediately above the bumper. Both horizontal strips shall extend to each rear corner of the bus. The vertical strips shall connect the two horizontal strips.

(h) Each side of the bus shall be marked with yellow retroreflective material that extends for the entire length of the bus body and is either:

(A) A background for the name of the school district identification required in section (31) (c) of this rule that is not less than 6 inches and not more than 12 inches in width; or

(B) A two inch wide strip that is between the beltline and the floorline;

(i) Further retroreflective placement requirements can be found in: Emergency Exits (section 21 of this rule), Identification (section 31 of this rule), and Stop Arm (section 61 of this rule)

(54) Rub Rails:

(a) There shall be one rub rail on each side of bus at, or no more than 8 inches above, the seat cushion level which shall extend from rear side of entrance door completely around bus body (except for emergency door and access panel(s)) to point of curvature near outside cowling on left side;

(b) There shall be one rub rail located 10 inches or less above the floor line which shall cover same longitudinal area as upper rub rail, except at wheelhousing, and shall extend only to longitudinal tangent of right and left rear corners;

(c) All rub rails shall be attached at each body post and all other upright structural members;

(d) All rub rails shall be four inches or more in width, shall be of 16-gauge steel, suitable material of equivalent strength, and shall be constructed in corrugated or ribbed fashion;

(e) All rub rails shall be applied to the outside body or outside body posts. Pressed-in or snap-on rub rails do not satisfy this requirement. For buses using rear luggage or engine compartment, rub rails need not extend around rear corners.

(f) The bottom edge of the body side skirts shall be stiffened by application of a rub rail, or the edge may be stiffened by providing a flange or other stiffeners.

(55) Sanders and other traction assisting devices:

(a) Sanders may be installed. When installed, sanders shall:

(A) Be of hopper cartridge-valve type;

(B) Have metal hopper with all interior surfaces treated to prevent condensation of moisture;

(C) Be of at least 100 pound (grit) capacity;

(D) Have cover on filler opening of hopper, which screws into place, sealing unit airtight;

(E) Have discharge tubes extending to front of each rear wheel under fender;

(F) Have no-clogging discharge tubes with slush-proof, nonfreezing rubber nozzles;

(G) Be operated by electric switch with telltale light mounted on instrument panel;

(H) Be exclusively driver-controlled.

(b) Automatic traction chains may be installed.

(56) Seat Belts:

(a) Driver's seat belt: A Type 2 seat belt shall be provided for the driver, a driver's seat with an integrated Type 2 seat belt may be substituted. Each belt section shall be booted to keep belt and the button or buckle type latch off floor when not in use. Shoulder belt assemblies on Type B, C, and D buses shall provide for a height adjustment of at least four inches at its upper point of attachment to the bus. Belt shall be anchored or guided in a manner at the seat frame to prevent the driver from sliding sideways when belt is in use. Locking retractors may be either an ELR (Emergency Locking Retractor) or an ALR (Automatic Locking Retractor). All ALR equipped buses received after July 1, 1989, must include an approved anti-cinching device;

(b) Passenger seat belts:

(A) On buses manufactured prior to October 21, 2011 with a GVWR of more than 10,000 pounds, Type 1 seat belts or Type 2 seat belts may be installed. The attachments, belts and installation shall meet the requirements of:

(i) 49 CFR 571.208 Occupant Crash Protection, 49 CFR 581.209 Seat Belt Assemblies, and 49 CFR 571.210 Seat Belt Assembly Anchorages, as they apply to school buses with a GVWR of 10,000 pounds or less; or



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(ii) The voluntary Type 1 or Type 2 installation requirements outlined in 49 CFR 571.222 School Bus Passenger Seating and Crash Protection that take effect on October 21, 2011.

(B) On buses manufactured on or after October 21, 2011 with a GVWR of more than 10,000 pounds, Type 2 seat belts may be installed. Standards for voluntary installation of seat belts are outlined in 49 CFR 571.222 School Bus Passenger Seating and Crash Protection.

(C) On buses with a GVWR of 10,000 pounds or less, mandatory seat belt standards are outlined in 49 CFR 571.222 School Bus Passenger Seating and Crash Protection.

### (57) Seats and Crash Barriers:

(a) Driver's seat shall be so located in relationship to the steering wheel that the driver may assume a natural position while driving, have a clear view of the road, and sufficient leg room to operate safely and effectively the brake and clutch pedals and accelerator without cramping or interference. Minimum distance between steering wheel and back rest of driver's seat shall be 11 inches. Driver's seat shall have a fore-and-aft adjustment of not less than four inches and shall on Type B, C, and D buses be capable of being raised and lowered at least three inches and shall be strongly attached to comply with acceptable installation procedures:

(A) For type B, C, and D buses, driver's seat shall be a high back (suspension) seat with a minimum seat back adjustment of 15 degrees, not requiring the use of tools, and with a head restraint to accommodate a 95th percentile female anthropomorphic dummy as defined in FMVSS 208. The driver's seat shall be secured with nuts, bolts, and washers or flanged-headed nuts. Type A buses may use manufacturer's standard driver's seat.

(B) Driver's seat positioning and range of adjustment shall be designed to accommodate comfortable actuation of the foot control pedal by 95 percent of the adult female population.

(b) Passenger Seats: In addition to the requirements of 49 CFR 571.222 School Bus Passenger Seating and Crash Protection, all passenger seats have the following requirements:

(A) All seats shall have minimum depth of 15 inches;

(B) In determining seating capacity of bus, the minimum allowable rump width shall be 13 inches;

(C) Seat, seat back cushion and crash barrier shall be covered with a material having a minimum 42-ounce finished weight, 54-inch width and finished vinyl coating of 1.06 broken twill, or other material with equal tensile strength, tear strength, seam strength, adhesion strength, resistance to abrasion, resistance to cold, and flex separation. Material shall meet or exceed the criteria contained in the School Bus Seat Upholstery Fire Block Test. (see Appendix);

(D) All seats shall be forward facing and shall be securely fastened to that part(s) of bus that support them with a nut-and-bolt type of fastener. Each seat leg shall be secured to the floor by a minimum of two nut-and-bolt type fasteners of at least grade 5 SAE strength. Sheet metal screw-type fasteners without a nut are not acceptable, except in areas where it is not possible to install a nut-and-bolt type fastener. Seats may be track mounted;

(E) If track mounted seating is installed, the manufacturer shall supply minimum and maximum seat spacing dimensions on a label permanently affixed to the bus to notify end user of seat installation requirements.

(F) No bus shall be equipped with jump seats or portable seats. Flip-up seats at side emergency exit doors are allowed;

(G) Seat spacing shall not be less than 24 inches between the front of the back of each seat and the rear of the back of the seat immediately ahead, measured at all points of the seat width. This shall be measured at cushion height on a plane parallel to the center line of the bus;

(58) Shock Absorbers: Bus shall be equipped with front and rear double-acting shock absorbers compatible with manufacturer's rated axle capacity at each wheel location.

(59) Side skirts shall be 2 inches above the horizontal line between the center of the front spindle to the center of the rear axle, or lower. Measurement shall apply to an unloaded school bus located on a flat, level surface.

### (60) Springs:

(a) Capacity of springs or suspension assemblies shall be commensurate with chassis manufacturer's gross vehicle weight rating;

(b) If rear springs are used they shall be of progressive type. Front leaf springs shall have a stationary eye at one end and shall be protected by a wrapped leaf in addition to the main leaf.

### (61) Steering Gear:

(a) Steering gear shall be approved by manufacturer and designed to assure safe and accurate performance when vehicle is operated with maximum load and at maximum speed;

(b) Steering mechanism that allows for external adjustment to correct for lost motion shall provide an accessible adjustment location;

(c) No changes shall be made in steering apparatus which are not approved by manufacturer;

(d) There shall be clearance of at least two inches between steering wheel and cowl, instrument panel, windshield, or any other surface;

(e) Power steering of the integral type is required;

(f) The steering system shall be designed to provide for means for lubrication of all wear-points, if wear points are not permanently lubricated.

### (62) Steps:

(a) Service door entrance may be equipped with two-step or three-step stepwell. Risers in each case shall be approximately equal and shall not exceed 10 inches in height. When plywood floor is used on steel, differential may be increased by thickness of plywood used:

(A) First step at service door for type A-1, A-2, B, and C buses shall be not less than 10 inches and not more than 14 inches from ground, based on standard chassis specifications;

(B) Type D buses shall be equipped with a three-step stepwell. First step at service door shall not be less than 12 inches and not more than 16 inches from the ground based on standard chassis specifications.

(b) Steps shall be enclosed to prevent accumulation of ice and snow;

(c) Steps shall not protrude beyond side body line;

(d) Steps (if any) on Type A-1 and A-2 buses not manufactured originally as school buses may be chassis manufacturer's standard;

(e) At least one grab handle not less than 20 inches in length shall be provided to assist passengers during entry or egress in unobstructed locations inside doorway. Grab handle shall be designed, installed and maintained to minimize the opportunity for entanglement of passenger clothing and belongings.

### (f) Step Treads:

(A) All steps, including floor line platform area, shall be covered with 3/16-inch rubber floor covering or other materials equal in wear resistance and abrasion resistance to top grade rubber;

(B) The step covering shall be permanently bonded to a durable backing material that is resistant;

(C) 3/16-inch ribbed step tread shall have a 1-1/2-inch white or yellow nosing as integral piece without any joint;

(D) Rubber portion of step treads shall have the following characteristics:

(i) Special compounding for good abrasion resistance and high coefficient of friction;

(ii) Flexibility so that it can be bent around a 1/2-inch mandrel both at 130 degrees F and 20 degrees F without breaking, cracking or crazing;

(iii) Show a durometer hardness 85 to 95.

(63) Steps, Windshield Access: There shall be at least one folding step or recessed foothold and suitably located handles on each side of the front of the body for easy accessibility for cleaning the windshield and lamps except when windshield and lamps are easily accessible from the ground. Standard does not apply to chassis not originally manufactured as school buses.

(64) Stop Signal Arms: Buses shall be equipped with stop signal arms mounted in accordance with the following requirements:

(a) Shall be installed on the left side of the bus; the vertical center of the stop blade shall be at least seven inches but not more than 14 inches below the window line, on the first body post to the rear of the driver or as close as practicable;

(b) A windguard shall be provided. All sheet metal parts shall be 16 gauge metal or heavier;

(c) All parts of the assembly that are not color specific in 49 CFR 571.131 School Pedestrian Safety Devices shall be painted black;

(d) Shall be equipped with two, four-inch, double faced alternating flashing red lamps to be mounted centered on the vertical centerline of the stop arm near the perimeter of the sign with a minimum of 12 inches spacing between lamp centers. Lamps shall be LED or strobe

(e) The stop arm and lamps shall be wired to the circuit of the flashing red warning lamps mounted on the front and rear of the bus and shall operate simultaneously with the red bus safety lamps. Override switch is prohibited;

(f) Shall be retroreflectorized on both sides meeting the Retroreflective Materials standard (50) of this rule.

(g) Shall be either air, vacuum, or electrically operated:

(A) Air operated stop arms:

(i) Air may be supplied from an air accessory tank or from the first (wet) tank;

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(ii) If source is from the first (wet) tank a pressure protection valve shall be installed to prevent the tank air supply from falling below 60 pounds;

(iii) Stop arm system must have a pressure regulating valve;

(iv) All fittings shall be brass.

(B) Vacuum operated stop arms:

(i) Vacuum shall be supplied from a separate accessory tank. Tank shall be protected by a check valve;

(ii) All fittings shall be brass.

(65) Sun Visor: Interior adjustable sun visor, not less than 6 by 30 inches in size, shall be installed above windshield in position convenient for use by driver. If transparent visor is used, it shall be of such material so as not to prevent distinguishing between the colors of red and green traffic signals. Type A-1 and A-2 may be equipped with manufacturer's standard visor. Visor shall have protected edges.

(66) Throttle: The force required to operate the throttle shall not exceed 16 pounds throughout the full range of accelerator pedal travel.

(67) Tires and Rims:

(a) Tires and rims of proper size and tires with load rating commensurate with chassis manufacturer's gross vehicle weight rating shall be provided. The use of multi-piece rims and/or tube type tires shall not be permitted;

(b) All tires on new buses shall be of same size. Load range of tires shall meet or exceed the gross axle weight rating as required by 49 CFR 571.120 Tire Selection and Rims for Vehicles Other Than Passenger Cars, and as indicated on the manufacturers data plaque;

(c) If bus is equipped with spare tire and rim assembly, it shall be of the same size and load range as those mounted on the vehicle;

(d) A spare tire, when carried, shall be suitably mounted in an accessible location outside passenger compartment. Type A-1, and A-2 buses may have spare tire securely mounted in the rear corner of passenger compartment;

(e) Recapped tires are prohibited on the front of the bus;

(f) Regrooved tires are not permitted on any bus;

(g) Minimum tread depth on tires shall be:

(A) Front axle — 4/32 inch;

(B) Rear axle — 2/32 inch.

(h) Tread depth shall be measured as follows: The minimum depth in any two adjacent major grooves at three locations spaced approximately equally around the outside of the tire but not on wear indicators.

(68) Tool Compartment: A metal container of adequate strength and capacity for storage of tire chains, tow chains and such tools as may be necessary, may be provided. Container may be located inside or outside of passenger compartment. If inside, it shall have a cover and positive type latch to prevent opening in event of a severe impact or bus rollover, and shall be attached to the floor with a nut and bolt fastener, or may be securely attached to a seat frame under a seat. If tool compartment is outside, it shall be lockable.

(69) Tow Hooks:

Type C and D buses shall have two front and rear to hooks that have sufficient strength to pull or be pulled by another vehicle of the same GVWR. Tow hooks shall be installed in order that no permanent distortion to the body or chassis will result if the bus must be towed.

(70) Transmission:

(a) Transmission shall have an input torque capacity greater than maximum net torque developed by engine;

(b) When automatic or semi-automatic transmission is used, it shall provide for not less than three forward and one reverse speed. The shift selector, if applicable, shall provide a detent between each gear position when shift selector is not steering column mounted. Type C and D buses shall be equipped with a transmission temperature gauge;

(c) When manual transmission is used, second gear and higher shall be synchronized. A minimum of three forward speeds and one reverse shall be provided.

(d) Automatic transmissions incorporating a parking pawl shall have a transmission shifter interlock controlled by the application of the service brake to prohibit accidental engagement of the transmission. All non-park pawl transmissions shall incorporate a park brake interlock that requires the service brake to be applied to allow release of the parking brake.

(71) Trash container: When used, the trash container shall be secured by a holding device that is designed to prevent movement and to allow easy removal and replacement. It shall be installed in an accessible location in the driver's compartment, not obstruct passenger access to the entrance door and maintained to minimize the opportunity for entanglement of passenger clothing and belongings.

(72) Turning Radius:

(a) Chassis with a wheel base of 264 inches or less shall have a right and left turning radius of not more than 42 1/2 feet, curb to curb measurement;

(b) Chassis with a wheelbase of 265 inches or more shall have a right and left turning radius of not more than 44 1/2 feet, curb to curb measurement.

(73) Under carriage luggage compartments: Luggage compartments may be installed on the outside of the bus mounted below the floor level or in the rear of the bus. Access to compartments must be from the outside only. Compartment doors must have a positive retention to hold the doors open. Compartment doors must be lockable.

(74) Undercoating:

(a) The entire underside of the bus body, including floor sections, cross members and below floor-line side panels, shall be coated with rust-proofing material for which the material manufacturer has issued to the bus manufacturer a notarized certification that the materials meet or exceed all performance requirements of SAE J1959, Corrosion Preventive Compound, Underbody Vehicle Corrosion Protection;

(b) The undercoating material shall be applied to the material manufacturer's specifications, including application method and recommended film thickness, and shall show no evidence of voids in the cured film.

(c) The undercoating material shall not cover any exhaust components of the chassis.

(75) Ventilation:

(a) Body shall be equipped with suitable, controlled ventilating system of sufficient capacity to maintain proper quantity of air under operating conditions without opening of windows except in extremely warm weather;

(b) Static-type non-closable exhaust ventilation shall be installed in low-pressure area of roof.

(76) Video surveillance cameras may be mounted inside or on either the forward or rear bulkhead, or to the ceiling in compliance with the following requirements:

(a) Surface mounted camera/camera housing/recording devices shall be mounted as far forward (if forward mounted) or as far rearward (if rear mounted) as possible and directly above the center of the windshield/rear window, and shall not:

(A) Extend into the passenger compartment more than 9 inches;

(B) Extend(s) down from the ceiling more than five inches;

(C) Be more than five inches wide;

(D) Interfere with the rear view mirror or sun visor.

(b) Recording devices or their housings shall not be mounted overhead in the passenger compartment;

(c) Video cameras/housings (not recorders) may be mounted overhead in the passenger compartment, provided they are over the seating area, but not over any part of the aisle, all edges must be rounded and/or protected with enclosure of shatterproof construction;

(d) Flush mounted cameras/housings may be mounted in any position in the front or rear bulkhead or ceiling provided that any modification to the body, in order to achieve flush mounting does not compromise the structural integrity of the body panels;

(e) All video related devices mounted to the interior bus body shall be securely fastened in a manner to prevent separation from the bus body in the event of collision or mishap;

(f) Recording devices/housings must allow ready access for camera and video recording medium removal without the use of tools;

(g) All electrical connections shall be made with UL approved wiring and terminals, and protected by grommets any place it passes through metal panels. Any electrical load added to the vehicles electrical system shall be protected with appropriate over current device (fuse).

(77) Weight Distribution:

(a) Weight distribution of fully loaded bus on level surface shall be such as to not exceed the manufacturer's front gross axle weight rating and rear gross axle weight rating;

(b) Weight distribution of fully loaded bus on level surface shall be such that no more than 75 percent of gross vehicle weight is on rear tires and no more than 35 percent is on front tires. Type B and D buses with engine inside front of body and entrance door ahead of front wheels shall have no more than 75 percent of gross vehicle weight on rear tires, no more than 50 percent on front tires. If entrance door is behind front wheels, no more than 75 percent of gross vehicle weight shall be on rear tires, no more than 40 percent on front tires. With engine in rear, no more than 75 percent of gross vehicle weight shall be on rear tires, no more than 40 percent on front tires.

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## (78) Wheelhousing:

(a) The wheelhousing opening shall allow for easy tire removal and service;

(b) Wheelhousing shall be attached to floor sheets in such a manner as to prevent any dust, water or fumes from entering the body. Wheelhousing shall be constructed of 16-gauge steel, or other material of equal strength;

(c) The inside height of the wheelhousing above the floor line shall not exceed 12 inches;

(d) The wheelhousing shall provide clearance for installation and use of tire chains on single and dual (if so equipped) power-driving wheels;

(e) No part of a raised wheelhousing shall extend into the emergency door opening.

(79) Wind deflectors may be installed according to manufacturer's standards on the rear roof to deflect snow, dust and dirt from the rear window.

## (80) Windshield and Windows:

(a) All glass in windshield, windows and doors shall be of approved safety glass so mounted that its identification mark is visible and of a quality to prevent distortion in any direction. All glazing materials shall be on the approved list of the Oregon Department of Motor Vehicles;

(b) Windshield shall be of safety plate glass AS-1 grade as specified by American National Standards Institute Safety Code Z26.1;

(c) Windshield glass may be heat absorbing and may have a horizontal gradient band starting slightly above the line of the operator's vision and gradually decreasing in light transmission to 20 percent or less at the top of the windshield in compliance with Federal Motor Vehicle Safety Standard 205;

(d) Glass in all side windows, doors and rear windows shall be AS-2 or better grade, as specified in ANSI Z26.1, or AS-4 coated abrasion resistant rigid plastic meeting requirements of Federal Motor Vehicle Safety Standard 205. Rigid plastic cannot be used for windshields or windows immediately to the left or right of the driver;

(e) Side windows shall conform to the following:

(A) Buses shall provide full drop or split sash windows which provide an unobstructed opening of at least 12 inches and not more than 14 inches in height, obtained by lowering the sash, and at least 22 inches in width. Type A-1 and A-2 buses may have a full drop or split sash windows which provide an unobstructed opening of at least 9 inches and not more than 13 inches in height, obtained by lowering the sash, and at least 22 inches in width, provided the bus has 2 swing-out windows. This requirement does not apply to emergency exit windows installed in compliance with subsection (22) of this rule

(B) One window on each side of the bus may be less than 22 inches in width. This window need not be split sash.

(C) Windows may be tinted.

(81) Windshield Washers: Bus shall be equipped with windshield washers.

[ED. NOTE: Exhibits referenced are available from the agency.]

[Publications referenced are available from the agency.]

Stat. Auth.: ORS 327.013 & 820.100 - 820.120

Stats. Implemented: ORS 327.013, 820.100, 820.105, 820.110 & 820.120

Hist.: 1EB 17-1985, f. 10-29-85, ef. 11-1-85; EB 44-1988, f. 12-16-88, cert. ef. 1-1-89; EB 21-1993, f. & cert. ef. 6-2-93; ODE 11-1999, f. & cert. ef. 2-12-99; ODE 30-1999, f. 12-13-99, cert. ef. 12-14-99; ODE 15-2004, f. & cert. ef. 8-4-04; ODE 26-2007, f. & cert. ef. 10-26-07; ODE 9-2011, f. & cert. ef. 7-1-11

## 581-053-0516

### Retrofit Standards for School Buses

In addition to meeting the minimum standards in effect at the time of purchase, all school buses in use by a pupil transportation entity shall meet the following additional requirements:

(1) Body Fluid Kits: All school buses shall have body fluid kits that meet the requirements in OAR 581-053-0512

(2) Emergency Door and Exit Labeling:

(a) All emergency doors shall have the designation "Emergency Door" in letters at least six inches high, of a color that contrasts with its background. The designation shall be located at the top of, or directly above, the emergency door on both the inside and outside surfaces of the bus;

(b) All emergency window exits (swing-out windows and rear push-out windows) shall have the designation "Emergency Exit" in letters at least six inches high, of a color that contrasts with its background. The designation shall be located at the top of, or directly above, or at the bottom of the emergency window exit on both the inside and outside surfaces of the bus.

(3) Fog Lights: Regardless of the age of the vehicle, if a front fog light system is installed after January 21, 1997, then the system shall meet the following requirements:

(a) Fog lamps shall be mounted symmetrically around the front centerline of the bus, below the headlights not less than 12 inches no more than 30 inches above the ground;

(ii) Fog lamps shall be wired to a separate switch and shall only come on when the low beam head lights are on.

(iii) A steady burning indicator light shall be wired so it comes on when the fog lamps are turned on and mounted in a location readily visible to the driver

(d) Fog light systems installed on vehicles prior to January 21, 1997 are exempted from this regulation.

(4) Identification: The name of the school district, private school, or parochial school shall be placed on all school buses on both the left and right sides of the bus. The name shall appear in the area directly below the side windows and the letters and figures in the name shall not be less than four inches nor more than seven inches in height and of proportionate width.

(5) Stop Arm: All school buses shall have a stop arm that meets the requirements in OAR 581-053-0512 except that retroreflective material on the stop arm is not mandated on buses manufactured prior to October 21, 2011.

(6) Wheelchair Restraint Systems: All buses that are equipped to transport students in a wheel chair manufactured prior to September 3, 1993 shall be retrofitted to meet the following requirements:

(a) Each wheelchair location shall have not less than four wheelchair securement anchorages and shall be situated so that:

(A) A wheel chair can be secured in a forward-facing position; and

(B) The wheelchair can be secured by wheelchair securement device at two locations in the front and two locations in the rear.

(b) Each wheelchair location shall have:

(A) Not less than one anchorage for the upper end of the upper torso restraint; and

(B) Not less than two floor anchorages for wheelchair occupant pelvic and upper torso restraint.

(c) Wheelchair securement device and an occupant restraint may share a common anchorage.

(d) All components must conform to 49 CFR 571.222 School bus passenger seating and crash protection published in volume 58 of the Federal Register, September 3, 1993.

Stat. Auth.: ORS 820.100 - 820.120

Stats. Implemented: ORS 820.100 - 820.120

Hist.: ODE 9-2011, f. & cert. ef. 7-1-11

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## Oregon Health Authority Chapter 943

**Rule Caption:** Rulemaking procedures and delegation of rulemaking authority for Oregon Health Authority.

**Adm. Order No.:** OHA 1-2011

**Filed with Sec. of State:** 7-1-2011

**Certified to be Effective:** 7-1-11

**Notice Publication Date:** 5-1-2011

**Rules Adopted:** 943-001-0005, 943-001-0007

**Subject:** These rules bring the agency into compliance with current statutes related to rulemaking filings and delegation of rulemaking authority requirements. The Authority is adopting these rules in Chapter 943 which applies to administrative rules for the Authority agency-wide. These rules conform with the Notice of Proposed Rulemaking and temporary rule filing requirements in ORS chapter 183.  
**Rules Coordinator:** Kym Gasper—(503) 945-6302

### 943-001-0005

#### Notice of Proposed Rulemaking and Adoption of Temporary Rules

(1) Except as provided in ORS 183.335(7) or (12) or 183.341, before permanently adopting, amending, or repealing an administrative rule, the Authority shall give notice of the intended action:

(a) To legislators specified in ORS 183.335(15) at least 49 days before the effective date of the rule;

(b) To persons on the interested parties lists described in section (2) of this rule for the pertinent OAR chapter or pertinent subtopics or programs within an OAR chapter at least 28 days before the effective date of the rule;



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(c) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days before the effective date of the rule;

(d) To other persons, agencies, or organizations that the Authority is required to provide an opportunity to comment pursuant to state statute or federal law or as a requirement of receiving federal funding, at least 28 days before the effective date of the rule;

(e) To the Associated Press and the Capitol Press Room at least 28 days before the effective date of the rule; and

(f) In addition to the above, the Authority may send notice of intended action to other persons, agencies, or organizations that the Authority, in its discretion, believes to have an interest in the subject matter of the proposed rule at least 28 days before the effective date of the rule.

(2) Pursuant to ORS 183.335(8), the Authority shall maintain an interested parties list for each OAR chapter of rules for which the Authority has administrative responsibility, and an interested parties list for subtopics or programs within those chapters. A person, group, or entity that desires to be placed on the list to receive notices regarding proposed permanent adoption, amendment, or repeal of a rule must make the request in writing or by electronic mail to the rules coordinator for the chapter. The request must include either a mailing address or an electronic mail address to which notices may be sent.

(3) Notices under this rule may be sent by hand delivery, state shuttle, postal mail, electronic mail, or facsimile. The Authority recognizes state shuttle as "mail" and may use this means to notify other state agencies.

(a) An email notification under section (1) of this rule may consist of any of the following:

(A) An email that attaches the Notice of Proposed Rulemaking or Notice of Proposed Rulemaking Hearing and Statement of Need and Fiscal Impact.

(B) An email that includes a link within the body of the email, allowing direct access online to the Notice of Proposed Rulemaking or Notice of Proposed Rulemaking Hearing and Statement of Need and Fiscal Impact.

(C) An email with specific instructions within the body of the email, usually including an electronic Universal Resource Locator (URL) address, to find the Notice of Proposed Rulemaking or Notice of Proposed Rulemaking Hearing and Statement of Need and Fiscal Impact.

(b) The Authority may use facsimile as an added means of notification, if necessary. Notification by facsimile under section (1) of this rule shall include the Notice of Proposed Rulemaking or Notice of Proposed Rulemaking Hearing and Statement of Need and Fiscal Impact, or specific instructions to locate these documents online.

(c) The Authority shall honor all written requests that notification be sent by postal mail instead of electronically if a mailing address is provided.

(4) If the Authority adopts or suspends a temporary rule, the Authority shall notify:

(a) Legislators specified in ORS 183.335(15);

(b) Persons on the interested parties list described in section (2) of this rule for the pertinent OAR chapter, subtopics, or programs within an OAR chapter;

(c) Other persons, agencies, or organizations that the Authority is required to notify pursuant to state statute or federal law or as a requirement of receiving federal funding; and

(d) The Associated Press and the Capitol Press Room; and

(e) In addition to the above, the Authority may send notice to other persons, agencies, or organizations that the Authority, in its discretion, believes to have an interest in the subject matter of the temporary rulemaking.

(5) In lieu of providing a copy of the rule or rules as proposed with the notice of intended action or notice concerning the adoption of a temporary rule, the Authority may state how and where a copy may be obtained on paper, by electronic mail, or from a specified web site.

Stat. Auth.: ORS 183.341 & 413.042

Stats. Implemented: ORS 183.330, 183.335, & 183.341

Hist.: OHA 1-2011, f. & cert. ef. 7-1-11

## 943-001-0007

### Delegation of Rulemaking Authority

Any officer or employee of the Oregon Health Authority who is identified on a completed Delegation of Authority form signed by the Director or Deputy Director of the Authority and filed with the Secretary of State, Administrative Rules Unit, is vested with the authority to adopt, amend, repeal, or suspend administrative rules as provided on that form until the delegation is revoked by the Director or Deputy Director of the Authority, or the person leaves employment with the Authority.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 183.325

Stat. Auth.: ORS 183.341 & 413.042

Stats. Implemented: ORS 183.330, 183.335, & 183.341

Hist.: OHA 1-2011, f. & cert. ef. 7-1-11

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**Rule Caption:** Authorization for Authority employees to appear on behalf of the Authority in contested case hearings.

**Adm. Order No.:** OHA 2-2011(Temp)

**Filed with Sec. of State:** 7-1-2011

**Certified to be Effective:** 7-1-11 thru 12-27-11

**Notice Publication Date:**

**Rules Adopted:** 943-001-0009

**Subject:** Provides authorization for Authority employees or officers (lay representatives) to appear on behalf of the Authority in contested case hearings. Prohibits Authority lay representatives from making legal arguments and explains process for submitting legal argument when necessary.

**Rules Coordinator:** Kym Gasper—(503) 945-6302

## 943-001-0009

### Lay Representation in Contested Case Hearings

(1) Contested case hearings are conducted in accordance with the Attorney General's model rules at OAR 137-003-0501 to 0700. Subject to the approval of the Attorney General, an officer or employee of the Oregon Health Authority (Authority) is authorized to appear on behalf of the agency in the following types of hearings conducted by the Authority:

(a) Eligibility and termination determinations related to medical assistance coverage.

(b) Suspension, reduction, or denial of medical assistance services, prior authorization, or medical management decisions.

(c) Enrollment or disenrollment decisions related to managed care plans.

(d) Eligibility for or termination of health insurance premium assistance, or determination of subsidy levels.

(e) Provider issues including provider enrollment or denial of enrollment, overpayment determinations, audits, and sanctions.

(f) Other administrative actions including criminal background checks, hardship waivers related to medical assistance, client overpayments related to medical assistance.

(g) Oregon State Hospital's involuntary administration of a significant procedure to a patient or resident.

(2) The agency representative may not make legal argument on behalf of the agency.

(a) "Legal argument" includes arguments on:

(A) The jurisdiction of the agency to hear the contested case;

(B) The constitutionality of a statute or rule or the application of a constitutional requirement to an agency; and

(C) The application of court precedent to the facts of the particular contested case proceeding.

(b) "Legal argument" does not include presentation of motions, evidence, examination and cross-examination of witnesses or presentation of factual arguments or arguments on:

(A) The application of the statutes or rules to the facts in the contested case;

(B) Comparison of prior actions of the agency in handling similar situations;

(C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case;

(D) The admissibility of evidence;

(E) The correctness of procedures being followed in the contested case hearing.

(3) When an agency officer or employee appears on behalf of the Authority, the administrative law judge shall advise the representative of the manner in which objections may be made and matters preserved for appeal. Such advice is of a procedural nature and does not change applicable law on waiver or the duty to make timely objection. Where such objections involve legal argument, the administrative law judge provide reasonable opportunity for the agency officer or employee to consult legal counsel and permit the Authority's legal counsel to file written legal argument within a reasonable time after the conclusion of the hearing.

Stat. Auth.: ORS 413.042

Stats Implemented: ORS 183.452

Hist.: OHA 2-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

# ADMINISTRATIVE RULES

**Rule Caption:** Oregon Health Authority Shared Service and Cooperative Relationships with Department of Human Services.

**Adm. Order No.:** OHA 3-2011(Temp)

**Filed with Sec. of State:** 7-1-2011

**Certified to be Effective:** 7-1-11 thru 12-27-11

**Notice Publication Date:**

**Rules Adopted:** 943-001-0020

**Subject:** HB 2009 (2009) created the Oregon Health Authority and transferred to the Authority the Department of Human Services' (Department) Divisions with respect to health and health care. Effective July 1, 2011 the Authority adopts these operational and programmatic rules to assure continuity as a part of the operational transfer from functions previously performed by the Department as a result of HB 2009(2009).

Among the functions transferred to the Authority is the medical assistance program. This rule provides for continuity in the relationship between the Authority and the Department when working together in the administration of the medical assistance program and that the Authority and Department shall work cooperatively in the administration of the medical assistance program, including making determinations of eligibility and service e need for medical assistance. This rule also explains that the Authority designated the Department as the operating agency for home and community-based waiver services and as an Organized Health Care Delivery System.

**Rules Coordinator:** Kym Gasper—(503) 945-6302

## 943-001-0020

### Oregon Health Authority Shared Service and Cooperative Relationships with Department of Human Services

(1) The Oregon Health Authority (Authority) will cooperate and collaborate with the Department of Human Services (Department) in order to effectively coordinate services to individuals, families and communities and realize operational efficiencies in the administration of services that are shared between them ("shared services").

(2) For all the programs, functions, and duties with respect to health or health care (generally described in Oregon Laws 2009, chapter 595, section 19(1)(a)), transferred to the Authority from the Department ("transferred program") or for shared services, the Authority declares that:

(a) All transferred program rules shall remain in effect until superceded by adoption of Authority rules or adoption of rules by the Authority coordinating shared services with the Department.

(b) All transferred program administration, policies, and procedures remain in effect pending the completion of review and adoption by the Authority or adoption of such policies and procedures related to coordination of shared services with the Department.

(c) Any judicial or administrative action, proceeding, contested case hearing, or administrative review matters, or new action, proceeding, or matter involving or relating to the duties or powers transferred to the Authority are the responsibility of the Authority.

(d) Rights and obligations legally incurred under transferred program contracts, leases, and business transactions remain legally valid and are the responsibility of the Authority.

(e) Statutorily required filings, notices or service of papers, applications, notices or other documents to be mailed, provided to, or served on the Authority shall be mailed, provided to, or served on the Authority. Any notices required by ORS 113.145, 114.525 and 130.370 to be sent to the Authority may be consolidated with similar notices to the Department and sent to the Estate Administration Unit of the Department. Any notices required by ORS 416.530 to be sent to the Authority may be consolidated with similar notices to the Department and sent to the Personal Injury Lien Unit of the Department Any consolidated notice shall be considered notice to the Authority as long as the Authority's interest or claim in the matter is identified in the notice consistent with requirements in applicable statute.

(f) A reference to an Administrator or Assistant Director in any transferred program rule of the Authority means the Director of the Authority's program that is covered by that chapter of the Oregon Administrative Rules or the Authority's program specified in the rule.

(3) As the state Medicaid agency for the administration of funds from Titles XIX and XXI of the Social Security Act, the Authority is charged with the administration of the medical assistance program. The Authority is responsible for facilitating outreach and enrollment efforts to connect eligible individuals with all available publicly funded health programs.

(a) The Authority and the Department recognize that there are many points of interconnection between their programs and the individuals who receive services through these programs. In addition, there are areas of natural connection between the Authority and the Department based upon the former and current structures of the Department in the administration of the medical assistance program.

(b) The Authority shall work cooperatively with the Department in the administration of the medical assistance program and to facilitate the outreach and enrollment in the program, including making determinations of eligibility and service need for medical assistance. The Authority has designated the Department as the operating agency for home and community-based waiver services and as an Organized Health Care Delivery System.

(c) The Authority and the Department are authorized by state law to delegate to each other any duties, functions and powers that they deem necessary for the efficient and effective operation of their respective functions. The Authority and the Department will work together to adopt rules to assure that medical assistance eligibility requirements, procedures, and determinations are consistent across both agencies. The Authority has authorized the Department to determine medical eligibility for medical assistance. Where that responsibility is given to the Department under ORS Chapter 411, the Department has delegated to the Authority the duties, functions, and powers to make medical eligibility determinations in accordance with OAR 410-120-0006.

(d) Where statute establishes duties and functions of the Authority or the Department in relation to medical assistance as a public assistance program, the Authority and the Department shall cooperate in the effective administration of the program.

Stat. Auth.: ORS 413.042; Other Auth. HB 2009, 2009 OL, Ch. 595, Sec. 19-25

Stats. Implemented: ORS 413.032

Hist.: OHA 3-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

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**Rule Caption:** Allows the Oregon Health Authority to receive reimbursement for providing public records.

**Adm. Order No.:** OHA 4-2011

**Filed with Sec. of State:** 7-1-2011

**Certified to be Effective:** 7-1-11

**Notice Publication Date:** 5-1-2011

**Rules Adopted:** 943-003-0000, 943-003-0010

**Subject:** Allows the Authority, in order to comply with request for public records, to establish fees, in policy, to reimburse Authority costs of providing public records. Limits amount of fee to \$25 that the Authority may charge to comply with request unless the Authority provides the requestor with notification of estimated amount of fee and requestor confirms that requestor wants the Authority to proceed with making records available.

**Rules Coordinator:** Kym Gasper—(503) 945-6302

## 943-003-0000

### Definitions

The following definitions apply to Oregon Administrative Rule 943-003-0010 unless otherwise indicated:

(1) "Authority" means the Oregon Health Authority.

(2) "Designee" means any officer or employee of the Authority, appointed by the Director to respond to requests for reduction or waiver of fees for public records of the Authority.

(3) "Director" means the Director of the Authority.

(4) "Person" means any natural person, corporation, partnership, firm, or association.

(5) "Photocopy(ing)" means a photograph, microphotograph and any other reproduction on paper or film in any scale, or the process of reproducing, in the form of a photocopy, a public record.

(6) "Public record" includes any writing that contains information relating to the conduct of the public's business that is prepared, owned, used or retained by the Authority regardless of physical form or characteristics.

(7) "Requestor" means a person requesting inspection, copies, or other reproduction of a public record of the Authority.

(8) "Writing" means handwriting, typewriting, printing, photographing and every means of recording, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, files, facsimiles or electronic recordings. It includes information stored on computer tape, microfiche, photographs, films, tape or videotape or that is maintained in a machine readable or electronic form.

Stat. Auth.: ORS 192.430, 413.042

Stats. Implemented: ORS 192.430 & 192.440

Hist.: OHA 4-2011 f. & cert. ef. 7-1-11

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## 943-003-0010

### Fees for Inspection or Copies of Public Records and Oregon Health Authority Publications; Other Services

(1) The Authority may charge a fee reasonably calculated to reimburse the Authority for the cost of making public records available:

(a) Costs include but are not limited to:

(A) The services and supplies used in making the records available;  
(B) The time spent locating the requested records, reviewing the records, and redacting, or separating material exempt from disclosure;

(C) Supervising a person's inspection of original documents;

(D) Copying records;

(E) Certifying copies of records;

(F) Summarizing, compiling, or organizing the public records to meet the person's request;

(G) Searching for and reviewing records even if the records subsequently are determined to be exempt from disclosure;

(H) Postal and freight charges for shipping the copies of the public records, sent first class or bulk rate based on weight;

(I) Indirect costs or third party charges associated with copying and preparing the public records; and

(J) Costs associated with electronic retrieval of records.

(b) When a Department of Justice review of the records is requested by the Authority, the Authority may charge a fee equal to the Attorney General's charge for the time spent by the attorney reviewing the public records, redacting material from the records, and segregating the public records into exempt and nonexempt records. A fee will not be charged for the cost of time spent by an attorney in determining the application of the provisions of ORS 192.410 to 192.505;

(c) Staff time shall be calculated based on the hourly rate of pay and fringe benefits for the position of the person performing the work;

(d) The cost for publications shall be based on the actual costs of development, printing, and distribution, as determined by the Authority;

(e) The cost for a public records request requiring the Authority to access the State's mainframe computer system, may include but not be limited to costs for computer usage time, data transfer costs, disk work space costs, programming, and fixed portion costs for printing and tape drive usage.

(2) The Authority shall establish a list of fees used to charge requestors for the costs of preparing and making available public records for the following:

(a) Photocopies;

(b) Facsimile copies. The Authority may limit the transmission to thirty pages;

(c) Electronic copies, diskettes, DVDs, and other electronically generated materials. The Authority shall determine what electronic media for reproduction of computer records shall be used and whether the electronic media is to be provided by the Authority or the requestor;

(d) Audio or video cassettes;

(e) Publications.

(3) The Authority shall review the list of fees established in policy from time to time in order to assure that the fees reflect current Authority costs.

(4) No additional fee shall be charged for providing records or documents in an alternative format when required by the Americans with Disabilities Act.

(5) The Authority shall notify requestors of the estimated fees for making the public records available for inspection or for providing copies to the requestor. If the estimated fees exceed \$25, the Authority shall provide written notice and will not act further to respond to the request until the requestor notifies the Authority, in writing, to proceed with making the records available:

(a) The Authority may require that all or a portion of the estimated fees be paid before the Authority may proceed with making the record available;

(b) The Authority may require that actual costs of making the record available be paid before the record is made available for inspection or copies provided.

(6) The Director or designee may reduce or waive fees when a determination is made that the waiver or reduction of fees is in the public interest because making the records available primarily benefits the general public. Factors that may be taken into account in making such a determination include, but are not limited to:

(a) The overall costs to be incurred by the Authority is negligible; or

(b) Supplying the requested records or documents is within the normal scope of Authority activity; or

(c) Requiring payment would cause extreme or undue financial hardship upon the requestor; or

(d) Discovery requests made as part of pending administrative, judicial, or arbitration proceedings.

(7) If the Authority denies an initial verbal request for waiver or reduction of fees, the requestor may submit a written request. If the Authority subsequently denies the written request for a waiver or reduction of fees, the requestor may petition the Attorney General for a review of the denial pursuant to the provisions of ORS 192.440(6) and 192.450.

Stat. Auth.: ORS 192.430, 413.042

Stats. Implemented: ORS 192.430, 192.440 and 192.450

Hist.: OHA 4-2011 f. & cert. ef. 7-1-11

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**Rule Caption:** Prohibiting Discrimination Against Individuals with Disabilities Process for Requesting Reasonable Modifications.

**Adm. Order No.:** OHA 5-2011(Temp)

**Filed with Sec. of State:** 7-1-2011

**Certified to be Effective:** 7-1-11 thru 12-27-11

**Notice Publication Date:**

**Rules Adopted:** 943-005-0000, 943-005-0005, 943-005-0010, 943-005-0015, 943-005-0020, 943-005-0025, 943-005-0030

**Subject:** These rules establish an Oregon Health Authority (Authority) policy of non-discrimination on the basis of disability in accordance with the Americans with Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973. The rules also explain the process for individuals to request reasonable modifications and how to file a complaint of alleged discrimination.

**Rules Coordinator:** Kym Gasper—(503) 945-6302

## 943-005-0000

### Purpose

These rules (OAR 943-005-0000 through 943-005-0030) establish an Oregon Health Authority policy of non-discrimination on the basis of disability in accordance with the Americans with Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.042

Hist.: OHA 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 943-005-0005

### Definitions

The following definitions apply to OAR 943-005-0000 through 943-005-0030:

(1) "Alternate Format Communication" means printed material converted to a communication style that meets the accessibility needs of individuals with disabilities to achieve "effective communication." The types of alternate format that the Oregon Health Authority offers include but are not limited to: large print, Braille, audiotape, electronic format (E-mail attachment, diskette, or CD-ROM) and oral presentation.

(2) "Americans with Disabilities Act" is a comprehensive federal law passed in 1990, which prohibits discrimination on the basis of disability in employment, programs and services provided by state and local governments; goods and services provided by private companies; commercial facilities; telecommunications and transportation. The ADA was crafted upon a body of existing legislation, particularly the Rehabilitation Act of 1973 (Section 504), which states that no recipient of federal financial assistance may discriminate against qualified individuals with disabilities solely because of a disability. (Public Law 101-336)

(3) "An Individual with a Disability" means an individual who:

(a) Has a physical or mental impairment that substantially limits one or more major life activities; or

(b) Has a record or history of such an impairment; or

(c) Is regarded as having such an impairment.

(4) "Authority" means the Oregon Health Authority.

(5) "Auxiliary Aids or Services" mean devices or services that meet the accessibility needs of individuals with hearing, cognitive or speech impairments to achieve "effective communication." The types of auxiliary aids and services that the Authority offers include but are not limited to: qualified sign language interpreters, text telephone (TTYs), oral presentation, note takers and communication through computer keyboarding.

(6) "Direct threat" means a significant risk to the health or safety of others that cannot be eliminated or reduced to an accepted level through the provision of auxiliary aids and services or through reasonably modifying policies, practices or procedures, that person is not considered a qualified



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individual with a disability and may be excluded from Authority programs services or activities.

(7) "Federal Discrimination Complaint" means a complaint by a client, client applicant or specific class of individuals or their representative filed with a federal agency alleging an act of discrimination by a public entity.

(8) "Qualified Individual with a Disability" means an individual who can meet the essential eligibility requirements for the program, service or activity with or without reasonable modification of rules, policies or procedures, or the provision of auxiliary aids and services.

(9) "Reasonable Modifications" means a modification of policies, practices or procedures made to a program or service that allows an individual with a disability to participate equally in the program or benefit from the service.

(10) "Report of Discrimination" means a report filed with the Authority by a client, client applicant or specific class of individuals or their representative alleging an act of discrimination by the Authority or an Authority contractor, their agents or subcontractors, or a governmental entity under intergovernmental agreement with the Authority, regarding delivery of Authority services, programs or activities that are subject to Title II of the ADA or Section 504 of the Rehabilitation Act.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.042

Hist.: OHA 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 943-005-0010

### Non-discrimination

(1) No qualified individual with a disability shall, on the basis of disability, be discriminated against, be excluded from participation in, or be denied the benefits of the services, programs or activities of the Authority. In providing any benefit or service, the Authority may not, directly or through contractual or other arrangements, on the basis of a disability deny a qualified individual the opportunity to participate in a service, program or activity or to receive the benefit or services offered. The Authority may not discriminate against a qualified individual with a disability, on the basis of disability in the granting of licenses and certificates.

(2) The Authority shall provide services, programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities within the context of the program being administered. For purposes of this section, "Integrated Setting" means a setting that enables individuals with disabilities to interact with non-disabled persons to the fullest extent possible.

(3) The Authority may not require a qualified individual with a disability to participate in services, programs, or activities that are separate or different, despite the existence of permissibly separate or different programs or activities.

(4) The Authority may not apply eligibility criteria or standards that screen out or tend to screen out an individual with a disability from fully and equally enjoying any goods or services, unless such criteria can be shown to be necessary for the provision of those goods and services or is determined by the Authority to be a legitimate safety requirement.

(5) The Authority shall ensure each program, service, or activity, including public meetings, hearings and events, when viewed in the entirety, is readily accessible to and usable by individuals with disabilities. For purposes of this section, accessible means the ability to approach, enter, operate, participate in, or to use safely and with dignity by a person with a disability.

(6) Nothing in these rules prohibits the Authority from providing benefits or services to individuals with disabilities, or to a particular class of individuals with disabilities, beyond those required by law.

(7) Nothing in these rules requires an individual with a disability to accept a modification, service, opportunity, or benefit provided under these rules that the individual decides not to accept.

(8) The Authority shall provide auxiliary aids and services or alternate format communication to individuals with disabilities where necessary to ensure an equal opportunity to participate in, and enjoy the benefits of, a service, program or activity, unless it would result in a fundamental alteration of the program or an undue financial or administrative burden. Although the Authority shall determine which aid or format, if any, can be provided without fundamental alteration or undue burden, primary consideration should be given to the choice of the requestor.

(9) Except as authorized under specific programs, the Authority is not required to provide personal devices, individually prescribed devices, readers for personal use or study, or services of a personal nature.

(10) The Authority may not assess a charge or fee to an individual with a disability or any group of individuals with disabilities to cover the

costs of measures required to provide the individual with the non-discriminatory treatment required by this policy.

(11) The Authority may not deny individuals the opportunity to participate on planning or advisory boards based on their disability.

(12) The Authority may not discriminate against individuals that do not have disabilities themselves, but have a known relationship or association with one or more individuals with disabilities.

(13) The Authority's determination of direct threat to the health and safety of others must be based on an individualized assessment relying on current medical evidence, or the best available objective evidence that shows:

(a) The nature, duration and severity of the risk,

(b) The probability that a potential injury will actually occur; and

(c) Whether reasonable modifications of policies, practices or procedures will lower or eliminate the risk.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.042

Hist.: OHA 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 943-005-0015

### Illegal Drug Use

(1) Except as provided in section (2) of this rule, OAR 943-005-0000 through 943-005-0030 does not prohibit discrimination against an individual based on that individual's current illegal use of drugs.

(2) The Authority may not deny health services or services provided in connection with drug rehabilitation to an individual on the basis of that individual's current use of drugs, if the individual is otherwise entitled to such services. However, a drug rehabilitation or treatment program may deny participation to individuals who engage in illegal use of drugs while they are in the program.

(3) A program may adopt reasonable policies related to drug testing that are designed to ensure that an individual who formerly engaged in the illegal use of drugs is not now engaging in the current illegal use of drugs.

(4) A client with a psychoactive substance use disorder resulting from current illegal use of drugs is not considered to have a disability under OAR 943-005-0000 through 943-005-0030 unless the client has a disability due to another condition.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.042

Hist.: OHA 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 943-005-0020

### Reasonable Modifications

(1) The Authority shall make reasonable modifications to policies, practices or procedures of a program, services or activity when the modifications are necessary to avoid discrimination based on disability unless the modification would fundamentally alter the nature of the program, service or activity or create an undue administrative or financial burden.

(2) When providing program access to a qualified individual with a disability would cause a fundamental alteration of the program, service or activity or undue financial or administrative burden, the Authority shall, to the extent the benefit of the program, service or activity can be achieved, provide program access to the point at which the program becomes fundamentally altered or experiences an undue burden.

(3) Alternate format communication is considered to be within the scope of reasonable modifications.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.042

Hist.: OHA 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 943-005-0025

### Requesting a Reasonable Modification

(1) To request a reasonable modification to an Authority program, service, or activity a client applicant, client or public member must submit to program staff a request for a reasonable modification to the applicable program. Requests may be made verbally or by completing the Request for Reasonable Modification form.

(2) Upon receipt of a request for modification the Authority shall:

(a) Determine whether additional documentation regarding the claimed disability is needed and request such documentation;

(b) Within 15 working days of the request or the receipt of additional medical documentation, whichever is later, provide to the requestor notification of approval, approval with alternative modifications or denial of the request for reasonable modification. All denials and approvals with alternative modifications that were not requested shall be clearly labeled a "Preliminary Notification Subject to Review."; and

(c) Ensure that approved modifications occur within a reasonable time.

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(3) A "Reasonable Modification Team" (Team) means a two person team appointed by program managers that meet to evaluate a Request for Reasonable Modification decision that either denied the request or approved the request but with modifications other than those requested.

(4) This process may include additional communication with the individual requesting the reasonable modifications.

(5) Preliminary Notifications shall be reviewed by a Reasonable Modification Team, which shall notify the requestor of the final result of the review within 15 working days of the preliminary notification or within 15 working days following receipt of medical or other supporting documentation requested by the Team, whichever is later.

(6) An individual whose request for reasonable modification has been denied or approved with alternative modifications which the individual believes to be inadequate may file a Report of Discrimination with the Authority within 60 days of the final result or file a complaint with the appropriate federal regulatory agency within 180 days of the final result.

Stat. Auth.: ORS 413.042  
Stats. Implemented: ORS 413.042  
Hist.: OHA 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 943-005-0030

### Report of Discrimination and Other Remedies Available for Alleged Discrimination

(1) A client or client applicant or specific class of individuals or their representative may file with the Authority a Report of Discrimination based on disability in the following circumstances:

(a) The final result under OAR 943-005-0025 for a Reasonable Modification Request was denied or was approved with an alternative to the requested modification which is believed to be inadequate;

(b) A request for auxiliary aids and services was denied or was approved with an alternative to the request which is believed to be inadequate;

(c) A request for an alternate format communication was denied or was approved with an alternative to the request which is believed to be inadequate;

(d) Inability to access facilities used for Authority programs;

(e) Denial of participation in Authority programs and services.

(2) A Report of Discrimination must be filed within 60 calendar days of the date of the alleged discrimination unless otherwise set forth in these rules

(3) A Report of Discrimination may be submitted verbally or on a Report of Discrimination Form available at any Authority office or by calling any Authority office.

(4) The claim of discrimination shall be investigated and shall include an interview with the complainant. At the conclusion of the investigation, a Letter of Determination shall be issued within 40 calendar days from the receipt of the Discrimination Report.

(5) An individual may appeal the Letter of Determination to the Civil Rights Review Board (CRRB) within 30 calendar days of receiving the Letter of Determination. CRRB means a panel of Authority employees appointed by the Director that reviews the decisions made by the Authority ADA Coordinator or the Civil Rights Investigator on discrimination complaints filed with the Authority.

(6) At the discretion of CRRB, this may include additional communication with the client.

(7) The remedies available under OAR 943-005-0000 through 943-005-0030 are available in addition to other remedies available under state or federal law or Oregon Administrative Rules, except that these remedies must be exhausted where exhaustion is a requirement of seeking remedies in another forum.

Stat. Auth.: ORS 413.042  
Stats. Implemented: ORS 413.042  
Hist.: OHA 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

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**Rule Caption:** Authority Employees, Volunteers and Contractors Background Checks and Contesting Fitness Determinations.

**Adm. Order No.:** OHA 6-2011(Temp)

**Filed with Sec. of State:** 7-1-2011

**Certified to be Effective:** 7-1-11 thru 12-27-11

**Notice Publication Date:**

**Rules Adopted:** 943-007-0000, 943-007-0500

**Subject:** These rules adopt and incorporate by reference the Department of Human Services' Background Check Unit rules chapter 407-007-0000 to 0075; 407-007-0090 to 0100; 407-0200 to 0325; and 407-007-0340 to 0370 for matters that involve employees, volun-

teers, providers or contractors of the Authority who are subject to background checks before the individual may work, volunteer be employed, hold the position, or provide services.

HB 2009 (2009) created the Oregon Health Authority and transferred to the Authority the Department of Human Services' (Department) Divisions with respect to health and health care. Effective July 1, 2011 the Authority needs to adopt and incorporate by reference the Department's rules which provide the Authority with the legal authority to conduct background checks and screenings on behalf of the Authority.

The Authority needs to adopt OAR 943-007-0500 which explains how an individual may contest a fitness determination.

**Rules Coordinator:** Kym Gasper—(503) 945-6302

## 943-007-0000

### Criminal History Checks

Employees, volunteers, providers and contractors for the Oregon Health Authority (Authority) are subject to background checks and screening to determine if they have a history of criminal behavior such that they should not be allowed to work, volunteer, be employed, or otherwise perform in positions covered by these rules.

(1) The Authority adopts and incorporates by reference the rules established in: OAR 407-007-0000 to 0075 and 407-007-0090 to 0100 (Employees, Volunteers and Contractors); for those matters that involve employees, volunteers, or contractors of the Authority, except as otherwise provided in this rule.

(2) The Authority adopts and incorporates by reference the rules established in: 407-007-0200 to 0325; and 407-007-0335 to 0370 (Providers) for those matters that involve any entity or agency licensed, certified, registered, or otherwise regulated by the Authority, except as otherwise provided in this rule.

(3) Any reference to any rule from OAR 407-007-0000 to 407-007-0100 in rules or contracts of the Authority are deemed to be references to the requirements of this rule, and shall be construed to apply to employees, volunteers, providers, or contractors of the Authority.

(4) References in OAR 407-007-0000 to 407-007-0370 to the Department of Human Services (Department) or to the Oregon Health Authority shall be construed to be references to either or both agencies.

(5) The Authority authorizes the Department to act on its behalf in carrying out background checks and screening associated with the administration of programs or activities administered by the Authority.

(6) Appeals shall be conducted by the Authority pursuant to OAR 943-007-0500.

Stat. Auth.: ORS 181.534, 181.537, 413.042  
Stats. Implemented: ORS 181.534, 181.537, 183.341  
Hist.: OHA 6-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 943-007-0500

### Contesting a Final Fitness Determination

(1) A final fitness determination of denied or approved with restrictions is considered an adverse outcome. An SI with an adverse outcome may contest that outcome.

(2) If an SI is denied, the SI may not work, volunteer, be employed, hold the position, provide services or be employed, licensed, certified, or registered or otherwise perform in positions covered by these rules. An SI appealing a restricted approval may only work under the terms of the restriction during the appeal.

(3) If an adverse outcome is changed at any time during the appeal process, the change does not guarantee employment or placement.

(4) An SI may challenge the accuracy or completeness of information provided by the OSP, the FBI, or other agencies reporting information to the Authority, by appealing to the entity providing the information. These challenges are not subject to the Authority's appeal process.

(5) The SI has the right to represent him or herself or have legal representation during the appeal process. The SI may not be represented by a lay person. In this rule, the term "SI" shall be considered to include the SI's legal representative.

(6) An SI who is already employed by the Authority at the time of the final fitness determination may appeal through applicable personnel rules, policies, and collective bargaining provisions. The SI's decision to do so is an election of remedies as to the rights of the SI with respect to the fitness determination and constitutes a waiver of the contested case process described in this rule.

(7) An SI may contest an adverse fitness determination by requesting a contested case hearing. The contested case hearing process is conducted

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pursuant to ORS 183.411 to 183.497 and the Attorney General's Uniform and Model Rules of Procedure for the Office of Administrative Hearings (OAH), OAR 137-003-0501 to 137-003-0700.

(a) To request a contested case hearing the SI must complete and sign the Hearing Request form.

(b) The completed and signed form must be received by the Authority within the following time lines:

(A) For Authority employees and SIs offered employment by the Authority, no later than 15 calendar days after the effective date of action listed on the notice of the fitness determination.

(B) For all other SIs, no later than 45 calendar days after the effective date of action listed on the notice of the fitness determination.

(c) If a request for hearing is not timely, the Authority shall determine, based on a written statement from the SI and available information, if there is good cause to proceed with the appeal.

(d) The Authority may refer an untimely request to OAH for a hearing on the issue of timeliness.

(8) The Authority may conduct an administrative review before referring the appeal to OAH.

(a) The SI must participate in the administrative review. Participation may include but is not limited to providing additional information or additional documents requested by the Authority within a specified amount of time.

(b) The administrative review is not open to the public.

(9) The Authority may conduct additional criminal records checks during the contested case hearing process to update or verify the SI's criminal records. If needed, the Authority may amend the notice of fitness determination during the appeal process while still maintaining the original hearing rights and deadlines.

(10) The Authority shall be represented by a hearing representative in contested case hearings. The Authority may also be represented by the Department of Justice's Office of the Attorney General.

(a) The Authority shall provide the administrative law judge and the SI a complete copy of available information used during the criminal records checks and fitness determinations. The notice of contested case and prehearing summary and all other documents shall be mailed by regular first class mail.

(b) SIs may not have access to confidential information contained in records collected or developed during the criminal records check process without a protective order limiting further disclosure of the information.

(A) A protective order issued pursuant to this section must be issued by an administrative law judge as provided for in OAR 137-003-0570(8) or by a court of law.

(B) In conjunction with a protective order issued pursuant to this section, individually identifying information relating to clients, witnesses, and other persons identified in abuse investigation reports or other records collected or developed during the criminal records check process shall be redacted prior to disclosure, except for the information identifying the SI.

(c) The contested case hearing is not open to the public.

(d) The administrative law judge shall make a new fitness determination based on the evidence and the contested case hearing record.

(e) The only remedy that an administrative law judge may grant is a fitness determination that the SI is approved, approved with restrictions (if allowed by rule), or denied. Under no circumstances shall the Authority or Qualified Entity (QE) be required to place an SI in any position, nor shall the Authority or QE be required to accept services or enter into a contractual agreement with an SI.

(f) For providers, a hearing pursuant to these rules may be conducted in conjunction with a licensure or certification hearing for the SI.

(11) The result of an appeal is a final order.

(a) The notice of fitness determination becomes the final order as if the SI never requested a hearing in the following situations:

(A) The SI failed to request a hearing in the time allotted in this rule. No other document shall be issued after the notice of fitness determination.

(B) The SI withdraws the request for hearing at any time during the appeal process.

(b) The Authority may make an informal disposition based on the administrative review. The Authority shall issue a final order and new notice of fitness determination. If the resulting fitness determination is an adverse outcome, the appeal shall proceed to a contested case hearing.

(c) The Authority shall issue a dismissal order in the following situations:

(A) The SI may withdraw a hearing request verbally or in writing at any time before the issuance of a final order. A dismissal order due to the withdrawal is effective the date the withdrawal is received by the Authority

or OAH. The SI may cancel the withdrawal in writing within 14 calendar days after the date of withdrawal.

(B) The Authority shall dismiss a hearing request when the SI fails to participate in the administrative review. Failure to participate in the administrative review shall result in termination of hearing rights. The order is effective on the due date for participation in the administrative review. The Authority shall review a good cause request to reinstate hearing rights if received in writing by the Authority within 14 calendar days.

(C) The Authority shall dismiss a hearing request when the SI fails to appear at the time and place specified for the contested case hearing. The order is effective on the date scheduled for the hearing. The Authority shall review a good cause request to reinstate hearing rights if received in writing by the Authority within 14 calendar days of the order.

(d) After a hearing, the administrative law judge shall issue a proposed and final order.

(A) If no written exceptions are received by the Authority within 14 calendar days after the service of the proposed and final order, the proposed and final order shall become the final order.

(B) If timely written exceptions to the proposed and final order are received by the Authority, the Authority's Director or designee shall consider the exceptions and serve a final order, or request a written response or a revised proposed and final order from the administrative law judge.

(12) Final orders, including dismissal and default orders, are subject to reconsideration or rehearing petitions within 60 calendar days after the final order is served, pursuant to OAR 137-003-0675.

(13) The Authority may provide the QE's AD with the results of the appeal.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 181.534, 181.537, 413.042  
Stats. Implemented: ORS 181.534, 181.537, 183.341  
Hist.: OHA 6-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

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**Rule Caption:** Establishment of process for restricting an individual's access to Authority premises, employees, and visitors.

**Adm. Order No.:** OHA 7-2011(Temp)

**Filed with Sec. of State:** 7-1-2011

**Certified to be Effective:** 7-1-11 thru 12-27-11

**Notice Publication Date:**

**Rules Adopted:** 943-012-0005, 943-012-0010, 943-012-0015, 943-012-0020, 943-012-0025

**Subject:** Allows the Authority to protect Authority employees, visitors, and its premises from threats or acts of violence. Defines prohibited conduct and establishes criteria for restricting an individual's access to Authority employees, visitors, and its premises when an individual has engaged in prohibited conduct.

**Rules Coordinator:** Kym Gasper—(503) 945-6302

## 943-012-0005

### Definitions

The following definitions apply to OAR 943-012-0005 through 943-012-0025:

(1) "Authority" means the Oregon Health Authority.

(2) "Division" means every individual organizational unit within the Authority.

(3) "Employee" means individuals acting in the course and scope of their duties who are on the State of Oregon payroll, contract employees, employees of temporary service agencies, and volunteers. It also includes employees of other government or social service agencies who, at the time they are accompanying an Authority employee on Authority business, are the target of conduct described in OAR 943-012-0010.

(4) "Premises" means any land, building, facility, and other property owned, leased, or in the possession of, and used or controlled by the Authority. When the Authority occupies space in a building occupied by multiple tenants, the definition includes the common areas of the building used by all tenants such as, but not limited to, restrooms, hallways, and food service areas.

(5) "Restriction of Access" means the Authority has limited an individual's access to specific Authority premises, employees, or methods of communication.

(6) "Weapon" includes, but is not limited to:

(a) A dangerous or deadly weapon as defined in ORS 161.015;

(b) Any other object or substance used in a manner that compromises the safety of Authority employees or visitors on Authority premises;

(c) An imitation or replica of any of the above.

Stat. Auth.: ORS 413.042



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Stats. Implemented: ORS 413.042, 654.010  
Hist.: OHA 7-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 943-012-0010

### Prohibited Conduct

(1) Conduct that may result in restriction of access includes, but is not limited to the following:

- (a) Causing or threatening to cause physical injury to Authority employees or visitors;
- (b) Engaging in actions which compromise the safety or health of Authority employees or visitors;
- (c) Causing or threatening to cause harm to the family or property of an employee or visitors through written, electronic, or verbal communication;
- (d) Causing or threatening to cause damage to Authority premises;
- (e) Bringing a deadly or dangerous weapon onto the Authority's premises, unless authorized by ORS chapter 166 to carry a handgun;
- (f) Displaying, attempting, or threatening to use any weapon, on or off Authority premises, that compromises the safety of Authority employees or visitors;
- (g) Engaging in harassing conduct as defined in ORS 166.065.
- (h) Engaging in telephonic harassment as defined in ORS 166.090.

(2) The conduct listed in section (1) is also prohibited if it occurs during employees' off-work hours and off Authority premises and the prohibited conduct is related to the employee's work with the Authority.

(3) Prior to issuing a restriction of access notice, the Authority shall make an individualized assessment as to whether the conduct listed in section (1) of this rule is a result of a disability of which the Authority has knowledge and whether the conduct is a "direct threat" to others as described in OAR 943-005-0000 through 943-005-0030. If the Authority determines the disabled individual's conduct is not a direct threat, the Authority shall explore the possibility of a reasonable accommodation to mitigate the safety risk.

(4) The prohibitions on conduct in this rule do not apply to individuals who are residents of an Authority-operated residential facility.

Stat. Auth.: ORS 413.042  
Stats. Implemented: ORS 413.042, 654.010  
Hist.: OHA 7-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 943-012-0015

### Continuation of Eligible Services

(1) An individual whose access has been restricted by the Authority shall continue to be provided services for which the individual meets program eligibility requirements by an alternate and effective method of communication as determined by the Authority.

(2) Alternate methods may include telephone, electronic mail, written communication, meeting at a designated secure site, or through the individual's representative.

Stat. Auth.: ORS 413.042  
Stats. Implemented: ORS 413.042, 654.010  
Hist.: OHA 7-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 943-012-0020

### Notification

(1) If the Authority determines that it is necessary to restrict access or the methods of communication because of prohibited conduct, the individual will be provided written notification, signed by the assistant director or deputy assistant director of the affected division, and sent by certified mail or other traceable means. The notice shall describe the following:

- (a) Conduct giving rise to the restrictions;
- (b) The specific premises or parts of premises from which the individual is excluded; or the forms of communication which are restricted;
- (c) The alternate method by which services may be obtained;
- (d) Contact information for services or appointment scheduling;
- (e) The availability of the review process, including notification that individuals with disabilities are entitled to request modification;
- (f) The potential criminal consequences for violating the notice of restriction of access; and

- (g) The law enforcement agency being notified.
- (2) The notice shall be effective upon issuance.
- (3) Restrictions on access to Authority premises or methods of communication shall remain in place until the Authority determines the individual no longer poses a threat and issues an official notification of removal.

Stat. Auth.: ORS 413.042  
Stats. Implemented: ORS 413.042, 654.010  
Hist.: OHA 7-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 943-012-0025

### Authority Review

(1) The Authority shall establish an internal review process to ensure that a notice of restriction of access is warranted prior to issuing a written notice of restriction of access.

(2) Following the Authority's issuance of a notice of restriction of access, the recipient of the notice may request review of the Authority's determination. The request must be submitted to the office of the Director of the Authority. The request must be in writing and submitted, by mail or personal delivery, within 15 business days of the date of issuance of the notice of restriction of access. If the request is submitted by mail, it must be postmarked within 15 business days. No particular format is required for the request for review; however, the individual should include specific grounds for requesting the review.

(3) Upon receipt of a request for review, the Director or an assistant director shall review the request and issue a written decision. The review may include an informal conference. The decision shall be issued within ten days of receipt of the request for review.

(4) The Authority's decision is final.

(5) If the Authority's decision rules in favor of the individual, the restricted individual's access restriction shall be immediately lifted. If the decision is unfavorable to the restricted individual, the restricted individual may seek further review after six months have lapsed since the date of issuance by following the process described in this rule.

Stat. Auth.: ORS 413.042  
Stats. Implemented: ORS 413.042, 654.010  
Hist.: OHA 7-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

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**Rule Caption:** Privacy OARs setting forth general procedures governing the collection, use and disclosure of protected information.

**Adm. Order No.:** OHA 8-2011(Temp)

**Filed with Sec. of State:** 7-1-2011

**Certified to be Effective:** 7-1-11 thru 12-27-11

**Notice Publication Date:**

**Rules Adopted:** 943-014-0000, 943-014-0010, 943-014-0015, 943-014-0020, 943-014-0030, 943-014-0040, 943-014-0050, 943-014-0060, 943-014-0070

**Subject:** These rules govern the collection, use, and disclosure of protected information by the Authority about individuals and to explain the rights and specific actions that individuals may take or request to be taken regarding the uses and disclosures of their protected information. These rules also set forth Authority requirements governing the use and disclosure of protected health information for purposes of HIPAA, 42 USC 1320-d through 1320d-8, Pub L 104-191, sec. 262 and 264, and the implementing HIPAA privacy rules, 45 CFR parts 160 and 164.

**Rules Coordinator:** Kym Gasper—(503) 945-6302

## 943-014-0000

### Definitions

The following definitions apply to OAR 943-014-0000 to 943-014-0070:

(1) "Administrative Hearing" means an oral proceeding before an administrative law judge in a contested case hearing.

(2) "Authority" means the Oregon Health Authority.

(3) "Authority Workforce" means employees, volunteers, trainees, and other persons whose conduct, in the performance of work for the Authority, is under the direction and control of the Authority, whether or not they are paid by the Authority.

(4) "Authorization" means permission from an individual or his or her personal representative giving the Authority, and others named on the form, authorization to obtain, release or use information about the individual from third parties for specified purposes or to disclose information to a third party specified by the individual.

(5) "Business Associate" means an individual or entity performing any function or activity on behalf of the Authority involving the use or disclosure of protected health information (PHI) and is not a member of the Authority's workforce.

(a) "Function or activity" includes but is not limited to program administration, claims processing or administration, data analysis, utilization review, quality assurance, billing, legal, actuarial, accounting, consulting, data processing, management, administrative, accreditation, financial services, and similar services for which the Authority may contract or obtain by interagency agreement, if access to PHI is involved.

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(b) Business associates do not include licensees or providers unless the licensee or provider also performs some function or activity on behalf of the Authority.

(6) "Client" means an individual who requests or receives program benefits or direct services from the Authority, including but not limited to services requested in connection with the administration of the medical assistance program, and individuals who apply for or are admitted to a state hospital or who are committed to the custody of the Authority.

(7) "Client Information" means personal information relating to a client that the Authority may maintain in one or more locations and in various forms, reports, or documents, or stored or transmitted by electronic media.

(8) "Collect" or "Collection" means the assembling of personal information through interviews, forms, reports, or other information sources.

(9) "Contract" means a written agreement between the Authority and a person or entity setting forth the rights and obligations of the parties including but not limited to contracts, licenses, agreements, interagency agreements, and intergovernmental agreements.

(10) "Correctional Institution" means any penal or correctional facility, jail, reformatory, detention center, work farm, halfway house, or residential community program center operated by contract with the federal government, a state, or an Indian tribe for the confinement or rehabilitation of persons charged with or convicted of a criminal offense or other persons held in lawful custody. "Other persons held in lawful custody" include juvenile offenders, adjudicated delinquents, aliens detained awaiting deportation, witnesses, or others awaiting charges or trial.

(11) "Corrective Action" means an action that a business associate must take to remedy a breach or violation of the business associate's obligations under the business associate's contractual requirement, including but not limited to reasonable steps that must be taken to cure the breach or end the violation.

(12) "Covered Entity" means health plans, health care clearinghouses, and health care providers who transmit any health information in electronic form in connection with a transaction that is subject to federal Health Insurance Portability and Accountability Act (HIPAA) requirements, as those terms are defined and used in the HIPAA regulations, 45 CFR parts 160 and 164.

(13) "De-identified Data" means client information from which the Authority or other entity has deleted, redacted, or blocked identifiers so the remaining information cannot reasonably be used to identify an individual.

(14) "Department" means the Department of Human Services.

(15) "Disclose" means the release, transfer, relay, provision of access to, or conveying of client information to any individual or entity outside the Authority.

(16) "Health Care" means care, services, or supplies related to the health of an individual. Health care includes but is not limited to preventive, diagnostic, therapeutic, rehabilitative, maintenance, palliative care, counseling services, assessment, or procedures with respect to the physical or mental condition, or functional status of an individual, or that affects the structure or function of the body and the sale or dispensing of a drug, device, equipment, or other prescribed item.

(17) "Health Care Operations" means any activities of the Authority to the extent that the activities are related to health care, Medicaid, or any other health care related programs, services, or activities administered by the Authority and include:

(a) Conducting quality assessment and improvement activities, including income evaluation and development of clinical guidelines;

(b) Population-based activities related to improving health or reducing health care costs, protocol development, case management and care coordination, contacting health care providers and patients with information about treatment alternatives; and related functions that do not include treatment;

(c) Reviewing the competence of qualifications of health care professionals, evaluating practitioner, provider, and health plan performance; and conducting training programs in which students and trainees in areas of health care learn under supervision to practice or improve their skills, accreditation, certification, licensing, or credentialing activities;

(d) Underwriting, premium rating, and other activities relating to the creation, renewal, or replacement of a contract for Medicaid or health care related services;

(e) Conducting or arranging for medical review, legal services, and auditing functions, including fraud and abuse detection and compliance programs, and disclosure to the Medicaid Fraud Unit pursuant to 43 CFR part 455.21;

(f) Business planning and development, such as conducting cost-management and planning-related analyses related to managing and operating the Authority, including administration, development, or improvement of methods of payments or health care coverage; and

(g) Business management and general administrative activities of the Authority, including but not limited to:

(A) Management activities relating to implementation of and compliance with the requirements of HIPAA;

(B) Customer service, including providing data analysis;

(C) Resolution of internal grievances, including administrative hearings and the resolution of disputes from patients or enrollees regarding the quality of care and eligibility for services; and

(D) Creating de-identified data or a limited data set.

(18) "Health Oversight Agency" means an agency or authority of the federal government, a state, territory, political subdivision of a state or territory, Indian tribe, or a person or entity acting under a grant of authority from or by contract with the public agency, including employees or agents of the public agency or its contractors or grantees that is authorized by law to oversee the health care system or government programs in which health information is necessary to determine eligibility or compliance, or to enforce civil rights laws for which health information is relevant. When performing these functions, the Authority acts as a health oversight agency for the purposes of these rules.

(19) "HIPAA" means the Title II, Subtitle F of the Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d et seq, and the federal regulations adopted to implement the Act.

(20) "Individual" means the person who is the subject of information collected, used, or disclosed by the Authority.

(21) "Individually Identifying Information" means any single item or compilation of information or data that indicates or reveals the identity of an individual, either specifically (such as the individual's name or social security number), or from which the individual's identity can be reasonably ascertained.

(22) "Information" means personal information relating to an individual, a participant, or an Authority client.

(23) "Inmate" means a person incarcerated in or otherwise confined in a correctional institution. An individual is no longer an inmate when released on parole, probation, supervised release, or is otherwise no longer in custody.

(24) "Institutional Review Board (IRB)" means a specially constituted review body established or designated by an entity in accordance with 45 CFR part 46 to protect the welfare of human subjects recruited to participate in biomedical or behavioral research. The IRB must be registered with the Office for Human Research Protection.

(25) "Law Enforcement Official" means an officer or employee of any agency or authority of the federal government, a state, territory, political subdivision of a state or territory, or Indian tribe who is empowered by law to:

(a) Investigate and conduct an official inquiry into a potential violation of law; or

(b) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.

(26) "Licensee" means a person or entity that applies for or receives a license, certificate, registration, or similar authority from the Authority to perform or conduct a service, activity, or function.

(27) "Minimum Necessary" means the least amount of information, when using or disclosing confidential client information, that is needed to accomplish the intended purpose of the use, disclosure, or request.

(28) "Participant" means individual's participating in Authority population-based services, programs, and activities that serve the general population, but who do not receive program benefits or direct services received by a client. Examples of participants include but are not limited to an individual whose birth certificate is recorded with Department of Vital Statistics, the subjects of public health studies, immunization or cancer registries, newborn screening, and other public health services, and individuals who contact Authority hotlines or the ombudsman for general public information services.

(29) "Payment" means any activities undertaken by the Authority related to a client to whom health care is provided in order to:

(a) Obtain premiums or to determine or fulfill its responsibility for coverage and provision of benefits under the Medicaid program or other publicly funded health care services; and

(b) Obtain or provide reimbursement for the provision of health care.

(30) Payment activities mean:

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(a) Determinations of eligibility or coverage, including coordination of benefits or the determination of cost sharing amounts, and adjudication of health benefit or health care claims;

(b) Risk adjusting amounts due which are based on enrollee health status and demographic characteristics;

(c) Billing, claims management, collection activities, obtaining payment under a contract for reinsurance, and related health care data processing;

(d) Review of health care services with respect to medical necessity, coverage under a health plan, appropriateness of care, or justification of charges;

(e) Utilization review activities, including pre-certification and pre-authorization of services, concurrent and retrospective review of services; and

(f) Disclosure to consumer reporting agencies relating to collection of premiums or reimbursement including name and address, date of birth, payment history, account number, and name and address of the health care provider or health plan.

(31) "Personal Representative" means a person who has authority to act on behalf of an individual in making decisions related to health care.

(32) "Protected Health Information (PHI)" means any individually identifiable health information, whether oral or recorded in any form or medium, that is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse and relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual. Any data transmitted or maintained in any other form or medium by covered entities, including paper records, fax documents, all oral communications, or any other form, such as screen prints of eligibility information, printed e-mails containing identified individual's health information, claim or billing information, or hard copy birth or death certificates. PHI does not include school records that are subject to the Family Educational Rights and Privacy Act and employment records held in the Authority's role as an employer.

(33) "Protected Information" means any participant or client information that the Authority may have in its records or files that must be safeguarded pursuant to Authority policy. This includes but is not limited to individually identifying information.

(34) "Provider" means a person or entity that may seek reimbursement from the Authority as a provider of services to Authority clients pursuant to a contract. For purposes of these rules, reimbursement may be requested on the basis of claims or encounters or other means of requesting payment.

(35) "Psychotherapy Notes" mean notes recorded in any medium by a health care provider who is a mental health professional documenting or analyzing the contents of conversations during a private counseling session, or group, joint, or family counseling session, when the notes are separated from the rest of the individual's record. Psychotherapy notes do not include medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of diagnosis, functional status, treatment plan, symptoms, prognosis, or progress to date.

(36) "Public Health Agency" means a public agency, including the Authority, or a person or entity acting under a grant of authority from or by contract with the Authority or public agency that performs or conducts one or more of the following essential functions that characterize public health programs, services, or activities:

(a) Monitor health status to identify community health problems;

(b) Diagnose and investigate health problems and health hazards in the community;

(A) Inform, educate, and empower people about health issues;

(B) Mobilize community partnerships to identify and solve health problems;

(C) Develop policies and plans that support individual and community health efforts;

(D) Enforce laws and regulations that protect health and ensure safety;

(E) Direct individuals to needed personal health services and assure the provision of health care when otherwise unavailable;

(F) Ensure a competent public health and personal health care workforce;

(G) Evaluate the effectiveness, accessibility, and quality of personal and population-based health services; and

(H) Perform research for new insights and innovative solutions to health problems.

(37) "Public Health Authority" means an agency or authority of the federal government, a state, territory, political subdivision of a state or territory, Indian tribe, or a person or entity acting under a grant of authority from or by contract with the public agency, including the employees or agents of the public agency, or its contractors or persons or entities to whom it has granted authority, that is responsible for public health matters as part of its official mandate. When performing functions as a public health agency, the Authority acts as a public health authority for purposes of these rules.

(38) "Re-disclosure" means the disclosure of information to a person, an Authority program, an Authority subcontracted entity, or other entity or person other than what was originally authorized.

(39) "Research" means systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalized knowledge.

(40) "Required by Law" means a duty or responsibility that federal or state law specifies that a person or entity must perform or exercise. Required by law includes but is not limited to court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or rules that require the production of information, including statutes or rules that require such information if payment is sought under a government program providing public benefits.

(41) "Treatment" means the provision, coordination, or management of health care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party, consultation between health care providers relating to a patient, or the referral of a patient for health care from one health care provider to another.

(42) "Use" means the sharing of individual information within an Authority program or the sharing of individual information between program staff and administrative staff that support or oversee the program.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.042

Hist.: OHA 8-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 943-014-0010

### Purpose

(1) The purpose of these rules (OAR 943-014-000 to 943-014-0070) is to govern the collection, use, and disclosure of protected information by the Authority about individuals and to explain the rights and specific actions that individuals may take or request to be taken regarding the uses and disclosures of their protected information. These rules also set forth the Authority's requirements governing the use and disclosure of PHI for purposes of HIPAA, 42 USC 1320-d through 1320d-8, Pub L 104-191, sec. 262 and 264, and the implementing HIPAA privacy rules, 45 CFR parts 160 and 164, applicable to the Authority's health care components.

(2) Except as provided in section (1) of this rule, state and federal statutes, rules, and policies that govern the administration of Authority programs, services, and activities continue to govern the use and disclosure of protected information in those Authority programs, services, and activities.

(3) In the event that it is not possible to comply with the requirements of both sections (1) and (2) of this rule, the Authority shall act in accordance with whichever federal or state law imposes a stricter requirement regarding the privacy or safeguarding of information and which provides the greater protection or access to the individual who is the subject of the information, unless one of the following applies:

(a) Public health. Nothing in these rules shall be construed to invalidate or limit the authority, power, or procedures established under any law providing for the reporting of disease or injury, birth, or death; public health surveillance; or public health investigation or intervention.

(b) Child abuse. Nothing in these rules shall be construed to invalidate or limit the authority, power, or procedures established under any law providing for the reporting of child abuse.

(c) State regulatory reporting. Nothing in these rules shall be construed to limit the ability of the State of Oregon or the Authority to require a health plan to report, or to provide access to information for management audits, financial audits, program monitoring, facility licensure or certification, or individual licensure or certification.



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(4) The Authority may collect, maintain, use, transmit, share, and disclose information about any individual to the extent authorized by law to administer Authority programs, services, and activities.

(5) The Authority may use and disclose information about licensees or providers consistent with federal and state laws and regulations. Information regarding the qualifications of licensees and providers are public records.

(a) When the Authority obtains information about individuals that relates to determining payment responsibility when a provider submits a request for payment to the Authority, the Authority shall safeguard the information consistent with federal and state laws and regulations and Authority policies.

(b) The Authority may review the performance of licensees and providers in the conduct of its health oversight activities and shall safeguard information obtained about individuals obtained during those activities in accordance with federal and state laws and regulations and Authority policies.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS413.042

Hist.: OHA 8-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 943-014-0015

### Covered Entity Status for Purposes of the HIPAA Privacy Rules

(1) These rules address information that, among other things, may be Protected Health Information that is protected by the HIPAA Privacy Rules. For purposes of HIPAA Privacy Rules, the Authority is a hybrid entity because the Authority performs functions that are covered by HIPAA (“health care components”) and functions that are not covered by HIPAA. The Authority’s health care components consist of the functions that are included in the definition of a covered entity, as follows:

(a) The Authority in its capacity as the state Medicaid agency for the administration of funds from Titles XIX and XXI of the Social Security Act and the medical assistance program as described in ORS chapter 414;

(b) The Health Care for All Oregon Children program;

(c) The Family Health Insurance Assistance Program established in ORS 414.841 to 414.864;

(d) Any medical assistance or premium assistance programs reimbursed with Medicaid or the Children’s Health Insurance Program funds operated by the Authority;

(e) The Oregon State Hospital and Blue Mountain Recovery Center;

(f) The Medicaid Management Information system and information technology systems associated with the administration and management of the health care components listed above; and

(g) The ombudsman and other administrative and health care operations functions associated with the administration and management of the health care components listed above.

(2) The Authority administers many aspects of the medical assistance program with the assistance of the Department, including but not limited to eligibility determinations for the medical assistance program and supervising the long-term and community-based services for seniors and people with disabilities. The Department also provides certain health care operations services for the Authority. In doing so, the Department is a business associate of the Authority. As a business associate of the Authority, the Department is authorized to use and disclose protected health information to perform or assist the Authority in the performance of its covered functions.

(3) When these rules of the Authority apply to PHI that is subject to the HIPAA Privacy and Security rules, a reference to the Authority may also include the actions of the Department acting as the Authority’s business associate.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS413.042

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## 943-014-0020

### Uses and Disclosures of Client or Participant Protected Information

(1) Uses and disclosures with individual authorization. The Authority must obtain a completed and signed authorization for release of information from the individual, or the individual’s personal representative, before obtaining or using protected information about an individual from a third party or disclosing protected information about the individual to a third party.

(a) Uses and disclosures must be consistent with what the individual has approved on the signed authorization form approved by the Authority.

(b) An individual may revoke an authorization at any time. The revocation must be in writing and signed by the individual, except that substance abuse treatment patients may orally revoke an authorization to dis-

close information obtained from substance abuse treatment programs. No revocation shall apply to information already released while the authorization was valid and in effect.

(2) Uses and disclosures without authorization. The Authority may use and disclose information without written authorization in the following circumstances:

(a) The Authority may disclose information to individuals who have requested disclosure to themselves of their information, if the individual has the right to access the information under OAR 943-014-0030(6).

(b) If the law requires or permits the disclosure, and the use and disclosure complies with, and is limited to, the relevant requirements of the relevant law.

(c) For treatment, payment, and health care operations the Authority may disclose the following information:

(A) Activities involving the current treatment of an individual, for the Authority or health care provider;

(B) Payment activities, for the Authority, covered entity, or health care provider;

(C) Protected health information for the purpose of health care operations; and

(D) Substance abuse treatment information, if the recipient has a Qualified Service Organization Agreement with the Authority.

(d) Psychotherapy notes. The Authority may only use and disclose psychotherapy notes in the following circumstances:

(A) In the Authority’s supervised counseling training programs;

(B) In connection with oversight of the originator of the psychotherapy notes; or

(C) To defend the Authority in a legal action or other proceeding brought by the individual.

(e) Public health activities.

(A) The Authority may disclose an individual’s protected information to appropriate entities or persons for governmental public health activities and for other purposes including but not limited to:

(i) A governmental public health authority that is authorized by law to collect or receive protected information for the purpose of preventing or controlling disease, injury, or disability. This includes but is not limited to reporting disease, injury, and vital events such as birth or death; and the conducting of public health surveillance, investigations, and interventions;

(ii) An official of a foreign government agency that is acting in collaboration with a governmental public health authority;

(iii) A governmental public health authority, or other government authority that is authorized by law to receive reports of child abuse or neglect;

(iv) A person subject to the jurisdiction of the federal Food and Drug Administration (FDA), regarding an FDA-regulated product or activity for which that person is responsible for activities related to the quality, safety, or effectiveness of an FDA-regulated product or activity; or

(v) A person who may have been exposed to a communicable disease, or may be at risk of contracting or spreading a disease or condition, if the Authority or other public health authority is authorized to notify the person as necessary in conducting a public health intervention or investigation.

(B) Where state or federal law prohibits or restricts use and disclosure of information obtained or maintained for public health purposes, the Authority shall deny the use and disclosure.

(f) Child abuse reporting and investigation. If the Authority has reasonable cause to believe that a child is a victim of abuse or neglect, the Authority may disclose protected information to appropriate governmental authorities authorized by law to receive reports of child abuse or neglect.

(g) Adult abuse reporting and investigation. If the Authority has reasonable cause to believe that a vulnerable adult is a victim of abuse or neglect, the Authority may disclose information, as required by law, to a government authority or regulatory agency authorized by law to receive reports of abuse or neglect including but not limited to a social service or protective services agency authorized by law to receive such reports. Vulnerable adults are adults age 65 or older and persons with disabilities.

(h) Health oversight activities. The Authority may disclose information without authorization for health oversight activities, including audits; civil, criminal, or administrative investigations, prosecutions, licensing or disciplinary actions; Medicaid fraud; or other necessary oversight activities.

(i) Administrative and court hearings, grievances, investigations, and appeals.

(A) The Authority may use or disclose information for an investigation, administrative or court hearing, grievance, or appeal about an individual’s eligibility or right to receive Authority benefits or services.

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(B) If the Authority has obtained information in performing its duties as a health oversight agency, public health authority, or public benefit program, the Authority may use or disclose that information in an administrative or court hearing consistent with the other privacy requirements applicable to that program, service, or activity.

(j) Court orders. The Authority may disclose information for judicial or administrative proceedings in response to a court order, subpoena, discovery request, or other legal process. If a court orders the Authority to conduct a mental examination pursuant to ORS 161.315, 161.365, 161.370, or orders the Authority to provide any other report or evaluation to the court, the examination, report, or evaluation shall be deemed to be required by law for purposes of HIPAA.

(k) Law enforcement purposes. For limited law enforcement purposes, the Authority may report certain injuries or wounds; provide information to identify or locate a suspect, victim, or witness; alert law enforcement of a death as a result of criminal conduct; and provide information which constitutes evidence of criminal conduct on Authority premises.

(A) The Authority may provide client information to a law enforcement officer in any of the following situations:

(i) The law enforcement officer is involved in carrying out any investigation, criminal, or civil proceedings connected with administering the program from which the information is sought;

(ii) An Authority employee may disclose information from personal knowledge that does not come from the client's interaction with the Authority;

(iii) The disclosure is authorized by statute or administrative rule;

(iv) The information informs law enforcement of a death as a result of criminal conduct;

(v) The information constitutes evidence of criminal conduct on Authority premises; or

(vi) The disclosure is necessary to protect the client or others, and the client poses a threat to his or her safety or to the safety of others.

(B) Except as provided in section (2)(k)(C) of this rule, the Authority may give a client's current address, Social Security number, and photo to a law enforcement officer if the law enforcement officer makes the request in the course of official duty, supplies the client's name, and states that the client:

(i) Is a fugitive felon or is violating parole, probation, or post-prison supervision;

(ii) For all public assistance programs, has information that is necessary for the officer to conduct official duties, and the location or apprehension of the client is within the officer's official duties; or

(C) If domestic violence has been identified in the household, the Authority may not release information about a victim of domestic violence unless a member of the household is either wanted as a fugitive felon or is violating parole, probation, or post-prison supervision.

(D) For purposes of this subsection, a fugitive felon is a person fleeing to avoid prosecution or custody for a crime, or an attempt to commit a crime, that would be classified as a felony.

(E) For purposes of this section, a law enforcement officer is an employee of the Oregon State Police, a county sheriff's department, or a municipal police department, whose official duties include arrest authority.

(l) Use and disclosure of information about deceased individuals.

(A) The Authority may disclose individual information to a coroner or medical examiner for the purpose of identifying a deceased individual, determining cause of death, or other duties authorized by law.

(B) The Authority may disclose individual information to funeral directors as needed to carry out their duties regarding the decedent. The Authority may also disclose individual information prior to, and in anticipation of, the death.

(m) Organ or tissue donation. The Authority may disclose individual information to organ procurement organizations or other entities engaged in procuring, banking, or transplanting cadaver organs, eyes, or tissue for the purpose of facilitating transplantation.

(n) Research. The Authority may disclose individual information without authorization for research purposes, as specified in OAR 943-014-0060.

(o) Threat to health or safety. To avert a serious threat to health or safety the Authority may disclose individual information if:

(A) The Authority believes in good faith that the information is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public; and

(B) The report is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat.

(p) National security and intelligence. The Authority may disclose information to authorized federal officials for lawful intelligence, counter-intelligence, and other national security activities.

(q) Correctional institutions and law enforcement custody situations. The Authority may disclose information to a correctional institution or a law enforcement official having lawful custody of an inmate or other person, for the limited purpose of providing health care or ensuring the health or safety of the person or other inmates.

(r) Emergency treatment. In case of an emergency, the Authority may disclose individual information to the extent needed to provide emergency treatment.

(s) Government entities providing public benefits. The Authority may disclose eligibility and other information to governmental entities administering a government program providing public benefits.

(3) Authorization not required if opportunity to object given. The Authority may use and disclose an individual's information without authorization if the Authority informs the individual in advance and gives the individual an opportunity to either agree or refuse or restrict the use and disclosure.

(a) These disclosures are limited to disclosure of information to a family member, other relative, close personal friend of the individual, or any other person named by the individual, subject to the following limitations:

(A) The Authority may disclose only the protected information that directly relates to the person's involvement with the individual's care or payment for care.

(B) The Authority may use and disclose protected information for notifying, identifying, or locating a family member, personal representative, or other person responsible for care of the individual, regarding the individual's location, general condition, or death. For individuals who had resided at one time at the state training center, OAR 411-320-0090(6) addresses family reconnection.

(C) If the individual is present for, or available prior to, a use and disclosure, the Authority may disclose the protected information if the Authority:

(i) Obtains the individual's agreement;

(ii) Provides the individual an opportunity to object to the disclosure, and the individual does not object; or

(iii) Reasonably infers from the circumstances that the individual does not object to the disclosure.

(D) If the individual is not present, or the opportunity to object to the use and disclosure cannot practicably be provided due to the individual's incapacity or an emergency situation, the Authority may disclose the information if, using professional judgment, the Authority determines that the use and disclosure is in the individual's best interests.

(b) Exception. For individuals referred to or receiving substance abuse treatment, mental health, or vocational rehabilitation services, the Authority shall not use or disclose information without written authorization, unless disclosure is otherwise permitted under 42 CFR part 2, 34 CFR 361.38, or ORS 179.505.

(c) Personal representative. The Authority must treat a personal representative as the individual for purposes of these rules, except that:

(A) A personal representative must be authorized under state law to act on behalf of the individual with respect to use and disclosure of information. The Authority may require a personal representative to provide a copy of the documentation authorizing the person to act on behalf of the individual.

(B) The Authority may elect not to treat a person as a personal representative of an individual if:

(i) The Authority has a reasonable belief that the individual has been or may be subjected to domestic violence, abuse, or neglect by the person;

(ii) The Authority, in the exercise of professional judgment, decides that it is not in the best interest of the individual to treat the person as the individual's personal representative.

(4) Redisclosure. The Authority must inform the individual that information held by the Authority and authorized by the individual for disclosure may be subject to redisclosure and no longer protected by these rules.

(5) Specific written authorization. If the use or disclosure of information requires an authorization, the authorization must specify that the Authority may use or disclose vocational rehabilitation records, alcohol and drug records, HIV/AIDS records, genetics information, and mental health or developmental disability records held by publicly funded providers.

(a) Pursuant to federal regulations at 42 CFR part 2 and 34 CFR 361.38, the Authority may not make further disclosure of vocational reha-

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bilitation and alcohol and drug rehabilitation information without the specific written authorization of the individual to whom it pertains.

(b) Pursuant to ORS 433.045 and OAR 333-012-0270, the Authority may not make further disclosure of individual information pertaining to HIV/AIDS.

(c) Pursuant to ORS 192.531 to 192.549, the Authority may not make further disclosure pertaining to genetic information.

(6) Verification of person or entity requesting information. The Authority may not disclose information about an individual without first verifying the identity of the person or entity requesting the information, unless the Authority workforce member fulfilling the request already knows the person or has already verified identity.

(7) Whistleblowers. The Authority may disclose an individual's protected health information under the HIPAA privacy rules under the following circumstances:

(a) The Authority workforce member or business associate believes in good faith that the Authority has engaged in conduct that is unlawful or that otherwise violates professional standards or Authority policy, or that the care, services, or conditions provided by the Authority could endanger Authority staff, individuals in Authority care, or the public; and

(b) The disclosure is to a government oversight agency or public health authority, or an attorney of an Authority workforce member or business associate retained for the purpose of determining the legal options of the workforce member or business associate with regard to the conduct alleged under section (7)(a) above; and

(c) Nothing in this rule is intended to interfere with ORS 659A.200 to 659A.224 describing the circumstances applicable to disclosures by Authority workforce or business associates.

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## 943-014-0030

### Client Privacy Rights

(1) Rights of clients to access their information. Clients may access, inspect, and obtain a copy of information on their own cases in Authority files or records, consistent with federal and state law.

(a) A client may request access by completing the Access to Records Request form, or by providing sufficient information to accomplish this request.

(b) Clients may request access to their own information that is kept by the Authority by using a personal identifier such as the client's name or Authority case number.

(c) If the Authority maintains information in a record that includes information about other people, the client may see information only about himself or herself.

(d) If a person identified in the file is a minor child of the client, and the client is authorized under Oregon law to have access to the minor's information or to act on behalf of the minor for making decisions about the minor's care, the client may obtain information about the minor.

(e) If the requestor of information is recognized under Oregon law as a the client's guardian or custodian and is authorized under Oregon law to have access to the client's information or to act on behalf of the client for making decisions about the client's services or care, the Authority shall release information to the requestor.

(f) For individuals with disabilities or mental illnesses, the named system in ORS 192.517, to protect and advocate the rights of individuals with developmental disabilities under Part C of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6041 et seq.) and the rights of individuals with mental illness under the Protection and Advocacy for Individuals with Mental Illness Act (42 U.S.C. 10801 et seq.), shall have access to all records defined in ORS 192.515.

(g) The Authority may deny a client's access to their own PHI if federal law prohibits the disclosure. Clients may access, inspect, and obtain a copy of health information on their own case in Authority files or records except for the following:

(A) Psychotherapy notes;

(B) Information compiled in reasonable anticipation of, or for use in civil, criminal, or administrative proceedings;

(C) Information that is subject to the federal Clinical Labs Improvement Amendments of 1988, or exempt pursuant to 42 CFR 493.3(a)(2);

(D) Information that the Authority believes, in good faith, can cause harm to the client, participant, or to any other person; and

(E) Documents protected by attorney work-product privilege.

(h) The Authority may deny a client access to information that was obtained under a promise of confidentiality from a person other than a health care provider to the extent that access would reveal the source of the information.

(i) The Authority may deny a client access to information, if the Authority gives the client a right to have the denial reviewed when:

(A) A licensed health care professional (for health information) or other designated staff (for other information) has determined, in the exercise of professional judgment, that the information requested may endanger the life or physical safety of the client or another person;

(B) The information makes reference to another person, and a licensed health care professional (for health information) or other designated staff (for other information) has determined, in the exercise of professional judgment, that the information requested may cause substantial harm to the client or to another person; or

(C) The request for access is made by the client's personal representative, and a licensed health care professional (for health information) or other designated staff (for other information) has determined, in the exercise of professional judgment, that allowing the personal representative access to the information may cause substantial harm to the client or to another person.

(j) If the Authority denies access under section (1)(i) of this rule, the client may have the decision reviewed by a licensed health care professional (for health information) or other designated staff (for other information) not directly involved in making the original denial decision.

(A) The Authority must promptly refer a client's request for review to the designated reviewer.

(B) The reviewer must determine, within the 30 or 60-day time limits stated in section (1)(k)(A) and (B) of this rule, whether to approve or deny the client's request for access.

(C) Based on the reviewer's decision, the Authority shall:

(i) Promptly notify the client in writing of the reviewer's determination; and

(ii) If approved, take action to carry out the reviewer's determination.

(k) The Authority must act on a client's request for access no later than 30 days after receiving the request, except as provided in this section and in the case of written accounts under ORS 179.505, which must be disclosed within five days.

(A) In cases where the information is not maintained or accessible to the Authority on-site, and does not fall under ORS 179.505, the Authority must act on the client's request no later than 60 days after receiving the request.

(B) If the Authority is unable to act within the 30 or 60-day limits, the Authority may extend this time period a maximum of 30 additional days, subject to the following:

(i) The Authority must notify the client in writing of the reasons for the delay and the date by which the Authority shall act on the request.

(ii) The Authority shall use only one 30-day extension.

(l) If the Authority grants the client's request, in whole or in part, the Authority must inform the client of the access decision and provide the requested access.

(A) If the Authority maintains the same information in more than one format or at more than one location, the Authority may provide the requested information once.

(B) The Authority must provide the requested information in a form or format requested by the client, if readily producible in that form or format. If not readily producible, the Authority shall provide the information in a readable hard-copy format or other format as agreed to by the Authority and the client.

(C) The Authority may provide the client with a summary of the requested information, in lieu of providing access, or may provide an explanation of the information if access has been provided, if:

(i) The client agrees in advance; and

(ii) The client agrees in advance to pay any fees the Authority may impose, under section (1)(L)(E) of this rule.

(D) The Authority shall arrange with the client for providing the requested access in a time, place, and manner convenient for the client and the Authority.

(E) If a client, or legal guardian or custodian, requests a copy, written summary, or explanation of the requested information, the Authority may impose a reasonable cost-based fee, limited to the following:

(i) Copying the requested information, including the costs of supplies and the labor of copying;

(ii) Postage; and



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(iii) Staff time for preparing an explanation or summary of the requested information.

(m) If the Authority denies access, in whole or in part, to the requested information, the Authority must:

(A) Give the client access to any other requested client information, after excluding the information to which access is denied; and

(B) Provide the client with a timely written denial. The denial must:

(i) Be provided within the time limits specified in section (1)(k)(A) and (B) of this rule;

(ii) State the basis of the denial in plain language;

(iii) If the Authority denies access under section (1)(i) of this rule, explain the client's review rights as specified in section (1)(j) of this rule, including an explanation of how the client may exercise these rights; and

(iv) Provide a description of how the client may file a complaint with the Authority, and if the information is PHI, with the United States Department of Health and Human Services (DHHS), Office for Civil Rights, pursuant to section (7) of this rule.

(n) If the Authority does not maintain the requested information, in whole or in part, and knows where the information is maintained (such as by a medical provider, insurer, other public agency, private business, or other non-Authority entity), the Authority must inform the client where to direct the request for access.

(2) Authority Notice of Privacy Practices. The Authority shall send clients notice about the Authority's privacy practices as follows:

(a) The Authority shall make available to each client a notice of Authority privacy practices that describes the duty of the Authority to maintain the privacy of PHI and include a description that clearly informs the client of the types of uses and disclosures the Authority is permitted or required to make;

(b) The Authority shall provide all clients in direct care settings a notice of Authority privacy practices and shall request the client's signature on an acknowledgement of receipt form;

(c) If the Authority revises its privacy practices, the Authority shall make the revised notice available to all clients;

(d) The Authority shall post a copy of the Authority's Notice of Privacy Practices for public viewing at each Authority worksite and on the Authority website; and

(e) The Authority shall give a paper copy of the Authority's Notice of Privacy Practices to any individual upon request.

(3) Right to request restrictions on uses or disclosures. Clients may request restrictions on the use or disclosure of their information.

(a) The Authority may deny the client's request or limit its agreement to a request.

(A) The Authority may not agree to restrict uses or disclosures of information if the restriction would adversely affect the quality of the client's care or services.

(B) The Authority may not agree to restrict uses or disclosures of information that would limit or prevent the Authority from making or obtaining payment for services.

(b) The Authority may not deny a client's request to restrict the sharing of records of alcohol and drug treatment or records relating to vocational rehabilitation services with another Authority program.

(c) The Authority shall document the client's request, and the reasons for granting or denying the request, in the client's Authority case file.

(d) If the client needs emergency treatment and the restricted protected information is needed to provide the treatment, the Authority may use or disclose the restricted protected information to a provider, for the limited purpose of providing treatment. However, once the emergency situation subsides the Authority shall ask the provider not to redisclose the information.

(e) The Authority may terminate its agreement to a restriction if:

(A) The client agrees to or requests the termination in writing;

(B) The client orally requests or agrees to the termination, and the Authority documents the oral request or agreement in the client's Authority case file; or

(C) With or without the client's agreement, the Authority informs the client that the Authority is terminating its agreement to the restriction. Information created or received while the restriction was in place shall remain subject to the restriction.

(4) Rights of clients to request to receive information from the Authority by alternative means or at alternative locations. The Authority must accommodate reasonable requests by clients to receive communications from the Authority by alternative means, such as by mail, e-mail, fax, or telephone, and at an alternative location.

(a) The client must specify the preferred alternative means or location.

(b) The client may submit the request for alternative means or locations either orally or in writing.

(A) If the client makes a request in-person, the Authority shall document the request and ask for the client's signature.

(B) If the client makes a request by telephone or electronically, the Authority shall document the request and verify the identity of the client.

(c) The Authority may terminate its agreement to an alternative location or method of communication if:

(A) The client agrees to or requests termination of the alternative location or method of communication in writing or orally. The Authority shall document the oral agreement or request in the client's Authority case file; or

(B) The Authority informs the client that the Authority is terminating its agreement to the alternative location or method of communication because the alternative location or method of communication is not effective. The Authority may terminate its agreement to communicate at the alternative location or by the alternate method if:

(i) The Authority is unable to contact the client at the location or by the method requested; or

(ii) The client fails to respond to payment requests, if applicable.

(5) Right of clients to request amendment of their information. Clients may request that the Authority amend information about themselves in Authority files.

(a) For all amendment requests, the Authority shall have the client complete the approved Authority form.

(b) The Authority may deny the request or limit its agreement to amend.

(c) The Authority must act on the client's request no later than 60 days after receiving the request. If the Authority is unable to act within 60 days, the Authority may extend this time limit by a maximum of 30 additional days, subject to the following:

(A) The Authority must notify the client in writing, within 60 days of receiving the request, of the reasons for the delay and the date by which the Authority shall act on the request; and

(B) The Authority shall use only one 30-day extension.

(d) The program's medical director, a licensed health care professional designated by the program administrator, or an Authority staff person involved in the client's case must review the request and any related documentation prior to making a decision to amend a health or medical record.

(e) A staff person designated by the Authority shall review the request and any related documentation prior to making a decision to amend any information that is not a health or medical record.

(f) If the Authority grants the request, in whole or in part, the Authority shall:

(A) Make the appropriate amendment to the information or records, and document the amendment in the client's Authority file or record;

(B) Provide notice to the client that the amendment has been granted, pursuant to the time limits under section (5)(c) of this rule;

(C) Obtain the client's agreement to notify other relevant persons or entities with whom the Authority has shared or needs to share the amended information; and

(D) Inform and provide the amendment within a reasonable time to:

(i) Persons named by the client who have received the information and who need the amendment; and

(ii) Persons, including business associates of the Authority, that the Authority knows have the information that is the subject of the amendment and who may have relied, or could foreseeably rely, on the information to the client's detriment.

(g) The Authority may deny the client's request for amendment if:

(A) The Authority finds the information to be accurate and complete;

(B) The information was not created by the Authority;

(C) The information is not part of Authority records; or

(D) The information would not be available for inspection or access by the client, pursuant to section (1)(g) and (h) of this rule.

(h) If the Authority denies the amendment request, in whole or in part, the Authority must provide the client with a written denial. The denial must:

(A) Be sent within the time limits specified in section (5)(c) of this rule;

(B) State the basis for the denial, in plain language; and

(C) Explain the client's right to submit a written statement disagreeing with the denial and how to file the statement. If the client files a statement:

(i) The Authority shall enter the written statement into the client's Authority case file;

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(ii) The Authority may also enter an Authority written rebuttal of the client's written statement into the client's Authority case file. The Authority shall send a copy of any written rebuttal to the client;

(iii) The Authority shall include a copy of the statement and any Authority written rebuttal with any future disclosures of the relevant information;

(iv) If a client does not submit a written statement of disagreement, the client may ask that if the Authority makes any further disclosures of the relevant information that the Authority shall also include a copy of the client's original request for amendment and a copy of the Authority written denial; and

(v) The Authority shall provide information on how the client may file a complaint with the Authority and, if the information is PHI, with DHHS, Office for Civil Rights.

(6) Rights of clients to request an accounting of disclosures of PHI. Clients may receive an accounting of disclosures of PHI that the Authority has made for any period of time, not to exceed six years, preceding the request date for the accounting.

(a) For all requests for an accounting of disclosures, the client may complete the authorized Authority form "Request for Accounting of Disclosures of Health Records", or provide sufficient information to accomplish this request.

(b) The right to an accounting of disclosures does not apply when the request is:

(A) Authorized by the client;

(B) Made prior to April 14, 2003;

(C) Made to carry out treatment, payment, or health care operations, unless these disclosures are made from an electronic health record;

(D) Made to the client;

(E) Made to persons involved in the client's care;

(F) Made as part of a limited data set in accordance with OAR 943-014-0070;

(G) Made for national security or intelligence purposes; or

(H) Made to correctional institutions or law enforcement officials having lawful custody of an inmate.

(c) For each disclosure, the accounting must include:

(A) The date of the disclosure;

(B) The name and address, if known, of the person or entity, who received the disclosed information;

(C) A brief description of the information disclosed; and

(D) A brief statement of the purpose of the disclosure that reasonably informs the client of the basis for the disclosure, or, in lieu of a statement, a copy of the client's written request for a disclosure, if any.

(d) If, during the time period covered by the accounting, the Authority has made multiple disclosures to the same person or entity for the same purpose, the Authority may provide the required information for only the first disclosure. The Authority need not list the same identical information for each subsequent disclosure to the same person or entity if the Authority adds the following information:

(A) The frequency or number of disclosures made to the same person or entity; and

(B) The date of the most recent disclosure during the time period for which the accounting is requested.

(e) The Authority must act on the client's request for an accounting no later than 60 days after receiving the request. If the Authority is unable to act within 60 days, the Authority may extend this time limit by a maximum of 30 additional days, subject to the following:

(A) The Authority must notify the client in writing, within 60 days of receiving the request, of the reasons for the delay and the date by which the Authority shall act on the request; and

(B) The Authority shall use only one 30-day extension.

(f) The Authority shall provide the first requested accounting in any 12-month period without charge. The Authority may charge the client a reasonable cost-based fee for each additional accounting requested by the client within the 12-month period following the first request, if the Authority:

(A) Informs the client of the fee before proceeding with any additional request; and

(B) Allows the client an opportunity to withdraw or modify the request in order to avoid or reduce the fee.

(g) The Authority shall document the information required to be included in an accounting of disclosures, as specified in section (6)(c) of this rule, and retain a copy of the written accounting provided to the client.

(h) The Authority shall temporarily suspend a client's right to receive an accounting of disclosures that the Authority has made to a health over-

sight agency or to a law enforcement official, for a length of time specified by the agency or official, if the agency or official provides a written or oral statement to the Authority that the accounting would be reasonably likely to impede their activities. If the agency or official makes an oral request, the Authority shall:

(A) Document the oral request, including the identity of the agency or official making the request.

(B) Temporarily suspend the client's request to an accounting of disclosures; and

(C) Limit the temporary suspension to no longer than 30 days from the date of the oral request, unless the agency or official submits a written request specifying a longer time period.

(7) Filing a complaint. Clients may file a complaint with the Authority or, if the information is PHI, with DHHS, Office for Civil Rights.

(a) Upon request, the Authority shall give clients the name and address of the specific person or office of where to submit complaints to DHHS.

(b) The Authority may not intimidate, threaten, coerce, discriminate against, or take any other form of retaliatory action against any individual filing a complaint or inquiring about how to file a complaint.

(c) The Authority may not require clients to waive their rights to file a complaint as a condition of providing treatment, payment, enrollment in a health plan, or eligibility for benefits.

(d) The Authority shall designate staff to review and determine action on complaints filed with the Authority.

(e) The Authority shall document, in the client's Authority case file all complaints, the findings from reviewing each complaint, and the Authority's actions resulting from the complaint. For each complaint the documentation shall include a description of corrective action that the Authority has taken, if any are necessary, or why corrective action is not needed.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.042

Hist.: OHA 8-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

### 943-014-0040

#### Minimum Necessary Standards

(1) The Authority shall limit the use and disclosure of protected information to that which is reasonably necessary to accomplish the intended purpose of the use or disclosure which is referred to in these rules as the minimum necessary standard.

(2) This minimum necessary standard is not intended to impede the essential Authority activities of treatment, payment, health care operations, or service delivery.

(3) The minimum necessary standard applies:

(a) When using protected information within the Authority;

(b) When disclosing protected information to a third party in response to a request; or

(c) When requesting protected information from another covered entity.

(4) The minimum necessary standard does not apply to:

(a) Disclosures to or requests by a health care provider for treatment;

(b) Disclosures made to the individual, including disclosures made in response to a request for access or an accounting;

(c) Disclosures made with a valid authorization;

(d) Disclosures made to DHHS for the purposes of compliance and enforcement of federal regulations under 45 CFR part 160 and required for compliance with 45 CFR part 164.; or

(e) Uses and disclosures required by law;

(5) When requesting protected information about an individual from another entity, the Authority shall limit requests to those that are reasonably necessary to accomplish the purposes for which the request is made. The Authority shall not request a person's entire medical record unless the Authority can specifically justify the need for the entire medical record.

Stat. Auth.: ORS 413.042

Stats. Implemented: 413.042

Hist.: OHA 8-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

### 943-014-0050

#### Business Associate

(1) The Authority may disclose an individual's PHI to a business associate, and may allow a business associate to create or receive an individual's PHI on behalf of the Authority if the Authority and the business associate first enter into a contract that complies with applicable federal and state law. In some limited circumstances, the Authority may determine that the Authority is a business associate of a covered entity. A business associate relationship with the Authority requires additional contractual disclosure

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and privacy provisions that must be incorporated into the contract pursuant to 45 CFR part 164-504 (e)(1)

(2) A contract with a business associate must comply with OAR 125-055-0100 to 125-055-0130 and the qualified service organization requirements in 42 CFR part 2.11.

Stat. Auth.: ORS 413.042  
Stats. Implemented: ORS 413.042  
Hist.: OHA 8-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 943-014-0060

### Uses and Disclosures of Protected Information for Research Purposes

The Authority may use and disclose an individual's information for research purposes as specified in this rule.

(1) All research disclosures are subject to applicable requirements of federal and state laws and rules including but not limited to 45 CFR part 46 and 21 CFR part 50.0 to 50.56, relating to the protection of human research subjects.

(2) The Authority may use and disclose de-identified information or a limited data set for research purposes, pursuant to OAR 943-014-0070.

(3) The Authority may use and disclose information regarding an individual for research purposes with the specific written authorization of the individual. The authorization must meet all requirements in OAR 943-014-0030, and may indicate an expiration date with terms such as "end of research study" or similar language. An authorization for use and disclosure for a research study may be combined with other types of written authorization for the same research study. If research includes treatment, the researcher may require an authorization for use and disclosure for the research as a provision of providing research related treatment.

(4) Notwithstanding section (3) of this rule, the Authority may use and disclose an individual's information for research purposes without the individual's written authorization, regardless of the source of funding for the research, provided that:

(a) The Authority obtains documentation that a waiver of an individual's authorization for release of information requirements has been approved by an IRB registered with the Office for Human Research Protection. Documentation required of an IRB when granting approval of a waiver of an individual's authorization for release of information must include all criteria specified in 45 CFR part 164.512(i)(2).

(b) A researcher may request access to individual information maintained by the Authority in preparation for research or to facilitate the development of a research protocol in anticipation of research. The Authority may determine whether to permit such use or disclosure, without individual authorization or use of an IRB, pursuant to 45 CFR part 164.512(i)(1)(ii).

(c) A researcher may request access to individual information maintained by the Authority about deceased individuals. The Authority may determine whether to permit such use or disclosure of information about decedents, without individual authorization or use of an IRB, pursuant to 45 CFR part 164.512(i)(1)(iii).

(5) The Authority, as a public health authority, may obtain and use individual information without authorization for the purpose of preventing injury or controlling disease and for the conduct of public health surveillance, investigations, and interventions. The Authority may also collect, use, or disclose information, without individual authorization, to the extent that the collection, use, or disclosure is required by law. When the Authority uses information to conduct studies as a public health authority, no additional individual authorization is required nor does this rule require an IRB or privacy board waiver of authorization based on the HIPAA privacy rules.

(6) The Authority may use and disclose information without individual authorization for studies and data analysis conducted for the Authority's own quality assurance purposes or to comply with reporting requirements applicable to federal or state funding requirements in accordance with the definition of "Health Care Operations" in 45 CFR part 164.501.

Stat. Auth.: ORS 413.042  
Stats. Implemented: ORS 413.042  
Hist.: OHA 8-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 943-014-0070

### De-identification of Client Information and Use of Limited Data Sets under Data Use Agreements

(1) The Authority may use and disclose information as appropriate for the work of the Authority, without further restriction, if the Authority or another entity has taken steps to de-identify the information pursuant to 45 CFR part 164.514(a) and (b).

(2) The Authority may assign a code or other means of record identification to allow the Authority to re-identify the de-identified information provided that:

(a) The code or other means of record identification is not derived from or related to information about the individual and cannot otherwise be translated to identify the individual; and,

(b) The Authority does not use or disclose the code or other means of record identification for any other purpose, and does not disclose the mechanism for re-identification.

(3) The Authority may use and disclose a limited data set if the Authority enters into a data use agreement with an entity requesting or providing the Authority with a limited data set subject to the requirements of 45 CFR part 164.514(e).

(a) The Authority may use and disclose a limited data set only for the purposes of research, public health, or health care operations. The Authority may use limited data set for its own activities or operations if the Authority has obtained a limited data set that is subject to a data use agreement.

(b) If the Authority knows of a pattern of activity or practice of a limited data set recipient that constitutes a material breach or violation of a data use agreement, the Authority shall take reasonable steps to cure the breach or end the violation. If such steps are unsuccessful, the Authority shall discontinue disclosure of information to the recipient and report the problem to the Secretary of DHHS.

Stat. Auth.: ORS 413.042  
Stats. Implemented: ORS 413.042  
Hist.: OHA 8-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

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**Rule Caption:** Confidentiality and Inadmissibility of Mediation and Workplace Interpersonal Dispute Mediation and Communication.

**Adm. Order No.:** OHA 9-2011(Temp)

**Filed with Sec. of State:** 7-1-2011

**Certified to be Effective:** 7-1-11 thru 12-27-11

**Notice Publication Date:**

**Rules Adopted:** 943-014-0200, 943-014-0205

**Subject:** HB 2009 (2009) created the Oregon Health Authority (Authority) and transferred to the Authority the Department of Human Services' (Department) Divisions with respect to health and health care. Effective July 1, 2011 the Authority is adopting its own operational and programmatic rules as a part of the operational transfer from functions previously performed by the Department as a result of HB 2009(2009). These rule adoptions duplicate the rules in the Department's chapter 407 and provide legal authority for the Authority to conduct business. These rules set forth the requirements, responsibilities, and duties of the Authority related to the disclosure of communications received as a result of mediations and workplace interpersonal dispute mediations. Those same requirements, responsibilities, and duties remain in the Department of Human Services OAR chapter 407 regarding disclosure of communications received as a result of mediation.

**Rules Coordinator:** Kym Gasper—(503) 945-6302

## 943-014-0200

### 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



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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; or

(c) The mediation communication includes information related to the health or safety of any child, then the mediation communication may be disclosed and may be admitted into evidence in a subsequent proceeding to the extent the disclosure is necessary to prevent or mitigate a threat or danger to the health or safety of any child.

(d) The mediation communication includes information relating to suffering by or commission of abuse upon certain persons and that information would otherwise be required to be reported by a public or private official under the provisions of ORS 124.060 (person 65 years of age or older), 430.765 (1) and (2) (person who is mentally ill or developmentally disabled who is 18 years of age or older and receives services from a community program or facility) or 441.640 (person who is a resident in a long-term care facility), in which case that portion of the mediation communication may be disclosed as required by statute.

(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 substantial form. This form may be used separately or incorporated into an "agreement to mediate." [Form not included. See ED. NOTE.]

(9) Exceptions to confidentiality and inadmissibility.

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) Any mediation communication related to the conduct of a licensed professional that is made to or in the presence of a person who, as a condition of his or her professional license, is obligated to report such commu-

nication 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 Agency Director, or

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designee determines that disclosure of the communication is necessary to prevent or mitigate a serious danger to the public's health or safety, and the communication is not otherwise confidential or privileged under state or federal law.

(o) The terms of any mediation agreement are not confidential and may be introduced as evidence in a subsequent proceeding, except to the extent the terms of the agreement are exempt from disclosure under ORS 192.410 to 192.505, a court has ordered the terms to be confidential under ORS 17.095 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).

(q) The mediation communication may be disclosed and may be admitted into evidence in a subsequent proceeding to the extent the disclosure is necessary to prevent or mitigate a threat or danger to the health or safety of any child or person 65 years of age or older, person who is mentally ill or developmentally disabled and receives services from a community program or facility as defined in ORS 430.735 or person who is a resident of a long-term care facility.

(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. Auth.: ORS 413.042  
Stats. Implemented: ORS 36.224, 36.228, 36.230, 36.232 & 36.234  
Hist.: OHA 9-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

### 943-014-0205

#### Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation Communications

(1) This rule applies to workplace interpersonal disputes, which are disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials. This rule does not apply to disputes involving the negotiation of labor contracts or matters about which a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed.

(2) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(3) Nothing in this rule affects any confidentiality created by other law.

(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) 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) or (h)-(j) of section (7) of this rule; or

(c) The mediation communication includes information related to the health or safety of any child, then the mediation communication may be disclosed and may be admitted into evidence in a subsequent proceeding to the extent the disclosure is necessary to prevent or mitigate a threat or danger to the health or safety of any child.

(d) The mediation communication includes information relating to suffering by or commission of abuse upon certain persons and that information would otherwise be required to be reported by a public or private official under the provisions of ORS 124.060 (person 65 years of age or older), 430.765 (1) and (2) (person who is mentally ill or developmentally disabled who is 18 years of age or older and receives services from a community program or facility) or 441.640 (person who is a resident in a long-term care facility), in which case that portion of the mediation communication may be disclosed as required by statute.

(6) Confidentiality and Inadmissibility of Mediation Communications. Except as provided in section (7) of this rule, mediation communications in mediations involving workplace interpersonal disputes 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 into evidence by the parties or the mediator in any subsequent proceeding so long as:

(a) The parties to the mediation and the agency have agreed in writing to the confidentiality of the mediation; and

(b) The person agreeing to the confidentiality of the mediation on behalf of the agency:

(A) Is neither a party to the dispute nor the mediator; and

(B) Is designated by the agency to authorize confidentiality for the mediation; and

(C) Is at the same or higher level in the agency than any of the parties to the mediation or who is a person with responsibility for human resources or personnel matters in the agency, unless the agency head or member of the governing board is one of the persons involved in the interpersonal dispute, in which case the Governor or the Governor's designee.

(7) 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) 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.

(e) 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.

(f) 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.

(g) 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.

(h) 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.

(i) 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.

(j) 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

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research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(k) The mediation communication may be disclosed and may be admitted into evidence in a subsequent proceeding to the extent the disclosure is necessary to prevent or mitigate a threat or danger to the health or safety of any child or person 65 years of age or older, person who is mentally ill or developmentally disabled and receives services from a community program or facility as defined in ORS 430.735 or person who is a resident of a long-term care facility.

(7) The terms of any agreement arising out of the mediation of a workplace interpersonal dispute are confidential so long as the parties and the agency so agree in writing. Any term of an agreement that requires an expenditure of public funds, other than expenditures of \$1,000 or less for employee training, employee counseling or purchases of equipment that remain the property of the agency, may not be made confidential.

(8) When a mediation is subject to section (6) of this rule, the agency will provide to all parties to the mediation and to the mediator a copy of this rule or an explanation of where a copy may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

Stat. Auth.: ORS 413.042  
Stats. Implemented: ORS 36.224, 36.228, 36.230, 36.232 & 36.234  
Hist.: OHA 9-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

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**Rule Caption:** Review Process When Self-Defense Asserted to a "Substantiated" physical at State Hospitals and State Operated Programs.

**Adm. Order No.:** OHA 10-2011(Temp)

**Filed with Sec. of State:** 7-1-2011

**Certified to be Effective:** 7-1-11 thru 12-27-11

**Notice Publication Date:**

**Rules Adopted:** 943-045-0000

**Subject:** This rule adopts and incorporates by reference the Department of Human Services' Review of Substantiated Physical Abuse When Self-Defense is Asserted at State Hospitals and State Operated Residential 24-hour Programs rules: chapter 407-0000 through 0110.

HB 2009 (2009) created the Oregon Health Authority and transferred to the Authority the Department of Human Services' (Department) Divisions with respect to health and health care. Effective July 1, 2011 the Authority needs to adopt and incorporate by reference the Department's rules which provide the Authority with the legal authority to conduct abuse investigations with respect to individuals residing in state hospitals and state operated 24-hour programs. These rules set forth the review process when self defense is asserted by individuals in response to "substantiated" determination.

**Rules Coordinator:** Kym Gasper—(503) 945-6302

## 943-045-0000

### Review of Substantiated Physical Abuse When Self-Defense is Asserted at State Hospitals

Protective service investigations and review of findings of alleged abuse in state hospitals are handled by the Office of Investigations and Training (OIT) State hospitals are administered by the Oregon Health Authority (Authority).

(1) The Authority adopts and incorporates by reference OAR 407-045-0000 to 407-045-0110 (Review of Substantiated Physical Abuse When Self-Defense is Asserted at State Hospitals).

(2) Any reference to any rule from OAR 407-045-0000 to 407-045-0110 in rules or contracts of the Authority are deemed to be references to the requirements of this rule, and shall be construed to apply to employees, volunteers, providers, or contractors that work at those locations that are administered by the Authority.

(3) References in OAR 407-045-0000 to 407-045-0110 to the Department of Human Services (Department) or to the Authority shall be construed to be references to either or both agencies.

(4) The Authority authorizes the Department to act on its behalf in carrying out protective service investigations and review of findings of alleged abuse at those locations that are administered by the Authority.

(5) Appeals will be handled by the Authority under the procedures set out in OAR 407-045-0000 to 407-045-0110, however, references to agency actions or decisions that qualify as orders under ORS 183.310(6) that are issued by "the Department" or by "the Director" are hereby incorporated as references to "the Oregon Health Authority" and "the Authority Director."

(6) References in OAR 407-045-0000 to 407-045-0110 to the Human Services Abuse Review Committee (HSARC), the OIT Substantiation Review Committee (OSRC) or "Office of Developmental Disability Services Review Committee" (ODDSRC) shall be construed to be references to committees for either the Department or the Authority.

Stat. Auth.: ORS 179.040 & 413.042  
Other Auth.: HB 2009, OL Ch. 595, sec. 19-25  
Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.755 - 430.768  
Hist.: Hist.: OHA 10-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

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**Rule Caption:** Abuse Reporting and Protective Services in Community Programs and Community Facilities.

**Adm. Order No.:** OHA 11-2011(Temp)

**Filed with Sec. of State:** 7-1-2011

**Certified to be Effective:** 7-1-11 thru 12-27-11

**Notice Publication Date:**

**Rules Adopted:** 943-045-0250, 943-045-0260, 943-045-0280, 943-045-0290, 943-045-0300, 943-045-0310, 943-045-0320, 943-045-0330, 943-045-0340, 943-045-0350, 943-045-0360, 943-045-0370

**Subject:** HB 2009 (2009) created the Oregon Health Authority (Authority) and transferred to the Authority the Department of Human Services' (Department) Divisions with respect to health and health care. Effective July 1, 2011 the Authority is adopting its own operational and programmatic rules as a part of the operational transfer from functions previously performed by the Department as result of HB 2009(2009).

With the creation of a new agency, the community programs and community facilities serving adults with mental illness moved to the Authority. Community programs and facilities serving adults with developmental disabilities will continue to be governed by the Department of Human Services' rule found at OAR 407-045-0250 to 0370. These rules are needed to reflect the separation of the Department of Human Services and Oregon Health Authority.

**Rules Coordinator:** Kym Gasper—(503) 945-6302

## 943-045-0250

### Purpose

These rules, OAR 943-045-0250 to 943-045-0370, 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. Auth.: ORS 179.040 & 413.042, 430.731, 414.715  
Other Auth.: HB 2009, OL Ch. 595, sec. 19-25  
Stats. Implemented: ORS 413.032, 430.735 - 430.765, 443.400 - 443.460, 443.705 - 443.825  
Hist.: Hist.: OHA 11-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 943-045-0260

### Definitions

As used in OAR 943-045-0250 to 943-045-0370, 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, resi-



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dence, 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 significant risk of 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 favors. 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 favors. 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 favors 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 Authority's Addictions and Mental Health Division (Division ) 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.

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(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:

(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 Authority or 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) "Authority" means the Oregon Health Authority.

(7) "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.

(8) "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.

(9) "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.

(10) "Community program" means the community mental health or developmental disabilities program as established in ORS 430.610 to 430.695.

(11) "Designee" means the community program.

(12) "Department" means the Department of Human Services.

(13) "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.

(14) "Law enforcement agency" means any city or municipal police department, county sheriff's office, the Oregon State Police, or any district attorney.

(15) "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.

(16) "Not substantiated" means the preponderance of evidence establishes the alleged abuse did not occur.

(17) "OIT" means the Department's Office of Investigations and Training.

(18) "Provider agency" means an entity licensed or certified to provide services, or which is responsible for the management of services to clients.

(19) "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 Authority, Department, county health department, community mental health or developmental disabilities program, or private agency contracting with a public body to provide any community 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.

(20) "Substantiated" means that the preponderance of evidence establishes the abuse occurred.

(21) "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. Auth.: ORS 179.040 & 413.042, 430.731, 414.715

Other Auth.: HB 2009, OL Ch. 595, sec. 19-25

Stats. Implemented: ORS 413.032, 430.735 - 430.765, 443.400 - 443.460, 443.705 - 443.825

Hist.: OHA 11-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

### 943-045-0280

#### Training for Adults Investigating Reports of Alleged Abuse

(1) The Authority shall provide sufficient and timely training and consultation to community programs to ensure that the community program is

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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. Auth.: ORS 179.040 & 413.042, 430.731, 414.715

Other Auth.: HB 2009, OL Ch. 595, sec. 19-25

Stats. Implemented: ORS 413.032, 430.735 - 430.765, 443.400 - 443.460, 443.705 - 443.825

Hist.: Hist.: OHA 10-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 943-045-0290

### 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 Authority 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.

(4) If the Authority 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 Authority 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 Authority 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 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 Authority it has received a report of abuse, in the format provided by the Authority.

(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. Auth.: ORS 179.040 & 413.042, 430.731, 414.715

Other Auth.: HB 2009, OL Ch. 595, sec. 19-25

Stats. Implemented: ORS 413.032, 430.735 - 430.765, 443.400 - 443.460, 443.705 - 443.825

Hist.: OHA 11-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 943-045-0300

### 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 Authority 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. Auth.: ORS 179.040 & 413.042

Stats. Implemented: ORS 430.735-430.765, 443.400-443.460, 443.705-443.825

Hist.: OHA 11-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 943-045-0310

### 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 pro-



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vide 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. Auth.: ORS 179.040 & 413.042, 430.731, 414.715

Other Auth.: HB 2009, OL Ch. 595, sec. 19-25

Stats. Implemented: ORS 413.032, 430.735 - 430.765, 443.400 - 443.460, 443.705 - 443.825

Hist.: OHA 11-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 943-045-0320

### Abuse Investigation and Protective Services Report

(1) The Authority 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 Authority or 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 Authority or Department for all abuse investigations in the state.

Stat. Auth.: ORS 179.040 & 413.042, 430.731, 414.715

Other Auth.: HB 2009, OL Ch. 595, sec. 19-25

Stats. Implemented: ORS 413.032, 430.735 - 430.765, 443.400 - 443.460, 443.705 - 443.825

Hist.: OHA 11-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 943-045-0330

### 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 Authority 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 Authority 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 Authority's designee, the protective services investigation may be disclosed pursuant to this rule either by the community program or the Authority.

Stat. Auth.: ORS 179.040 & 413.042, 430.731, 414.715

Other Auth.: HB 2009, OL Ch. 595, sec. 19-25

Stats. Implemented: ORS 413.032, 430.735 - 430.765, 443.400 - 443.460, 443.705 - 443.825

Hist.: OHA 11-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 943-045-0340

### 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 sub-section, "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.

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(4) Adverse action may also be evidence of retaliation after 90 days even though the presumption no longer applies.

Stat. Auth.: ORS 179.040 & 413.042, 430.731, 414.715  
Other Auth.: HB 2009, OL Ch. 595, sec. 19-25  
Stats. Implemented: ORS 413.032, 430.735 - 430.765, 443.400 - 443.460, 443.705 - 443.825  
Hist.: OHA 11-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 943-045-0350

### Immunity of Individuals Making Reports in Good Faith

(1) Any individual who makes a good faith report and who has 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 immune from civil liability for the disclosure to a prospective employer of the employee of known facts concerning the abuse.

Stat. Auth.: ORS 179.040 & 413.042, 430.731, 414.715  
Other Auth.: HB 2009, OL Ch. 595, sec. 19-25  
Stats. Implemented: ORS 413.032, 430.735 - 430.765, 443.400 - 443.460, 443.705 - 443.825  
Hist.: OHA 11-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 943-045-0360

### Authority Investigation of Alleged Abuse

(1) If determined necessary or appropriate, the Authority 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 Authority before conducting any separate investigation.

(2) The community program shall make all records necessary for the investigation available to the Authority for inspection and copying. The community facilities and community programs must provide the Authority access to employees, the adult, and the premises for investigation purposes.

Stat. Auth.: ORS 179.040 & 413.042, 430.731, 414.715  
Other Auth.: HB 2009, OL Ch. 595, sec. 19-25  
Stats. Implemented: ORS 413.032, 430.735 - 430.765, 443.400 - 443.460, 443.705 - 443.825  
Hist.: OHA 11-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 943-045-0370

### 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 & 413.042, 430.731, 414.715  
Other Auth.: HB 2009, OL Ch. 595, sec. 19-25  
Stats. Implemented: ORS 413.032, 430.735 - 430.765, 443.400 - 443.460, 443.705 - 443.825  
Hist.: OHA 11-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

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**Rule Caption:** Abuse Reporting and Protective Services for Individuals in State Hospitals.

**Adm. Order No.:** OHA 12-2011(Temp)

**Filed with Sec. of State:** 7-1-2011

**Certified to be Effective:** 7-1-11 thru 12-27-11

**Notice Publication Date:**

**Rules Adopted:** 943-045-0400, 943-045-0410, 943-045-0420, 943-045-0430, 943-045-0440, 943-045-0450, 943-045-0460, 943-045-0470, 943-045-0480, 943-045-0490, 943-045-0500, 943-045-0510, 943-045-0520

**Subject:** HB 2009 (2009) created the Oregon Health Authority (Authority) and transferred to the Authority the Department of Human Services' (Department) Divisions with respect to health and health care. Effective July 1, 2011 the Authority is adopting its own operational and programmatic rules as a part of the operational transfer from functions previously performed by the Department as result of HB 2009(2009).

With the creation of a new agency, the state hospitals serving individuals with mental illness moved to the Authority. These rules are

needed to reflect the separation of the Department of Human Services and Oregon Health Authority.

**Rules Coordinator:** Kym Gasper—(503) 945-6302

## 943-045-0400

### Purpose

The purpose of these rules is to establish a policy prohibiting abuse and to define procedures for reporting, investigating, and resolving alleged incidents of abuse of individuals in state hospitals.

Stat. Auth.: ORS 179.040, 413.042  
Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.768  
Hist.: OHA 12-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 943-045-0410

### Definitions

(1) "Abuse" means any act or absence of action by a staff or visitor inconsistent with prescribed treatment and care that violates the well-being or dignity of the individual.

(2) "Authority" means the Oregon Health Authority.

(3) "Derogatory" means an expression of a low opinion or a disparaging remark.

(4) "Director" means the Director of the Oregon Health Authority's Addictions and Mental Health Division or their designee.

(5) "Disrespectful" means lacking regard or concern; or to treat as unworthy or lacking value as a human being.

(6) "Division" means the Oregon Health Authority's Addictions and Mental Health Division.

(7) "Employee" means an individual employed by the state and subject to rules for employee conduct.

(8) "Inconclusive" means there is insufficient evidence to conclude the alleged abuse occurred or did not occur by a preponderance of the evidence.

(9) "Individual" means a person who is receiving services at a state hospital for people with mental illness.

(10) "Not Substantiated" means the preponderance of evidence establishes the alleged abuse did not occur.

(11) "Office of Investigations and Training (OIT)" means the Department of Human Services' office responsible for the investigation of allegations of abuse made at state hospitals on behalf of the Authority.

(12) "Staff" means employees, contractors and their employees, and volunteers.

(13) "Substantiated" means that the preponderance of evidence establishes the abuse occurred.

(14) "Superintendent" refers to the chief executive officer of a state hospital who serves as the designee of the Director to receive allegations of abuse concerning individuals and his or her designee.

(15) "Visitor" means all others persons not included as staff who visit the facility for business purposes or to visit individuals or staff.

Stat. Auth.: ORS 179.040, 413.042  
Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.768  
Hist.: OHA 12-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 943-045-0420

### General Policy

(1) The Authority believes every individual is deserving of safe, respectful and dignified treatment provided in a caring environment. To that end, all employees, volunteers, contractors and their employees, as well as visitors shall conduct themselves in such a manner that individuals are free from abuse.

(2) In these rules, the term "abuse" is given a broad definition because of the unique vulnerability of individuals served by the Authority. While some examples are listed later in these rules (including specific conduct listed in ORS 430.735(1)), it must be clearly understood that all possible situations cannot be anticipated and each case must be evaluated based on the particular facts available.

Stat. Auth.: ORS 179.040, 413.042  
Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.768  
Hist.: OHA 12-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 943-045-0430

### Policy Regarding Abuse

(1) All forms of Abuse Prohibited. Staff, visitors, volunteers, contractors and their employees must continually be aware of the potential for abuse in interactions with individuals.

(2) Listed below are examples of the type of conduct which constitutes abuse. This list of examples is by no means exhaustive and represents general categories of prohibited conduct. Conduct of a like or similar nature is also obviously prohibited. Examples include, but are not limited to:

# ADMINISTRATIVE RULES

(a) Physical Abuse: Examples include hitting, kicking, scratching, pinching, choking, spanking, pushing, slapping, twisting of head, arms, or legs, tripping, the use of physical force which is unnecessary or excessive or other physical contact with an individual inconsistent with prescribed treatment or care;

(b) Verbal Abuse: Verbal conduct may be abusive because of either the manner of communicating with or the content of the communication with individuals. Examples include yelling, ridicule, harassment, coercion, threats, intimidation, cursing, foul language or other forms of communication which are derogatory or disrespectful of the individual, or remarks intended to provoke a negative response by the individual;

(c) Abuse by Failure to Act: This includes neglecting the care of the individual resulting in death (including suicide), physical or psychological harm, or a significant risk of harm to the individual either by failing to provide authorized and prescribed treatment or by failing to intervene when an individual needs assistance such as denying food or drink or leaving the individual unattended when staff presence is mandated;

(d) Sexual Abuse: Examples include:

(A) Contact of a sexual nature between staff and individuals;

(B) Failure to discourage sexual advances toward staff by individuals; and

(C) Permitting the sexual exploitation of individuals or use of individual sexual activity for staff entertainment or other improper purpose.

(e) Condoning Abuse: Permitting abusive conduct toward an individual by any other staff, individual, or person; and

(f) Statutory Terms of Abuse: As defined in ORS 430.735: any death caused by other than accidental or natural means; any physical injury caused by other than accidental means, or that appears to be at variance with the explanation given of the injury; willful infliction of physical pain or injury, sexual harassment or exploitation, including but not limited to any sexual contact between an employee of a facility or community program and an adult, and neglect that leads to physical harm or significant mental injury through withholding of services necessary to maintain health and well being.

(3) At times, persons may be required to utilize self-defense. This includes control procedures that are designed to minimize physical injury to the individual or other persons. Employees must use the least restrictive procedures necessary under the circumstances for dealing with an individual's behaviors or defending against an individual's attack. Abuse does not include acts of self-defense or defense of an individual or other person in response to the use or imminent use of physical force provided that only the degree of force reasonably necessary for protection is used. When excessively severe methods of control are used or when any conduct designed as self-defense is carried beyond what is necessary under the circumstances to protect the individual or other persons from further violence or assault, then that conduct then becomes abuse.

Stat. Auth.: ORS 179.040, 413.042

Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.768

Hist.: OHA 12-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 943-045-0440

### Reporting Requirements

(1) Oregon law requires mandatory reports and investigations of allegations of abuse of individuals with disabilities. Therefore, any person who has reasonable cause to believe that an incident of abuse has occurred to an individual residing at a state hospital must immediately report the incident according to the procedures set forth in the applicable state hospital policy on abuse reporting.

(2) Any person participating in good faith in reporting alleged abuse and who has reasonable grounds for reporting has immunity from any civil liability that otherwise might be imposed or incurred based on the reporting or the content of the report under ORS 430.753(1).

(3) The identity of the person reporting alleged abuse is confidential. The Authority or OIT may reveal the names of abuse reporters to law enforcement agencies, public agencies who certify or license facilities or persons practicing therein, public agencies providing services to the individuals, private agencies providing protective services for the individuals, and the protection and advocacy system for individuals designated by federal law. The identity of the person reporting alleged abuse may also be disclosed in certain legal proceedings including, but not limited to, Human Resources or other administrative proceedings and criminal prosecution.

Stat. Auth.: ORS 179.040, 413.042

Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.768

Hist.: OHA 12-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 943-045-0450

### Preliminary Procedures

(1) Once a report of alleged abuse is made, the following steps shall be taken to ensure both a proper investigation and appropriate action are taken to ensure that individuals are free from any threat of abuse:

(a) No later than two hours after receipt of the allegation except for circumstances with good cause the Superintendent shall notify OIT of the report of alleged abuse. OIT shall determine whether the allegation, if true, would fit within the definition of abuse. This determination shall be made in consultation with the Superintendent. The determination must be made by OIT within 24 hours of receipt of the report of abuse;

(b) If the allegation is determined not to fit the definition of abuse, the Superintendent may take other appropriate action, such as a referral to Human Resources for review as a performance issue, worksite training, or take other systemic measures to resolve problems identified;

(c) The Superintendent with OIT shall ensure that if the allegation meets the definition of child abuse under ORS 419B.005, or elder abuse under ORS 124.050 that the allegation has been reported to the appropriate agency.

(2) Immediately and no later than 24 hours after determining that the allegation falls within the definition of abuse under this policy or other applicable laws, the Superintendent shall:

(a) Provide appropriate protective services to the individual that may include arranging for immediate protection of the individual and the provision of appropriate services including medical, legal, or other services necessary to prevent further abuse;

(b) Determine with OIT if there is reason to believe that an investigation by an appropriate law enforcement agency is necessary, and if so, request that such agency determine whether there is reason to believe a crime has been committed;

(c) Make a report to any other appropriate agencies.

(d) Promptly notify the legal guardian (of an adjudicated incapacitated individual) of the alleged incident and give an explanation of the procedures that will be used to investigate and resolve the matter; as well as the hospital's responsibility and plan to provide appropriate protective services;

(e) Contact the Director if the individual has sustained serious injury.

Stat. Auth.: ORS 179.040, 413.042

Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.768

Hist.: OHA 12-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 943-045-0460

### Investigation by the Office of Investigations and Training

(1) Investigation of allegations of abuse shall be thorough and unbiased. OIT shall conduct an investigation of the allegation.

(2) OIT shall conduct interviews with any party alleging an incident of abuse, the individual allegedly abused, and the person accused. OIT shall also include interviews with persons appearing to be involved in or having knowledge of the alleged abuse or surrounding circumstances.

(3) All records necessary for the investigation shall be available to OIT for inspection and copying. OIT shall collect information which has relevance to the alleged event. This may include, but is not limited to, individual or facility records, statements, diagrams, photographs, and videos.

(4) If the facts in the case are disputed and a law enforcement agency does not conduct a timely investigation or complete a criminal investigation, OIT shall determine the manner and methods of conducting the investigation.

(5) When a law enforcement agency is conducting a criminal investigation of the alleged abuse, OIT shall also perform its own investigation unless OIT is advised by the law enforcement agency that a concurrent OIT investigation would interfere with the criminal investigation.

Stat. Auth.: ORS 179.040, 413.042

Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.768

Hist.: OHA 12-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 943-045-0470

### Abuse Investigation Report

(1) OIT shall complete the investigation and submit a draft report to the Superintendent within 30 calendar days after initiating an investigation. The investigation must be completed within 30 calendar days unless the Director grants an extension. The Director may grant an extension for good cause shown when law enforcement is conducting an investigation, when a key party is unavailable, new evidence is discovered, 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



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required) or for some other mitigating reason. The Director shall determine the length of the extension.

(2) The Superintendent and OIT shall review the OIT or law enforcement investigation report. The Superintendent and OIT shall also review and discuss any other relevant reports or information.

(3) OIT shall determine whether the evidence substantiates the allegation of abuse. In some instances, OIT may determine that the evidence is inconclusive. The determination must be made within 15 calendar days from completion of the draft investigation report, unless a key party is unavailable, additional evidence is discovered, or the Director grants an extension for some other mitigating reason. Any determination not made within the 15-day period must be made as soon as reasonably possible thereafter.

(4) Once this review is complete, OIT shall prepare a final report, which 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 evidence 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 individual;

(g) Any additional corrective action required by the hospital and deadlines for the completion of these actions;

(h) A list of any notices made to licensing or certifying agencies;

(i) The name and title of the person completing the report; and

(j) The date written.

(5) If the allegation of abuse is substantiated, the Superintendent shall direct that appropriate action be taken against the responsible person commensurate with the seriousness of the conduct and any aggravating or mitigating circumstances, including consideration of previous conduct of record. If Human Resources are involved, as necessary to comply with laws related to employee rights, additional investigation may be conducted.

(6) If the allegations are found to be inconclusive, the Superintendent may request a review by Human Resources to determine the need for any training or disciplinary action, as warranted by the facts and any follow-up investigative work.

(7) The Superintendent shall ensure that appropriate documentation exists as to the action taken as a result of an abuse investigation.

(8) The Superintendent shall ensure that a copy of the law enforcement investigation report is forwarded to OIT.

Stat. Auth.: ORS 179.040, 413.042

Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.768

Hist.: OHA 12-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 943-045-0480

### Disclosure of Investigation Report and Related Documents

(1) Investigation reports prepared by OIT are subject to the following:

(a) Portions of the abuse investigation report and investigatory documents are confidential and not available for public inspection. Pursuant to ORS 430.763, names of persons who make reports of abuse, witnesses, and the alleged abuse victim are confidential and shall not be available for public inspection. Investigatory documents, including portions of the abuse investigation report that contains "Individually identifiable health information", as that term is defined under 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 509.

(b) Notwithstanding subsection (a) of this rule, the Authority and OIT 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 or licenses or certifies the persons practicing therein, and to any public agency providing protective services for the adult. The Authority and OIT shall also 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).

(c) Persons or entities receiving confidential information pursuant to this rule must maintain the confidentiality of the information and may not disclose the confidential information to unauthorized persons or entities, as required by state or federal law.

(d) When the report is completed, a redacted version of the abuse investigation report not containing any confidential information, the disclo-

sure of which would be prohibited by state or federal law shall be available for public inspection.

(2) The OIT report shall be disclosed by OIT or the Superintendent to:

(a) The Director of the Division and

(b) Any person designated by the Superintendent for purposes related to the proper administration of the state hospital such as assessing patterns of abuse or to respond to personnel actions and may be disclosed in the Superintendent's discretion;

(c) The individual involved;

(d) The guardian of an adjudicated incapacitated person; and

(e) The person who allegedly abused the individual.

(3) Copies of all reports shall be maintained by the Superintendent separate from employee personnel files. The chart of the individual allegedly abused must contain a reference to the report sufficient to enable authorized persons to retrieve and review the report.

Stat. Auth.: ORS 179.040, 413.042

Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.768

Hist.: OHA 12-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 943-045-0490

### Consequences of Abuse

(1) All persons shall be subject to appropriate action if found responsible for:

(a) Abusing an individual;

(b) Failing to report an alleged incident of abuse; or

(c) Refusing to give information or giving untruthful information during an investigation of alleged abuse.

(2) Any discipline of an employee as a result of the above-described conduct must be in conformance with any applicable standards contained in state law or in a Collective Bargaining Agreement.

(3) Any employee dismissed for violating the abuse policy may not be rehired in any capacity, may not be permitted to visit or have any type of contact with individuals.

(4) Any volunteer found violating the abuse policy may be denied visitation or any other contact with individuals.

(5) The Authority may immediately terminate the contract of any contractor found violating the abuse policy. Any employee of the contractor found violating the abuse policy may be excluded from the grounds and may be subject to appropriate disciplinary action by the employer.

(6) Any visitor found in violation of the abuse policy may be excluded from the grounds and will be subject to other appropriate actions as determined by the Superintendent.

(7) Any employee, volunteer, contractor, contractor's employee, or visitor may be subject to criminal prosecution depending on the outcome of any allegation referred to law enforcement for investigation.

(8) Any staff found to have violated the abuse policy shall be reported to any appropriate professional licensing or certification boards or associations.

Stat. Auth.: ORS 179.040, 413.042

Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.768

Hist.: OHA 12-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 943-045-0500

### Notice of Abuse Policy

(1) Upon admission each individual, and guardian if any, and family must be informed orally and in writing of the rights, policies, abuse definitions and procedures concerning prohibition of abuse of individuals.

(2) A clear and simple statement of the title and number of this policy and how to seek advice about its content must be prominently displayed in areas frequented by individuals at the state hospital.

(3) All staff shall be provided a copy of this rule, either at the commencement of their employment, or duties, or, for current staff, within 90 days of the effective date of this rule and once a year thereafter. All staff must sign a form acknowledging receipt of this information on the date of receipt.

(4) A summary of this policy shall be posted in the state hospital in areas regularly frequented by visitors and in a manner designed to notify visitors of the policy. Copies of the complete policy shall be provided to visitors upon request.

Stat. Auth.: ORS 179.040, 413.042

Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.768

Hist.: OHA 12-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 943-045-0510

### Retaliation

(1) No state hospital staff or other person shall retaliate against any person who reports in good faith suspected abuse or against the individual with respect to any report.

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(2) Any state hospital staff or other person 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, may be subject to a penalty of up to \$1,000, notwithstanding any other remedy provided by law.

Stat. Auth.: ORS 179.040, 413.042  
Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.768  
Hist.: OHA 12-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 943-045-0520

### Quality Assurance Review

(1) The State Hospitals shall report on critical indicators, identified by the Authority; and on quality improvement activities undertaken to improve any identified issues.

(2) These reports must be provided to the Authority monthly.

(3) Representatives from the State Hospitals and OIT shall meet quarterly with the Authority's Director or designee. They shall regularly review quality indicators and any other Authority generated information regarding the abuse and neglect system in the State Hospitals.

(4) The Authority must make the information part of any quality improvement activities of the Authority.

Stat. Auth.: ORS 179.040, 413.042  
Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.768  
Hist.: OHA 12-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

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**Rule Caption:** Electronic Data Transmission (EDT) Rule.

**Adm. Order No.:** OHA 13-2011(Temp)

**Filed with Sec. of State:** 7-1-2011

**Certified to be Effective:** 7-1-11 thru 12-27-11

**Notice Publication Date:**

**Rules Adopted:** 943-120-0100, 943-120-0110, 943-120-0112, 943-120-0114, 943-120-0116, 943-120-0118, 943-120-0120, 943-120-0130, 943-120-0140, 943-120-0150, 943-120-0160, 943-120-0165, 943-120-0170, 943-120-0180, 943-120-0190, 943-120-0200

**Subject:** The Oregon Health Authority (Authority) needs to adopt these rules to ensure the Authority's EDT rules compliment the functionality of the Oregon Replacement Medicaid Management Information System (MMIS) in conjunction with the Health Insurance Portability and Accountability Act (HIPAA) transactions and codes set standards for the exchange of electronic data.

**Rules Coordinator:** Kym Gasper—(503) 945-6302

## 943-120-0100

### Definitions

The following definitions apply to OAR 943-120-0100 through 943-120-0200:

(1) "Access" means the ability or means necessary to read, write, modify, or communicate data or information or otherwise use any information system resource.

(2) "Agent" means a third party or organization that contracts with a provider, allied agency, or prepaid health plan (PHP) to perform designated services in order to facilitate a transaction or conduct other business functions on its behalf. Agents include billing agents, claims clearinghouses, vendors, billing services, service bureaus, and accounts receivable management firms. Agents may also be clinics, group practices, and facilities that submit billings on behalf of providers but the payment is made to a provider, including the following: an employer of a provider, if a provider is required as a condition of employment to turn over his fees to the employer; the facility in which the service is provided, if a provider has a contract under which the facility submits the claim; or a foundation, plan, or similar organization operating an organized health care delivery system, if a provider has a contract under which the organization submits the claim. Agents may also include electronic data transmission submitters.

(3) "Allied Agency" means local and regional allied agencies and includes local mental health authority, community mental health programs, Oregon Youth Authority, Department of Corrections, local health departments, schools, education service districts, developmental disability service programs, area agencies on aging, federally recognized American Indian tribes, and other governmental agencies or regional authorities that have a contract (including an interagency, intergovernmental, or grant agreement, or an agreement with an American Indian tribe pursuant to ORS 190.110) with the Oregon Health Authority to provide for the delivery of services to covered individuals and that request to conduct electronic data transactions in relation to the contract.

(4) "Authority" means the Oregon Health Authority.

(5) "Authority Network and Information Systems" means the Authority's computer infrastructure that provides personal communications, confidential information, regional, wide area and local networks, and the internetworking of various types of networks on behalf of the Authority.

(6) "Clinic" means a group practice, facility, or organization that is an employer of a provider, if a provider is required as a condition of employment to turn over his fees to the employer; the facility in which the service is provided, if a provider has a contract under which the facility submits the claim; or a foundation, plan, or similar organization operating an organized health care delivery system, if a provider has a contract under which the organization submits the claim; and the group practice, facility, or organization is enrolled with the Authority, and payments are made to the group practice, facility, or organization. If the entity solely submits billings on behalf of providers and payments are made to each provider, then the entity is an agent.

(7) "Confidential Information" means information relating to covered individuals which is exchanged by and between the Authority, a provider, PHP, clinic, allied agency, or agents for various business purposes, but which is protected from disclosure to unauthorized individuals or entities by applicable state and federal statutes such as ORS 344.600, 410.150, 411.320, 418.130, or the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 and its implementing regulations. These statutes and regulations are collectively referred to as "Privacy Statutes and Regulations."

(8) "Contract" means a specific written agreement between the Authority and a provider, PHP, clinic, or allied agency that provides or manages the provision of services, goods, or supplies to covered individuals and where the Authority and a provider, PHP, clinic, or allied agency may exchange data. A contract specifically includes, without limitation, an Authority provider enrollment agreement, fully capitated health plan managed care contract, dental care organization managed care contract, mental health organization managed care contract, chemical dependency organization managed care contract, physician care organization managed care contract, a county financial assistance agreement, or any other applicable written agreement, interagency agreement, intergovernmental agreement, or grant agreement between the Authority and a provider, PHP, clinic, or allied agency.

(9) "Covered Entity" means a health plan, health care clearing house, health care provider, or allied agency that transmits any health information in electronic form in connection with a transaction, including direct data entry (DDE), and who must comply with the National Provider Identifier (NPI) requirements of 45 CFR 162.402 through 162.414.

(10) "Covered Individual" means individuals who are eligible for payment of certain services or supplies provided to them or their eligible dependents by or through a provider, PHP, clinic, or allied agency under the terms of a contract applicable to a governmental program for which the Authority processes or administers data transmissions.

(11) "Data" means a formalized representation of specific facts or concepts suitable for communication, interpretation, or processing by individuals or by automatic means.

(12) "Data Transmission" means the transfer or exchange of data between the Authority and a web portal or electronic data interchange (EDI) submitter by means of an information system which is compatible for that purpose and includes without limitation, web portal, EDI, electronic remittance advice (ERA), or electronic media claims (EMC) transmissions.

(13) "Department" means the Department of Human Services.

(14) "Direct Data Entry (DDE)" means the process using dumb terminals or computer browser screens where data is directly keyed into a health plan's computer by a provider or its agent, such as through the use of a web portal.

(15) "Electronic Data Interchange (EDI)" means the exchange of business documents from application to application in a federally mandated format or, if no federal standard has been promulgated, using bulk transmission processes and other formats as the Authority designates for EDI transactions. For purposes of these rules (OAR 943-120-0100 through 943-120-0200), EDI does not include electronic transmission by web portal.

(16) "Electronic Data Interchange Submitter" means an individual or entity authorized to establish the electronic media connection with the Authority to conduct an EDI transaction. An EDI submitter may be a trading partner or an agent of a trading partner.

(17) "Electronic Media" means electronic storage media including memory devices in computers or computer hard drives; any removable or transportable digital memory medium such as magnetic tape or disk, optical disk, or digital memory card; or transmission media used to exchange information already in electronic storage media. Transmission media

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includes but is not limited to the internet (wide-open), extranet (using internet technology to link a business with information accessible only to collaborating parties), leased lines, dial-up lines, private networks, and the physical movement of removable or transportable electronic storage media. Certain transmissions, including paper via facsimile and voice via telephone, are not considered transmissions by electronic media because the information being exchanged did not exist in electronic form before transmission.

(18) "Electronic Media Claims (EMC)" means an electronic media means of submitting claims or encounters for payment of services or supplies provided by a provider, PHP, clinic, or allied agency to a covered individual.

(19) "Electronic Remittance Advice (ERA)" means an electronic file in X12 format containing information pertaining to the disposition of a specific claim for payment of services or supplies rendered to covered individuals which are filed with the Authority on behalf of covered individuals by providers, clinics, or allied agencies. The documents include, without limitation, the provider name and address, individual name, date of service, amount billed, amount paid, whether the claim was approved or denied, and if denied, the specific reason for the denial. For PHPs, the remittance advice file contains information on the adjudication status of encounter claims submitted.

(20) "Electronic Data Transaction (EDT)" means a transaction governed by the Health Insurance Portability and Accountability Act (HIPAA) transaction rule, conducted by either web portal or EDI.

(21) "Envelope" means a control structure in a mutually agreed upon format for the electronic interchange of one or more encoded data transmissions either sent or received by an EDI submitter or the Authority.

(22) "HIPAA Transaction Rule" means the standards for electronic transactions at 45 CFR Part 160 and 162 (version in effect on January 1, 2008) adopted by the Department of Health and Human Services (DHHS) to implement the Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d et. seq.

(23) "Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of an information system or information asset including but not limited to unauthorized disclosure of information, failure to protect user IDs, and theft of computer equipment using or storing Authority information assets or confidential information.

(24) "Individual User Profile (IUP)" means Authority forms used to authorize a user, identify their job assignment, and the required access to the Authority's network and information system. It generates a unique security access code used to access the Authority's network and information system.

(25) "Information Asset" means all information, also known as data, provided through the Authority, regardless of the source, which requires measures for security and privacy of the information.

(26) "Information System" means an interconnected set of information resources under the same direct management control that shares common functionality. A system normally includes hardware, software, information, data, applications, communications, and trained personnel necessary for successful data transmission.

(27) "Lost or Indecipherable Transmission" means a data transmission which is never received by or cannot be processed to completion by the receiving party in the format or composition received because it is garbled or incomplete, regardless of how or why the message was rendered garbled or incomplete.

(28) "Mailbox" means the term used by the Authority to indicate trading partner-specific locations on the Authority's secure file transfer protocol (SFTP) server to deposit and retrieve electronic data identified by a unique Authority assigned trading partner number.

(29) "Password" means the alpha-numeric codes assigned to an EDI submitter by the Authority for the purpose of allowing access to the Authority's information system, including the web portal, for the purpose of successfully executing data transmissions or otherwise carrying out the express terms of a trading partner agreement or provider enrollment agreement and these rules.

(30) "Personal Identification Number (PIN)" means the alpha-numeric codes assigned to web portal submitters by the Authority for the purpose of allowing access to the Authority's information system, including the web portal, for the purpose of successfully executing DDE, data transmissions, or otherwise carrying out the express terms of a trading partner agreement, provider enrollment agreement, and these rules.

(31) "Prepaid Health Plan (PHP) or Plan" means a managed health care, dental care, chemical dependency, physician care organization, or

mental health care organization that contracts with the Authority on a case managed, prepaid, capitated basis under the Oregon Health Plan (OHP).

(32) "Provider" means an individual, facility, institution, corporate entity, or other organization which supplies or provides for the supply of services, goods or supplies to covered individuals pursuant to a contract, including but not limited to a provider enrollment agreement with the Authority. A provider does not include billing providers as used in the Division of Medical Assistance (DMAP) general rules. DMAP billing providers are defined in these rules as agents, except for DMAP billing providers that are clinics.

(33) "Provider Enrollment Agreement" means an agreement between the Authority and a provider for payment for the provision of covered services to covered individuals.

(34) "Registered Transaction" means each type of EDI transaction applicable to a trading partner that must be registered with the Authority before it can be tested or approved for EDI transmission.

(35) "Security Access Codes" means the alpha-numeric codes assigned by the Authority to the web portal submitter or EDI submitter for the purpose of allowing access to the Authority's information system, including the web portal, to execute data transmissions or otherwise carry out the express terms of a trading partner agreement, provider enrollment agreement, and these rules. Security access codes may include passwords, PINs, or other codes.

(36) "Source Documents" means documents or electronic files containing underlying data which is or may be required as part of a data transmission with respect to a claim for payment of charges for medical services or supplies provided to a covered individual, or with respect to any other transaction. Examples of data contained within a specific source document include but are not limited to an individual's name and identification number, claim number, diagnosis code for the services provided, dates of service, service procedure description, applicable charges for the services provided, and a provider's, PHP's, clinic's, or allied agency's name, identification number, and signature.

(37) "Standard" means a rule, condition, or requirement describing the following information for products, systems, or practices:

- (a) Classification of components;
- (b) Specification of materials, performance, or operations; or
- (c) Delineation of procedures.

(38) "Standards for Electronic Transactions" mean a transaction that complies with the applicable standard adopted by DHHS to implement standards for electronic transactions.

(39) "Submitter" means a provider, PHP, clinic, or allied agency that may or may not have entered into a Trading Partner Agreement depending upon whether the need is to exchange Electronic Data Transactions or access the Authority's Web Portal.

(40) "Transaction" means the exchange of data between the Authority and a provider using web portal access or a trading partner using electronic media to carry out financial or administrative activities.

(41) "Trade Data Log" means the complete written summary of data and data transmissions exchanged between the Authority and an EDI submitter during the period of time a trading partner agreement is in effect and includes but is not limited to sender and receiver information, date and time of transmission, and the general nature of the transmission.

(42) "Trading Partner" means a provider, PHP, clinic, or allied agency that has entered into a trading partner agreement with the Authority in order to satisfy all or part of its obligations under a contract by means of EDI, ERA, or EMC, or any other mutually agreed means of electronic exchange or transfer of data.

(43) "Trading Partner Agreement (TPA)" means a specific written request by a provider, PHP, clinic, or allied agency to conduct EDI transactions that governs the terms and conditions for EDI transactions in the performance of obligations under a contract. A provider, PHP, clinic, or allied agency that has executed a TPA will be referred to as a trading partner in relation to those functions.

(44) "User" means any individual or entity authorized by the Authority to access network and information systems or information assets.

(45) "User Identification Security (UIS)" means a control method required by the Authority to ensure that only authorized users gain access to specified information assets. One method of control is the use of passwords and PINs with unique user identifications.

(46) "Web Portal" means a site on the World Wide Web that provides secure access with personalized capabilities to its visitors and a pathway to other content designed for use with the Authority specific DDE applications.



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(47) "Web Portal Submitter" means an individual or entity authorized to establish an electronic media connection with the Authority to conduct a DDE transaction. A web portal submitter may be a provider or a provider's agent.

Stat. Auth.: ORS 413.042  
Stats. Implemented: ORS 414.065  
Hist.: OHA 13-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 943-120-0110

### Purpose

(1) These rules establish requirements applicable to providers, PHPs, and allied agencies that want to conduct electronic data transactions with the Authority. These rules govern the conduct of all web portal or EDI transactions with the Authority. These rules only apply to services or items that are paid for by the Authority. If the service or item is paid for by a plan or an allied agency, these rules do not apply.

(2) These rules establish the Authority's electronic data transaction requirements for purposes of the Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d-1320d-8, Public Law 104-191, sec. 262 and sec. 264, and the implementing standards for electronic transactions rules. Where a federal HIPAA standard has been adopted for an electronic data transaction, this rule implements and does not alter the federal standard.

(3) These rules establish procedures that must be followed by any provider, PHP, or allied agency in the event of a security or privacy incident, regardless of whether the incident is related to the use of an electronic data transaction.

Stat. Auth.: ORS 413.042  
Stats. Implemented: ORS 414.065  
Hist.: OHA 13-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 943-120-0112

### Scope and Sequence of Electronic Data Transmission Rules

(1) The Authority communicates with and receives communications from its providers, PHPs, and allied agencies using a variety of methods appropriate to the services being provided, the nature of the entity providing the services, and constantly changing technology. These rules describe some of the basic ways that the Authority will exchange data electronically. Additional details may be provided in the Authority's access control rules, provider-specific rules, or the applicable contract documents.

(2) Access to eligibility information about covered individuals may occur using one or more of the following methods:

- (a) Automated voice response, via a telephone;
- (b) Web portal access;
- (c) EDI submitter access; or
- (d) Point of sale (POS) for pharmacy providers.

(3) Claims for which the Authority is responsible for payment or encounter submissions made to the Authority may occur using one or more of the following methods:

(a) Paper, using the form specified in the provider specific rules and supplemental billing guidance. Providers may submit paper claims, except that pharmacy providers are required to use the POS process for claims submission and PHPs are required to use the 837 electronic formats;

- (b) Web portal access;
- (c) EDI submitter access; or
- (d) POS for pharmacy providers.

(4) Authority informational updates, provider record updates, depository for PHP reports, or EDT as specified by the Authority for contract compliance.

(5) Other Authority network and information system access is governed by specific program requirements, which may include but is not limited to IUP access. Affected providers, PHPs, and allied agencies will be separately instructed about the access and requirements. Incidents are subject to these rules.

(6) Providers and allied agencies that continue to use only paper formats for claims transactions are only subject to the confidentiality and security rule, OAR 943-120-0170.

Stat. Auth.: ORS 413.042  
Stats. Implemented: ORS 414.065  
Hist.: OHA 13-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 943-120-0114

### Provider Enrollment Agreement

(1) When a provider applies to enroll, the application form will include information about how to participate in the web portal for use of DDE and automated voice response (AVR) inquiries. The enrollment agreement will include a section describing the process that will permit the provider, once enrolled, to participate in DDE over the Internet using the

secure Authority web portal. This does not include providers enrolled through the use of the DMAP 3108 Managed Care Plan and FFS Non Paid Provider Application.

(2) When the provider number is issued by the Authority, the provider will also receive two PINs: one that may be used to access the web portal and one that may be used for AVR.

(a) If the PINs are not activated within 60 days of issuance, the Authority will initiate a process to inactivate the PIN. If the provider wants to use PIN-based access to the web portal or AVR after deactivation, the provider must submit an update form to obtain another PIN.

(b) Activating the PIN will require Internet access and the provider must supply security data that will be associated with the use of the PIN.

(c) Providers using the PIN are responsible for protecting the confidentiality and security of the PIN pursuant to OAR 943-120-0170.

Stat. Auth.: ORS 413.042  
Stats. Implemented: ORS 414.065  
Hist.: OHA 13-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 943-120-0116

### Web Portal Submitter

(1) Any provider activating their web portal access for web portal submission may be a web portal submitter. The provider will be referred to as the web portal submitter when functioning in that capacity, and shall be required to comply with these rules governing web portal submitters.

(2) The authorized signer of the provider enrollment agreement shall be the individual who is responsible for the provider's DDE claims submission process.

(a) If a provider submits their own claims directly, the provider will be referred to as the web portal submitter when functioning in that capacity and shall be required to comply with these rules governing web portal submitters.

(b) If a provider uses an agent or clinic to submit DDE claims using the Authority's web portal, the agent or clinic will be referred to as the web portal submitter when functioning in that capacity and shall be required to comply with these rules governing web portal submitters.

Stat. Auth.: ORS 413.042  
Stats. Implemented: ORS 414.065  
Hist.: OHA 13-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 943-120-0118

### Conduct of Direct Data Entry Using Web Portal

(1) The web portal submitter is responsible for the conduct of the DDE transactions submitted on behalf of the provider, as follows:

(a) Accuracy of Web Portal Submissions. The web portal submitter must take reasonable care to ensure that data and DDE transmissions are timely, complete, accurate, and secure, and must take reasonable precautions to prevent unauthorized access to the information system or the DDE transmission. The Authority will not correct or modify an incorrect DDE transaction prior to processing. The transactions may be rejected and the web portal submitter will be notified of the rejection.

(b) Cost of Equipment. The web portal submitter and the Authority must bear their own information system costs. The web portal submitter must, at their own expense, obtain access to Internet service that is compatible with and has the capacity for secure access to the Authority's web portal. Web portal submitters must pay their own costs for all charges, including but not limited to charges for equipment, software and services, Internet connection and use time, terminals, connections, telephones, and modems. The Authority is not responsible for providing technical assistance for access to or use of Internet web portal services or the processing of a DDE transaction.

(c) Format of DDE Transactions. The web portal submitter must send and receive all data transactions in the Authority's approved format. Any attempt to modify or alter the DDE transaction format may result in denial of web portal access.

(d) Re-submissions. The web portal submitter must maintain source documents and back-up files or other means sufficient to re-create a data transmission in the event that re-creation becomes necessary for any purpose, within timeframes required by federal or state law, or by contractual agreement. Back ups, archives, or related files are subject to the terms of these rules to the same extent as the original data transmission.

(2) Security and Confidentiality. To protect security and confidentiality, web portal submitters must comply with the following:

(a) Refrain from copying, reverse engineering, disclosing, publishing, distributing, or altering any data or data transmissions, except as permitted by these rules or the contract, or use the same for any purpose other than that which the web portal submitter was specifically given access and authorization by the Authority or the provider.

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(b) Refrain from obtaining access by any means to any data or the Authority's network and information system for any purpose other than that which the web portal submitter has received express authorization to receive access. If the web portal submitter receives data or data transmissions from the Authority which are clearly not intended for the receipt of web portal submitter, the web portal submitter will immediately notify the Authority and make arrangements to return or re-transmit the data or data transmission to the Authority. After re-transmission, the web portal submitter must immediately delete the data contained in the data transmission from its information system.

(c) Install necessary security precautions to ensure the security of the DDE transmission or records relating to the information system of either the Authority or the web portal submitter when the information system is not in active use by the web portal submitter.

(d) Protect and maintain, at all times, the confidentiality of security access codes issued by the Authority. Security access codes are strictly confidential and specifically subject, without limitation, to all of the restrictions in OAR 943-120-0170. The Authority may change the designated security access codes at any time and in any manner as the Authority in its sole discretion considers necessary.

(e) Install, maintain, and use security measures for confidential information transmitted between a provider and the web portal submitter if a provider uses an agent or clinic as the web portal submitter.

Stat. Auth.: ORS 413.042  
Stats. Implemented: ORS 414.065  
Hist.: OHA 13-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 943-120-0120

### Registration Process — EDI Transactions

(1) The EDI transaction process is preferred by providers, PHPs, and allied agencies for conducting batch or real time transactions, rather than the individual data entry process used for DDE. EDI registration is an administrative process governed by these rules. The EDI registration process begins with the submission of a TPA by a provider, PHP, clinic, or allied agency, including all requirements and documentation required by these rules.

(2) Trading partners must be Authority providers, PHPs, clinics, or allied agencies with a current Authority contract. The Authority will not accept a TPA from individuals or entities who do not have a current contract with the Authority.

(a) The Authority may receive and hold the TPA for individuals or entities that have submitted a provider enrollment agreement or other pending contract, subject to the satisfactory execution of the pending document.

(b) Termination, revocation, suspension, or expiration of the contract will result in the concurrent termination, revocation, suspension, or expiration of the TPA without any additional notice; except that the TPA will remain in effect to the extent necessary for a trading partner or the Authority to complete obligations involving EDI under the contract for dates of service when the contract was in effect. Contracts that are periodically renewed or extended do not require renewal or extension of the TPA unless there is a lapse of time between contracts.

(c) Failure to identify a current Authority contract during the registration process will result in a rejection of the TPA. The Authority will verify that the contract numbers identified by a provider, PHP, clinic, or allied agency are current contracts.

(d) If contract number or contract status changes, the trading partner must provide the Authority with updated information within five business days of the change in contract status. If the Authority determines that a valid contract no longer exists, the Authority shall discontinue EDI transactions applicable for any time period in which the contract no longer exists; except that the TPA will remain in effect to the extent necessary for the trading partner or the Authority to complete obligations involving EDI under the contract for dates of service when the contract was in effect.

(3) Trading Partner Agreement. To register as a trading partner with the Authority, a provider, PHP, clinic, or allied agency must submit a signed TPA to the Authority.

(4) Application for Authorization. In addition to the requirements of section (3) of this rule, a trading partner must submit an application for authorization to the Authority. The application provides specific identification and legal authorization from the trading partner for an EDI submitter to conduct EDI transactions on behalf of a trading partner.

(5) Trading Partner Agents. A trading partner may use agents to facilitate the electronic transmission of data. If a trading partner will be using an agent as an EDI submitter, the application for authorization required under section (4) of this rule must identify and authorize an EDI submitter and must include the EDI certification signed by an EDI submitter before the

Authority may accept electronic submission from or send electronic transmission to an EDI submitter.

(6) EDI Registration. In addition to the requirements of section (3) of this rule, a trading partner must also submit its EDI registration form. This form requires the trading partner or its authorized EDI submitter to register an EDI submitter and the name and type of EDI transaction they are prepared to conduct. Signature of the trading partner or authorized EDI submitter is required on the EDI registration form. The registration form will also permit the trading partner to identify the individuals or EDI submitters who are authorized to submit or receive EDI registered transactions.

(7) Review and Acceptance Process. The Authority will review the documentation provided to determine compliance with sections (1) through (6) of this rule. The information provided may be subject to verification by the Authority. When the Authority determines that the information complies with these rules, the Authority will notify the trading partner and EDI submitter by email about any testing or other requirements applicable to place the registered transaction into a production environment.

Stat. Auth.: ORS 413.042  
Stats. Implemented: ORS 414.065  
Hist.: OHA 13-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 943-120-0130

### Trading Partner as EDI Submitter — EDI Transactions

(1) A trading partner may be an EDI submitter. Registered trading partners that also qualify as an EDI submitter may submit their own EDI transactions directly to the Authority. A trading partner will be referred to as an EDI submitter when functioning in that capacity and will be required to comply with applicable EDI submitter rules, except as provided in section (3) of this rule.

(2) Authorization and Registration Designating Trading Partner as EDI Submitter. Before acting as an EDI submitter, a trading partner must designate in the application for application that they are an EDI submitter who is authorized to send and receive data transmissions in the performance of EDI transactions. A trading partner must complete the "Trading Partner Application for Authorization to Submit EDI Transactions" and the "EDI Submitter Information" required in the application. A trading partner must also submit the EDI registration form identifying them as an EDI submitter. A trading partner must notify the Authority of any material changes in the information no less than ten days prior to the effective date of the change.

(3) EDI Submitter Certification Conditions. Where a trading partner is acting as its own EDI submitter, the trading partner is not required to submit the EDI submitter certification conditions in the application for authorization applicable to agents.

Stat. Auth.: ORS 413.042  
Stats. Implemented: ORS 414.065  
Hist.: OHA 13-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 943-120-0140

### Trading Partner Agents as EDI Submitters — EDI Transactions

(1) Responsibility for Agents. If a trading partner uses the services of an agent, including but not limited to an EDI submitter in any capacity in order to receive, transmit, store, or otherwise process data or data transmissions or perform related activities, a trading partner shall be fully responsible to the Authority for the agent's acts.

(2) Notices Regarding EDI Submitter. Prior to the commencement of an EDI submitter's services, a trading partner must designate in the application for authorization the specific EDI submitters that are authorized to send and receive data transmissions in the performance of EDI transactions of a trading partner. A trading partner must complete the "Trading partner Authorization of EDI Submitter" and the "EDI Submitter Information" required in the application. A trading partner must also submit the EDI registration form identifying and providing information about an EDI submitter. A trading partner or authorized EDI submitter must notify the Authority of any material changes in the EDI submitter authorization or information no less than five days prior to the effective date of the changes.

(3) EDI Submitter Authority. A trading partner must authorize the actions that an EDI submitter may take on behalf of a trading partner. The application for authorization permits a trading partner to authorize which decisions may only be made by a trading partner and which decisions are authorized to be made by an EDI submitter. The EDI submitter information authorized in the application for authorization will be recorded by the Authority in an EDI submitter profile. The Authority may reject EDI transactions from an EDI submitter acting without authorization from a trading partner.

(4) EDI Submitter Certification Conditions. Each authorized EDI submitter acting as an agent of a trading partner must execute and comply with

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the EDI submitter certification conditions that are incorporated into the application for authorization. Failure to include the signed EDI submitter certification conditions with the application shall result in a denial of EDI submitter authorization by the Authority. Failure of an EDI submitter to comply with the EDI submitter certification conditions may result in termination of EDI submitter registration for EDI transactions with the Authority.

(5) EDI Submitters Responsibilities. In addition to the requirements of section (1) of this rule, a trading partner is responsible for ensuring that an EDI submitter makes no unauthorized changes in the data content of all data transmissions or the contents of an envelope, and that an EDI submitter will take all appropriate measures to maintain the timeliness, accuracy, truthfulness, confidentiality, security, and completeness of each data transmission. A trading partner is responsible for ensuring that its EDI submitters are specifically advised of, and will comply with, the terms of these rules and any TPA.

Stat. Auth.: ORS 413.042  
Stats. Implemented: ORS 414.065  
Hist.: OHA 13-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 943-120-0150

### Testing — EDI Transactions

(1) When a trading partner or authorized EDI submitter registers an EDI transaction with the Authority, the Authority may require testing before authorizing the transaction. Testing may include third party and business-to-business testing. An EDI submitter must be able to demonstrate its capacity to send and receive each transaction type for which it has registered. The Authority will reject any EDI transaction if an EDI submitter either refuses or fails to comply with the Authority testing requirements.

(2) The Authority may require EDI submitters to complete compliance testing at an EDI submitter's expense for each transaction type if either the Authority or an EDI submitter has experienced a change to hardware or software applications by entering into business-to-business testing.

(3) When third party and/or business-to-business testing is completed to the Authority's satisfaction, the Authority will notify an EDI submitter that it will register and accept the transactions in the production environment. This notification authorizes an EDI submitter to submit the registered EDI transactions to the Authority for processing and response, as applicable. If there are any changes in the trading partner or EDI submitter authorization, profile data or EDI registration information on file with the Authority, updated information must be submitted to the Authority as required in OAR 943-120-0190.

(4) Testing will be conducted using secure electronic media communications methods.

(5) An EDI submitter may be required to re-test with the Authority if the Authority format changes or if the EDI submitter format changes.

Stat. Auth.: ORS 413.042  
Stats. Implemented: ORS 414.065  
Hist.: OHA 13-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 943-120-0160

### Conduct of Transactions — EDI Transactions

(1) EDI Submitter Obligations. An EDI submitter is responsible for the conduct of the EDI transactions registered on behalf of a trading partner, including the following:

(a) EDI Transmission Accuracy. An EDI submitter shall take reasonable care to ensure that data and data transmissions are timely, complete, accurate, and secure; and shall take reasonable precautions to prevent unauthorized access to the information system, the data transmission, or the contents of an envelope which is transmitted either to or from the Authority. The Authority will not correct or modify an incorrect transaction prior to processing. The transaction may be rejected and an EDI submitter notified of the rejection.

(b) Re-transmission of Indecipherable Transmissions. Where there is evidence that a data transmission is lost or indecipherable, the sending party must make best efforts to trace and re-transmit the original data transmission in a manner which allows it to be processed by the receiving party as soon as practicable.

(c) Cost of Equipment. An EDI submitter and the Authority will pay for their own information system costs. An EDI submitter shall, at its own expense, obtain and maintain its own information system. An EDI submitter shall pay its own costs for all charges related to data transmission including, without limitation, charges for information system equipment, software and services, electronic mailbox maintenance, connect time, terminals, connections, telephones, modems, any applicable minimum use charges, and for translating, formatting, sending, and receiving communications over the electronic network to the electronic mailbox, if any, of the

Authority. The Authority is not responsible for providing technical assistance in the processing of an EDI transaction.

(d) Back-up Files. EDI submitters must maintain adequate data archives and back-up files or other means sufficient to re-create a data transmission in the event that re-creation becomes necessary for any purpose, within timeframes required by state and federal law, or by contractual agreement. Data archives or back-up files shall be subject to these rules to the same extent as the original data transmission.

(e) Transmissions Format. Except as otherwise provided herein, EDI submitters must send and receive all data transmissions in the federally mandated format, or (if no federal standard has been promulgated) other formats as the Authority designates.

(f) Testing. EDI submitters must, prior to the initial data transmission and throughout the term of a TPA, test and cooperate with the Authority in the testing of information systems as the Authority considers reasonably necessary to ensure the accuracy, timeliness, completeness, and confidentiality of each data transmission.

(2) Security and Confidentiality. To protect security and confidentiality of transmitted data, EDI submitters must comply with the following:

(a) Refrain from copying, reverse engineering, disclosing, publishing, distributing, or altering any data, data transmissions, or the contents of an envelope, except as necessary to comply with the terms of these rules or the TPA, or use the same for any purpose other than that which an EDI submitter was specifically given access and authorization by the Authority or a trading partner;

(b) Refrain from obtaining access by any means to any data, data transmission, envelope, mailbox, or the Authority's information system for any purpose other than that which an EDI submitter has received express authorization. If an EDI submitter receives data or data transmissions from the Authority which clearly are not intended for an EDI submitter, an EDI submitter shall immediately notify the Authority and make arrangements to return or re-transmit the data or data transmission to the Authority. After re-transmission, an EDI submitter shall immediately delete the data contained in the data transmission from its information system;

(c) Install necessary security precautions to ensure the security of the information systems or records relating to the information systems of either the Authority or an EDI submitter when the information system is not in active use by an EDI submitter;

(d) Protect and maintain the confidentiality of security access codes issued by the Authority to an EDI submitter; and

(e) Provide special protection for security and other purposes, where appropriate, by means of authentication, encryption, the use of passwords, or other means. Unless otherwise provided in these rules, the recipient of a protected data transmission must at least use the same level of protection for any subsequent transmission of the original data transmission.

(3) Authority Obligations. The Authority shall:

(a) Make available to an EDI submitter, by electronic media, those types of data and data transmissions which an EDI submitter is authorized to receive.

(b) Inform an EDI submitter of acceptable formats in which data transmissions may be made and provide notification to an EDI submitter within reasonable time periods consistent with HIPAA transaction standards, if applicable, or at least 30 days prior by electronic notice of other changes in formats.

(c) Provide an EDI submitter with security access codes that will allow an EDI submitter access to the Authority's information system. Security access codes are strictly confidential and EDI submitters must comply with all of the requirements of OAR 943-120-0170. The Authority may change the designated security access codes at any time and manner as the Authority, in its sole discretion, deems necessary. The release of security access codes shall be limited to authorized electronic data personnel of an EDI submitter and the Authority with a need to know.

Stat. Auth.: ORS 413.042  
Stats. Implemented: ORS 414.065  
Hist.: OHA 13-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 943-120-0165

### Pharmacy Point of Sale Access

Pharmacy providers who electronically bill pharmaceutical claims must participate in and submit claims using the POS system, except as provided in OAR 410-121-0150.

Stat. Auth.: ORS 413.042  
Stats. Implemented: ORS 414.065  
Hist.: OHA 13-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11



# ADMINISTRATIVE RULES

## 943-120-0170

### Confidentiality and Security

(1) Individually Identifiable Health Information. All providers, PHPs, and allied agencies are responsible for ensuring the confidentiality of individually identifiable health information, consistent with the requirements of the privacy statutes and regulations, and shall take reasonable action to prevent any unauthorized disclosure of confidential information by a provider, PHP, allied agency, or other agent. A provider, web portal submitter, trading partner, EDI submitter, or other agent must comply with any and all applicable privacy statutes and regulations relating to confidential information.

(2) General Requirements for Electronic Submitters. A provider (web portal submitter), trading partner (EDI submitter), or other agent must maintain adequate security procedures to prevent unauthorized access to data, data transmissions, security access codes, or the Authority's information system, and must immediately notify the Authority of all unauthorized attempts by any individual or entity to obtain access to or otherwise tamper with the data, data transmissions, security access codes, or the Authority's information system.

(3) Notice of Unauthorized Disclosures. All providers, PHPs, and allied agencies must promptly notify the Authority of all unlawful or unauthorized disclosures of confidential information that come to its agents' attention, and shall cooperate with the Authority if corrective action is required by the Authority. The Authority will promptly notify a provider, PHP, or allied agency of all unlawful or unauthorized disclosures of confidential information in relation to a provider, PHP, or allied agency that come to the Authority's or its agents' attention, and will cooperate with a provider, PHP, or allied agency if corrective action is required.

(4) Wrongful use of the web portal, EDI systems, or the Authority's network and information system, or wrongful use or disclosure of confidential information by a provider, allied agency, electronic submitters, or their agents may result in the immediate suspension or revocation of any access granted under these rules or other Authority rules, at the sole discretion of the Authority.

(5) A provider, allied agency, PHP, or electronic submitter must report to the Authority's Information Security Office at [dhsinfo.security@state.or.us](mailto:dhsinfo.security@state.or.us) and to the Authority program contact individual, any privacy or security incidents that compromise, damage, or cause a loss of protection to confidential information, information assets, or the Authority's network and security system. Reports must be made in the following manner:

(a) No later than five business days from the date on which a provider, allied agency, PHP, or electronic submitter becomes aware of the incident; and

(b) Provide the results of the incident assessment findings and resolution strategies no later than 30 business days after the report is due under section (4)(a).

(6) A provider, allied agency, PHP, or electronic submitter must comply with the Authority's requests for corrective action concerning a privacy or security incident and with applicable laws requiring mitigation of harm caused by the unauthorized use or disclosure of confidential information.

Stat. Auth.: ORS 413.042  
Stats. Implemented: ORS 414.065  
Hist.: OHA 13-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 943-120-0180

### Record Retention and Audit

(1) Records Retention. A provider, web portal submitter, trading partner, and EDI submitter shall maintain, for a period of no less than seven years from the date of service, complete, accurate, and unaltered copies of all source documents associated with all data transmissions.

(2) EDI Trade Data Log. An EDI submitter must establish and maintain a trade data log that must record all data transmissions taking place between an EDI submitter and the Authority during the term of a TPA. A trading partner and EDI submitter must take necessary and reasonable steps to ensure that the trade data log constitutes a current, truthful, accurate, complete, and unaltered record of all data transmissions between the parties and must be retained by each party for no less than 24 months following the date of the data transmission. The trade data log may be maintained on electronic media or other suitable means provided that, if necessary, the information may be timely retrieved and presented in readable form.

(3) Right to Audit. A provider must allow and require any web portal submitter to allow, and a trading partner must allow and require an EDI submitter or other agent to allow access to the Authority, the Oregon Secretary of State, the Oregon Department of Justice Medicaid Fraud Unit, or its designees, and DHHS or its designees to audit relevant business records,

source documents, data, data transmissions, trade data logs, or information systems of a provider and its web portal submitter, and a trading partner, and its agents, as necessary, to ensure compliance with these rules. A provider must allow and require its web portal submitter to allow, and a trading partner must allow and require an EDI submitter or other agent to allow the Authority, or its designee, access to ensure that adequate security precautions have been made and are implemented to prevent unauthorized disclosure of any data, data transmissions, or other information.

Stat. Auth.: ORS 413.042  
Stats. Implemented: ORS 414.065  
Hist.: OHA 13-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 943-120-0190

### Material Changes

(1) Changes in Any Material Information — EDT Process. A trading partner must submit an updated TPA, application for authorization, or EDI registration form to the Authority within ten business days of any material change in information. A material change includes but is not limited to mailing or email address change, contract number or contract status (termination, expiration, extension), identification of authorized individuals of a trading partner or EDI submitter, the addition or deletion of authorized transactions, or any other change that may affect the accuracy of or authority for an EDI transaction. The Authority may act on data transmissions submitted by a trading partner and its EDI submitter based on information on file in the application for authorization and EDI registration forms until an updated form has been received and approved by the Authority. A trading partner's signature or the signature of an authorized EDI submitter is required to ensure that an updated TPA, authorization, or EDI registration form is valid and authorized.

(2) Changes in Any Material Information — Web Portal Access. Providers must submit an updated web portal registration form to the Authority within ten business days of any material changes in information. A material change includes but is not limited to mailing or email address change, contract number or contract status (termination, suspension, expiration), identification of web portal submitter contact information, or any other change that may affect the accuracy of or authority for a DDE transaction. The Authority is authorized to act on data transmissions submitted by a provider and its web portal submitter based on information on file in the web portal registration form until an updated form has been received and approved by the Authority. A provider's signature or the signature of an authorized business representative is required to ensure that an updated web portal registration form is valid and authorized.

(3) Failure to submit a timely updated form may impact the ability of a data transaction to be processed without errors. Failure to submit a signed, updated form may result in the rejection of a data transmission.

Stat. Auth.: ORS 413.042  
Stats. Implemented: ORS 414.065  
Hist.: OHA 13-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 943-120-0200

### Authority System Administration

(1) No individual or entity shall be registered to conduct a web portal or an EDI transaction with the Authority except as authorized under these rules. Eligibility and continued participation as a provider, PHP, allied agency or web portal submitter in the conduct of DDE transactions, or as a trading partner or EDI submitter in the conduct of registered transactions, is conditioned on the execution and delivery of the documents required in these rules, the continued accuracy of that information consistent with OAR 943-120-0190, and compliance with a requirements of these rules. Data, including confidential information, governed by these rules may be used for purposes related to treatment, payment, and health care operations and for the administration of programs or services by the Authority.

(2) In addition to the requirements of section (1) of this rule, in order to qualify as a trading partner:

(a) An individual or entity must be a Authority provider, PHP, clinic, or allied agency pursuant to a current valid contract; and

(b) A provider, PHP, clinic, or allied agency must have submitted an executed TPA and all related documentation, including the application for authorization, that identifies and authorizes an EDI submitter.

(3) In addition to the requirements of section (1) of this rule, in order to qualify as an EDI submitter:

(a) A trading partner must have identified the individual or entity as an authorized EDI submitter in the application for authorization;

(b) If a trading partner identifies itself as an EDI submitter, the application for authorization must include the information required in the "Trading Partner Authorization of EDI Submitter" and the "EDI Submitter Information"; and

# ADMINISTRATIVE RULES

(c) If a trading partner uses an agent as an EDI submitter, the application for authorization must include the information described in section (3)(b) and the signed EDI submitter certification.

(4) The EDI registration process described in these rules provides the Authority with essential profile information that the Authority may use to confirm that a trading partner or EDI submitter is not otherwise excluded or disqualified from submitting EDI transactions to the Authority.

(5) Nothing in these rules or a TPA prevents the Authority from requesting additional information from a trading partner or an EDI submitter to determine their qualifications or eligibility for registration as a trading partner or EDI submitter.

(6) The Authority shall deny a request for registration as a trading partner or for authorization of an EDI submitter or an EDI registration if it finds any of the following:

(a) A trading partner or EDI submitter has substantially failed to comply with the applicable administrative rules or laws;

(b) A trading partner or EDI submitter has been convicted of (or entered a plea of nolo contendere) a felony or misdemeanor related to a crime or violation of federal or state public assistance laws or privacy statutes or regulations;

(c) A trading partner or EDI submitter is excluded from participation in the Medicare program, as determined by the DHHS secretary; or

(d) A trading partner or EDI submitter fails to meet the qualifications as a trading partner or EDI submitter.

(7) Failure to comply with these rules, trading partner agreement, or EDI submitter certification or failure to provide accurate information on an application or certification may also result in sanctions and payment recovery pursuant to applicable Authority program contracts or rules.

(8) For providers using the DDE submission system by the Authority web portal, failure to comply with the terms of these rules, a web portal registration form, or failure to provide accurate information on the registration form may result in sanctions or payment recovery pursuant to the applicable Authority program contracts or rules.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.065

Hist.: OHA 13-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

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**Rule Caption:** Provider Enrollment and Claiming using Medicaid Management Information System.

**Adm. Order No.:** OHA 14-2011(Temp)

**Filed with Sec. of State:** 7-1-2011

**Certified to be Effective:** 7-1-11 thru 12-27-11

**Notice Publication Date:**

**Rules Adopted:** 943-120-0300, 943-120-0310, 943-120-0320, 943-120-0325, 943-120-0330, 943-120-0340, 943-120-0350, 943-120-0360, 943-120-0370, 943-120-0380, 943-120-0400

**Subject:** The Authority is adopting Authority-wide provider rules (OAR 943-120-0300 to 943-120-0380) which govern provider enrollment and claiming using the Medicaid Management Information System (MMIS). The Authority is proposing to ensure that Oregon Medicaid clients will be able to receive consistent and uninterrupted service and that providers are assured their correct and appropriate reimbursement at times that necessitate exceptions to normal, on-going communications.

**Rules Coordinator:** Kym Gasper—(503) 945-6302

## 943-120-0300

### Definitions

The following definitions apply to OAR 943-120-0300 to 943-120-0400:

(1) “Abuse” means provider practices that are inconsistent with sound fiscal, business, or medical practices resulting in an unnecessary cost to the Oregon Health Authority, or in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care. It also includes actions by clients or recipients that result in unnecessary cost to the Oregon Health Authority.

(2) “Advance Directive” means a form that allows an individual to have another individual make health care decisions when he or she cannot make decisions and informs a doctor if the individual does not want any life sustaining help if he or she is near death.

(3) “Authority” means the Oregon Health Authority.

(4) “Benefit Package” means the package of covered health care services for which the client is eligible.

(5) “Billing Agent or Billing Service” means a third party or organization that contracts with a provider to perform designated services in order to facilitate claim submission or electronic transactions on behalf of the provider.

(6) “Billing Provider” means an individual, agent, business, corporation, clinic, group, institution, or other entity who, in connection with submission of claims to the Authority, receives or directs payment from the Authority on behalf of a performing provider and has been delegated the authority to obligate or act on behalf of the performing provider.

(7) “Children’s Health Insurance Program (CHIP)” means a federal and state funded portion of the Oregon Health Plan (OHP) established by Title XXI of the Social Security Act and administered by the Division of Medical Assistance Programs.

(8) “Claim” means a bill for services, a line item of a service, or all services for one client within a bill. Claim includes a bill or an encounter associated with requesting reimbursement, whether submitted on paper or electronically. Claim also includes any other methodology for requesting reimbursement that may be established in contract or program-specific rules.

(9) “Client or Recipient” means an individual found eligible by the Authority to receive services under the OHP demonstration, medical assistance program, or other public assistance programs administered by the Authority. The following OHP categories are eligible for enrollment:

(a) Temporary Assistance to Needy Families (TANF) are categorically eligible families with income levels under current TANF eligibility rules;

(b) CHIP children under one year of age whose household has income under 185% Federal Poverty Level (FPL) and do not meet one of the other eligibility classifications;

(c) Poverty Level Medical (PLM) adults under 100% of the FPL and clients who are pregnant women with income under 100% of FPL;

(d) PLM adults over 100% of the FPL are clients who are pregnant women with income between 100% and 185% of the FPL;

(e) PLM children under one year of age who have family income under 133% of the FPL or were born to mothers who were eligible as PLM adults at the time of the child’s birth;

(f) PLM or CHIP children one through five years of age who have family income under 185% of the FPL and do not meet one of the other eligibility classifications;

(g) PLM or CHIP children six through 18 years of age who have family income under 185% of the FPL and do not meet one of the other eligibility classifications;

(h) OHP adults and couples are clients age 19 or over and not Medicare eligible, with income below 100% of the FPL who do not meet one of the other eligibility classifications, and do not have an unborn child or a child under age 19 in the household;

(i) OHP families are clients, age 19 or over and not Medicare eligible, with income below 100% of the FPL who do not meet one of the other eligibility classifications, and have an unborn child or a child under the age of 19 in the household;

(j) General Assistance (GA) recipients are clients who are eligible by virtue of their eligibility under the GA program, ORS 411.710 et seq.;

(k) Assistance to Blind and Disabled (AB/AD) with Medicare eligibles are clients with concurrent Medicare eligibility with income levels under current eligibility rules;

(l) AB/AD without Medicare eligibles are clients without Medicare with income levels under current eligibility rules;

(m) Old Age Assistance (OAA) with Medicare eligibles are clients with concurrent Medicare Part A or Medicare Parts A and B eligibility with income levels under current eligibility rules;

(n) OAA with Medicare Part B only are OAA eligibles with concurrent Medicare Part B only income under current eligibility rules;

(o) OAA without Medicare eligibles are clients without Medicare with income levels under current eligibility rules; or

(p) Children, Adults and Families (CAF) children are clients with medical eligibility determined by CAF or Oregon Youth Authority (OYA) receiving OHP under ORS 414.025, 418.034, and 418.189 to 418.970. These individuals are generally in placement outside of their homes and in the care or custody of CAF or OYA.

(10) “Client Representative” means an individual who can make decisions for clients who are not able to make such decisions themselves. For purposes of medical assistance, a client representative may be, in the following order of priority, an individual who is designated as the client’s health care representative under ORS 127.505(12), a court-appointed guardian, a spouse or other family member as designated by the client, the individual service plan team (for developmentally disabled clients), an

## ADMINISTRATIVE RULES

Authority case manager, or other Authority designee. To the extent that other Authority programs recognize other individuals who may act as a client representative, that individual may be considered the client representative.

(11) "Clinical Records" means the medical, dental, or mental health records of a client. These records include the Primary Care Provider (PCP) records, the inpatient and outpatient hospital records and the Exceptional Needs Care Coordinator (ENCC), complaint and disenrollment for cause records which may be located in the Prepaid Health Plan (PHP) administrative offices.

(12) "Conviction or Convicted" means that a judgment of conviction has been entered by a federal, state, or local court, regardless of whether an appeal from that judgment is pending.

(13) "Covered Services" means medically appropriate health services or items that are funded by the legislature and described in ORS Chapter 414, including OHP authorized under ORS 414.705 to 414.750, and applicable Authority rules describing the benefit packages of covered services except as excluded or limited under OAR 410-141-0500 or such other public assistance services provided to eligible clients under program-specific requirements or contracts by providers required to enroll with the Authority under OAR 943-120-0300 to 943-120-0400.

(14) "Date of Service" means the date on which the client receives medical services or items, unless otherwise specified in the appropriate provider rules.

(15) "Authority" means the Oregon Health Authority.

(16) "Diagnosis Code" means the code as identified in the International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM). The primary diagnosis code is shown in all billing claims and PHP encounters, unless specifically excluded in individual provider rules. Where they exist, diagnosis codes must be shown to the degree of specificity outlined in OAR 943-120-0340 (claim and PHP encounter submission).

(17) "Electronic Data Transaction (EDT)" means the electronic exchange of business documents from application to application in a federally mandated format or, if no federal standard has been promulgated, conducted by either web portal or electronic data interchange pursuant to the Authority's electronic data transaction rule (OAR 943-120-0100 to 943-120-0200).

(18) "Exclusion" means the Authority may not reimburse a specific provider who has defrauded or abused the Authority for items or services that a provider furnished.

(19) "False Claim" means a claim or PHP encounter that a provider knowingly submits or causes to be submitted that contains inaccurate or misleading information, and that information would result, or has resulted, in an overpayment or improper use for per capita cost calculations.

(20) "Fraud" means an intentional deception or misrepresentation made by an individual with the knowledge that the deception could result in some unauthorized benefit to himself or herself, or some other individual. It includes any act that constitutes fraud or false claim under applicable federal or state law.

(21) "Healthcare Common Procedure Coding System (HCPCS)" means a method for reporting health care professional services, procedures and supplies. HCPCS consists of the Level 1 — American Medical Association's Physicians' Current Procedural Terminology (CPT), Level II — National Codes and Level III — Local Codes.

(22) "Health Insurance Portability and Accountability Act (HIPAA)" means a federal law (Public Law 104-191, August 21, 1996) with the legislative objective to assure health insurance portability, reduce health care fraud and abuse, enforce standards for health information and guarantee security and privacy of health information.

(23) "Hospice" means a public agency or private organization or subdivision of either that is primarily engaged in providing care to terminally ill individuals, is certified for Medicare, accredited by the Oregon Hospice Association, and is listed in the Hospice Program Registry.

(24) "Individual Adjustment Request" means a form (DMAP 1036) used to resolve an incorrect payment on a previously paid claim, including underpayments or overpayments.

(25) "Medicaid" means a federal and state funded portion of the medical assistance program established by Title XIX of the Social Security Act, as amended, and administered in Oregon by the Authority.

(26) "Medicaid Management Information System (MMIS)" means the automated claims processing and information retrieval system for handling all Medicaid transactions. The objectives of the system include verifying provider enrollment and client eligibility, managing health care

provider claims and benefit package maintenance, and addressing a variety of Medicaid business needs.

(27) "Medical Assistance Program" means a program for payment of health care provided to eligible Oregonians. Oregon's medical assistance program includes Medicaid services including the OHP Medicaid Demonstration, and CHIP. The medical assistance program is administered and coordinated by DMAP, a division of the Authority.

(28) "Medically Appropriate" means services and medical supplies that are required for prevention, diagnosis, or treatment of a health condition that encompasses physical or mental conditions, or injuries and which are:

(a) Consistent with the symptoms or treatment of a health condition;

(b) Appropriate with regard to standards of good health practice and generally recognized by the relevant scientific community, evidence based medicine, and professional standards of care as effective;

(c) Not solely for the convenience of a client or a provider of the service or medical supplies; and

(d) The most cost effective of the alternative levels of medical services or medical supplies that can be safely provided to a client in the provider's judgment.

(29) "Medicare" means the federal health insurance program for the aged and disabled administered by the Centers for Medicare and Medicaid Services (CMS) under Title XVIII of the Social Security Act.

(30) "National Provider Identification (NPI)" means a federally directed provider number mandated for use on HIPAA covered transactions by individuals, provider organizations, and subparts of provider organizations that meet the definition of health care provider (45 Code of Federal Regulations (CFR) 160.103) and who conduct HIPAA covered transactions electronically.

(31) "Non-Covered Services" means services or items for which the Authority is not responsible for payment. Non-covered services are identified in:

(a) OAR 410-120-1200, Excluded Services and Limitations;

(b) OAR 410-120-1210, Medical Assistance Benefit Packages and Delivery System;

(c) OAR 410-141-0480, OHP Benefit Package of Covered Services;

(d) OAR 410-141-0520, Prioritized List of Health Services; and

(e) The individual Authority provider rules, program-specific rules, and contracts.

(32) "Non-Participating Provider" means a provider who does not have a contractual relationship with the PHP.

(33) "Nursing Facility" means a facility licensed and certified by the Department of Human Services Seniors and People with Disabilities Division (SPD) defined in OAR 411-070-0005.

(34) "Oregon Health Plan (OHP)" means the Medicaid demonstration project that expands Medicaid eligibility to eligible clients. The OHP relies substantially upon prioritization of health services and managed care to achieve the public policy objectives of access, cost containment, efficacy, and cost effectiveness in the allocation of health resources.

(35) "Out-of-State Providers" means any provider located outside the borders of Oregon:

(a) Contiguous area providers are those located no more than 75 miles from the border of Oregon;

(b) Non-contiguous area providers are those located more than 75 miles from the borders of Oregon.

(36) "Post-Payment Review" means review of billings or other medical information for accuracy, medical appropriateness, level of service, or for other reasons subsequent to payment of the claim.

(37) "Prepaid Health Plan (PHP)" means a managed health, dental, chemical dependency, physician care organization, or mental health care organization that contracts with DMAP or Addictions and Mental Health Division (AMH) on a case managed, prepaid, capitated basis under the OHP. PHP's may be a Dental Care Organization (DCO), Fully Capitated Health Plan (FCHP), Mental Health Organization (MHO), Primary Care Organization (PCO) or Chemical Dependency Organization (CDO).

(38) "Prohibited Kickback Relationships" means remuneration or payment practices that may result in federal civil penalties or exclusion for violation of 42 CFR 1001.951.

(39) "PHP Encounter" means encounter data submitted by a PHP or by a provider in connection with services or items reimbursed by a PHP.

(40) "Prior Authorization" means payment authorization for specified covered services or items given by Authority staff, or its contracted agencies, or a county if required by the county, prior to provision of the service. A physician or other referral is not a prior authorization.



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(41) "Provider" means an individual, facility, institution, corporate entity, or other organization which supplies health care or other covered services or items, also termed a performing provider, that must be enrolled with the Authority pursuant to OAR 943-120-0300 to 943-120-0400 to seek reimbursement from the Authority, including services provided, under program-specific rules or contracts with the Authority or with a county or PHP.

(42) "Quality Improvement" means the effort to improve the level of performance of key processes in health services or health care. A quality improvement program measures the level of current performance of the processes, finds ways to improve the performance and implements new and better methods for the processes. Quality improvement includes the goals of quality assurance, quality control, quality planning, and quality management in health care where "quality of care is the degree to which health services for individuals and populations increase the likelihood of desired health outcomes and are consistent with current professional knowledge."

(43) "Quality Improvement Organization (QIO)" means an entity which has a contract with CMS under Part B of Title XI to perform utilization and quality control review of the health care furnished, or to be furnished, to Medicare and Medicaid clients; formerly known as a "Peer Review Organization."

(44) "Remittance Advice" means the automated notice a provider receives explaining payments or other claim actions.

(45) "Subrogation" means the right of the state to stand in place of the client in the collection of third party resources, including Medicare.

(46) "Suspension" means a sanction prohibiting a provider's participation in the Authority's medical assistance or other programs by deactivation of the assigned provider number for a specified period of time or until the occurrence of a specified event.

(47) "Termination" means a sanction prohibiting a provider's participation in the Authority's programs by canceling the assigned provider number and agreement unless:

- (a) The exceptions cited in 42 CFR 1001.221 are met; or
- (b) Otherwise stated by the Authority at the time of termination.

(48) "Third Party Resource (TPR)" means a medical or financial resource, including Medicare, which, by law, is available and applicable to pay for covered services and items for a medical assistance client.

(49) "Usual Charge" means when program-specific or contract reimbursement is based on usual charge, and is the lesser of the following, unless prohibited from billing by federal statute or regulation:

(a) The provider's charge per unit of service for the majority of non-medical assistance users of the same service based on the preceding month's charges;

(b) The provider's lowest charge per unit of service on the same date that is advertised, quoted, or posted. The lesser of these applies regardless of the payment source or means of payment; or

(c) Where the provider has established a written sliding fee scale based upon income for individuals and families with income equal to or less than 200% of the FPL, the fees paid by these individuals and families are not considered in determining the usual charge. Any amounts charged to TPR must be considered.

(50) "Visit Data" means program-specific or contract data collection requirements associated with the delivery of service to clients on the basis of an event such as a visit.

Stat. Auth.: ORS 413.042  
Stats. Implemented: ORS 414.065  
Hist.: OHA 14-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 943-120-0310

### Provider Requirements

(1) All providers seeking reimbursement from the Authority, a PHP, or a county pursuant to a county agreement with the Authority for the provision of covered services or items to eligible recipients, must comply with these rules, OAR 943-120-0300 to 943-120-0400, and the applicable rules or contracts of the specific programs described below:

(a) Programs administered by DMAP including the OHP and the medical assistance program that reimburses providers for services or items provided to eligible recipients, including but not limited to chapter 410, division 120; chapter 410, division 141; and provider rules in chapter 410 applicable to the provider's service category;

(b) Programs administered by AMH that reimburse providers for services or items provided to eligible AMH recipients; or

(c) Programs administered by SPD that reimburse providers for services or items provided to eligible SPD recipients.

(2) Authority programs use visit data to monitor service delivery, planning, and quality improvement activities. Visit data must be submitted by a program-specific rule or contract. A provider shall make accurate,

complete, and timely submission of visit data. Visit data is not a HIPAA transaction and does not constitute a claim for reimbursement.

(3) CHIP and Medicaid-Funded Covered Services and Items.

(a) Covered services or items paid for with Medicaid (Title XIX) and CHIP (Title XXI) funds (referred to as the medical assistance program) are also subject to federal and state Medicaid rules and requirements. In interpreting these rules and program-specific rules or contracts, the Authority shall construe them as much as possible in a manner that shall comply with federal and state medical assistance program laws and regulations, and the terms and conditions of federal waivers and the state plans

(b) If a provider is reimbursed with medical assistance program funds, the provider must comply with all applicable federal and state laws and regulations pertaining to the provision of Medicaid services under the Medicaid Act, Title XIX, 42 United States Code (USC) 1396 et. seq., and CHIP services under Title XXI, including without limitation:

(A) Maintaining all records necessary to fully disclose the extent of the services provided to individuals receiving medical assistance and furnish such information to any state or federal agency responsible for administration or oversight of the medical assistance program regarding any payments claimed by an individual or institution for providing Medicaid services as the state or federal agency may from time to time request;

(B) Complying with all disclosure requirements of 42 CFR 1002.3(a) and 42 CFR 455 subpart (B);

(C) Maintaining written notices and procedures respecting advance directives in compliance with 42 USC 1396(a)(57) and (w), 42 CFR 431.107(b)(4), and 42 CFR 489 subpart I;

(D) Certifying that the information is true, accurate and complete when submitting claims or PHP encounters for the provision of medical assistance services or items. Submission of a claim or PHP encounter constitutes a representation of the provider's understanding that payment of the claim shall be from federal or state funds, or both and that any falsification or concealment of a material fact may result in prosecution under federal or state laws.

(c) Hospitals, nursing facilities, home health agencies (including those providing personal care), hospices, and HMOs must comply with the Patient Self-Determination Act as set forth in Section 4751 of OBRA 1991. To comply with the obligation under the above-listed laws to deliver information on the rights of the individual under Oregon law to make health care decisions, the named providers and organizations must give capable individuals over the age of 18 a copy of "Your Right to Make Health Care Decisions in Oregon," copyright 1993, by the Oregon State Bar Health Law Section. Out-of-state providers of these services must comply with Medicare and Medicaid regulations in their state. Submittal to the Authority of the appropriate claim form requesting payment for medical services provided to a Medicaid eligible shall be considered representation to the Authority of the medical provider's compliance with the above-listed laws.

(d) Payment for any service or item furnished by a provider of CHIP or Medicaid-funded services or items may not be made by or through (directly or by power of attorney) any individual or organization, such as a collection agency or service bureau, that advances money to a provider for accounts receivable that the provider has assigned, sold, or transferred to the individual or organization for an added fee or a deduction of a portion of the accounts receivable.

(e) The Authority shall make medical assistance provider payments only to the following:

(A) The provider who actually performed the service or provided the item;

(B) In accordance with a reassignment from the provider to a government agency or reassignment by a court order;

(C) To the employer of the provider, if the provider is required as a condition of employment to turn over his or her fees to the employer, and the employer is enrolled with the Authority as a billing provider;

(D) To the facility in which the service is provided, if the provider has a contract under which the facility submits the claim, and the facility is enrolled with the Authority as a billing provider;

(E) To a foundation, PHP, clinic, or similar organization operating as an organized health care delivery system, if the provider has a contract under which the organization submits the claim, and the organization is enrolled with the Authority as a billing provider; or

(F) To an enrolled billing provider, such as a billing service or an accounting firm that, in connection with the submission of claims, receives or directs payments in the name of the provider, if the billing provider's compensation for this service is:

(i) Related to the cost of processing the billing;

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(ii) Not related on percentage or other basis to the amount that is billed or collected and not dependent upon the collection of the payment.

(f) Providers must comply with TPR requirements in program-specific rules or contracts.

(4) The Authority uses several approaches to promote program integrity. These rules describe program integrity actions related to provider payments, including provider reimbursement under program-specific rules, county agreements, and contracts. The program integrity goal is to pay the correct amount to a properly enrolled provider for covered services provided to an eligible client according to the program-specific coverage criteria in effect on the date of service.

(a) Program integrity activities include but are not limited to the following:

(A) Medical or professional review including but not limited to following the evaluation of care in accordance with evidence-based principles, medical error identification, and prior authorization processes, including all actions taken to determine the coverage and appropriateness of services or items;

(B) Provider obligations to submit correct claims and PHP encounters;

(C) Onsite visits to verify compliance with standards;

(D) Implementation of HIPAA electronic transaction standards to improve accuracy and timeliness of claims processing and encounter reporting;

(E) Provider credentialing activities;

(F) Accessing federal Department of Health and Human Services (DHHS) database (exclusions);

(G) Quality improvement activities;

(H) Cost report settlement processes;

(I) Audits;

(J) Investigation of false claims, fraud or prohibited kickback relationships; and

(K) Coordination with the Department of Justice Medicaid Fraud Control Unit (MFCU) and other health oversight authorities.

(b) The following individuals may review a request for services or items, or audit a claim or PHP encounter for care, services, or items, before or after payment, for assurance that the specific care, item, or service was provided pursuant to the program-specific and the generally accepted standards of a provider's field of practice or specialty:

(A) Authority staff or designee;

(B) Medical utilization and professional review contractor;

(C) Dental utilization and professional review contractor; or

(D) Federal or state oversight authority.

(c) Payment may be denied or subject to recovery if the review or audit determines the care, service, or item was not provided pursuant to provider rules or does not meet the criteria for quality or medical appropriateness of the care, service, or item or payment. Related provider and hospital billings shall also be denied or subject to recovery.

(d) If the Authority determines that an overpayment has been made to a provider, the amount of overpayment is subject to recovery.

(e) The Authority may communicate with and coordinate any program integrity actions with the MFCU, DHHS, and other federal and state oversight authorities.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.065

Hist.: OHA 14-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 943-120-0320

### Provider Enrollment

(1) In some Authority program areas, being an enrolled Authority provider is a condition of eligibility for an Authority contract for certain services or activities. The Authority requires billing providers to be enrolled as providers consistent with the provider enrollment processes set forth in this rule. If reimbursement for covered services will be made under a contract with the Authority, the provider must also meet the Authority's contract requirements. Contract requirements are separate from the requirements of these provider enrollment rules. Enrollment as a provider with the Authority is not a promise that the enrolled provider will receive any amount of work from the Authority, a PHP, or a county.

(2) Provider enrollment establishes essential Authority provider participation requirements for becoming an enrolled Authority provider. The details of provider qualification requirements, client eligibility, covered services, how to obtain prior authorization or review (if required), documentation requirements, claims submission, and available electronic access

instructions, and other pertinent instructions and requirements are contained in the program-specific rules or contract.

(3) Prior to enrollment, providers must:

(a) Meet all program-specific or contract requirements identified in program-specific rules or contracts in addition to those requirements identified in these rules;

(b) Meet Authority contracting requirements, as specified by the Authority's Office of Contracts and Procurement (OC&P);

(c) Meet Authority and federal licensing requirements for the type of service for which the provider is enrolling;

(d) Meet Authority and federal certification requirements for the type of service for which the provider is enrolling; and

(e) Obtain a provider number from the Authority for the specific service for which the provider is enrolling.

(4) Participation with the Authority as an enrolled provider is open to qualified providers that:

(a) Meet the qualification requirements established in these rules and program-specific rules or contracts;

(b) Enroll as an Authority provider pursuant to these rules;

(c) Provide a covered service or item within their scope of practice and licensure to an eligible Authority recipient pursuant to program-specific rules or contracts; and

(d) Accept the reimbursement amounts established pursuant to the Authority's program-specific fee structures or contracts for the service or item.

(5) To be enrolled as an Authority provider, an individual or organization must submit a complete and accurate provider enrollment form, available from the Authority, including all required documentation, and a signed provider enrollment agreement.

(a) The provider enrollment form requests basic demographic information about the provider that will be permanently associated with the provider or organization until changed on an update form.

(b) Each Authority program establishes provider-specific qualifications and program criteria that must be provided as part of the provider enrollment form.

(A) The provider must meet applicable licensing and regulatory requirements set forth by federal and state statutes, regulations, and rules, and must comply with all Oregon statutes and regulations applicable to the provider's scope of service as well as the program-specific rules or contract applicable to the provision of covered services. The provider and program addendum shall specify the required documentation of professional qualifications that must be provided with the provider enrollment form.

(B) All providers of services within 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. In addition providers must be registered to do business in Oregon by registering with the Oregon Secretary of State, Corporation Division, if registration is required.

(c) All individuals and entities shall disclose information used by the Authority to determine whether an exclusion applies that would prevent the Authority from enrolling the provider. Individual performing providers must submit a disclosure statement. All providers that are enrolling as an entity (corporation, non-profit, partnership, sole proprietorship, governmental) must submit a disclosure of ownership and control interest statement. Payment may not be made to any individual or entity that has been excluded from participation in federal or state programs or that employs or is managed by excluded individuals or entities.

(A) Entities must disclose all the information required on the disclosure of ownership and control interest statement. Information that must be disclosed includes the name, address, and taxpayer identification number of each individual with an ownership or control interest in the disclosing entity or in any subcontractor in which the disclosing entity has a direct or indirect ownership of five percent or more; whether any of the named individuals are related as spouse, parent, child, sibling, or other family member by marriage or otherwise; and the name and taxpayer identification number of any other disclosing entity in which an individual with an ownership or control interest in the disclosing entity also has an ownership or control interest.

(B) A provider must submit, within 35 days of the date of a request by DHHS or the Authority, full and complete information about the ownership of any subcontractor with whom the provider had business transactions totaling more than \$25,000 during the 12-month period ending on the date of the request; and any significant business transactions between the provider and any wholly owned supplier, or between the provider and any subcontractor, during the five-year period ending on the date of the request.

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(C) Before the Authority enters into a provider enrollment agreement with a provider, or renews a provider agreement, or at any time upon written request of the Authority, the provider must disclose to the Authority the identity and taxpayer identification number of any individual who has an ownership or control interest in the provider; or is an agent or managing employee of the provider; or the individual performing provider that has been convicted of a criminal offense related to that individual's involvement in any program under Medicare, Medicaid, or Title XX services program, since the inception of those programs.

(D) The Authority may refuse to enter into or may suspend or terminate a provider enrollment agreement if the individual performing provider or any individual who has an ownership or control interest in the entity, or who is an agent or managing employee of the provider, has been sanctioned or convicted of a criminal offense related to that individual's involvement in any program established under Medicare, Medicaid, Children's Health Insurance, Title XX services, or other public assistance program.

(E) The Authority may refuse to enter into or may suspend or terminate a provider enrollment agreement, or contract for provider services, if it determines that the provider did not fully and accurately make any disclosure required under section (5)(c) of this rule.

(F) Taxpayer identification numbers, including social security numbers (SSN) and employer identification numbers (EIN), must be provided where indicated on the Disclosure Statement or the Disclosure of Ownership and Control Interest Statement. The taxpayer identification number will be used to confirm whether the individual or entity is subject to exclusion from participation in the Oregon Medicaid program.

(6) The provider must sign the provider enrollment agreement, and submit it for review to the Authority at the time the provider submits the provider enrollment form and related documentation. Signing the provider enrollment agreement constitutes agreement by a provider to comply with all applicable Authority provider and program rules, and applicable federal and state laws and regulations in effect on the date of service.

(7) A provider may request to conduct electronic transactions with the Authority by enrolling and completing the appropriate authorization forms pursuant to the electronic data transaction rules (OAR 943-120-0100 to 943-120-0200).

(8) A provider shall be enrolled, assigned, and issued a provider number for use in specific payment or business operations upon the following criteria:

(a) Provider submission of a complete and signed (when applicable), provider enrollment form, provider enrollment agreement, provider certification and all required documents to the Authority program responsible for enrolling the provider. Provider signature must be the provider or an individual with actual authority from the provider to legally bind the provider to attest and certify to the accuracy and completeness of the information submitted;

(b) The Authority's verification of licensing or certification or other authority to perform the service or provide the item within the lawful scope of practice recognized under Oregon law. The Authority may confirm any information on the provider enrollment form or documentation submitted with the provider enrollment form, and may request additional information; and

(c) The Authority's acceptance of the provider enrollment form, provider enrollment agreement, and provider certification by the Authority unit responsible for approving the enrollment of the provider.

(9) Submission of a claim or encounter or other reimbursement document constitutes the enrolled provider's agreement that:

(a) The service or item was provided in compliance with all applicable rules and requirements in effect on the date of service;

(b) The provider has created and maintained all records necessary to disclose the extent of services or items provided and provider's compliance with applicable program and financial requirements, and that the provider agrees to make such information available upon request to the Authority, the MFCU (for Medicaid-funded services or items), the Oregon Secretary of State, and (for federally-funded services or items) the federal funding authority and the Comptroller General of the United States, or their designees;

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

(d) The provider understands that payment of the claim or encounter or other reimbursement document will be from federal or state funds, or a combination of federal and state funds, and that any falsification, or concealment of a material fact, may result in prosecution under federal and state laws.

(10) The Authority has taken action to ensure compliance with the NPI requirements pursuant to 45 CFR Part 162 when those requirements became effective on May 23, 2007. In the event of a transition period approved by CMS beyond May 23, 2008, the following requirements for contractors, providers, and provider-applicants shall apply:

(a) Providers and contractors that obtain an NPI must use their NPI where indicated. In situations where a taxonomy code may be used in conjunction with the NPI, providers must update their records as specified with the Authority's provider enrollment unit. Providers applying for enrollment with the Authority that have been issued an NPI must include that NPI and any associated taxonomy codes with the provider enrollment form;

(b) A provider enrolled with the Authority must bill using the NPI pursuant to 45 CFR part 162.410, in addition to the Authority-assigned provider number, where applicable, and continue to bill using the Authority assigned provider number until the Authority informs the provider that the Authority assigned provider number is no longer allowed, or the NPI transition period has ended, whichever occurs first. Failure to use the NPI and Authority-assigned provider number as indicated during this transition period may result in delay or rejection of claims and other transactions;

(c) The NPI and applicable taxonomy code combinations will be cross-referenced to the Authority assigned provider number for purposes of processing all applicable electronic transactions as specified in OAR 943-120-0100;

(d) The provider and PHP must cooperate with the Authority with reasonable consultation and testing procedures, if any, related to implementation of the use of NPI's; and

(e) Certain provider types are not eligible for an NPI based on federal criteria for obtaining an NPI. Providers not eligible for an NPI must always use their Authority provider number on claims, encounters, or other reimbursement documents for that specific provider type.

(11) The effective date of provider enrollment is the date the provider's request is received by the Authority if on that date the provider has met all applicable requirements. The effective date may be retroactive for up to one year to encompass dates on which the provider furnished covered services to a medical assistance recipient for which it has not been paid, if on the retroactive effective date the provider has met all applicable requirements.

(12) Provider numbers are specific to the category of service or items authorized by the Authority. Issuance of an Authority-assigned provider number establishes enrollment of an individual or organization as a provider for the specific category of services covered by the provider and program addendum submitted with the provider enrollment form and enrollment agreement.

(13) Providers must provide the following updates:

(a) An enrolled provider must notify the Authority in writing of a material change in any status or condition on any element of their provider enrollment form. Providers must notify the Authority of changes in any of this information in writing within 30 calendar days of any of the following changes:

- (A) Business affiliation;
- (B) Ownership;
- (C) NPI;
- (D) Associated taxonomy codes;
- (E) Federal Tax Identification number;
- (F) Ownership and control information; or
- (G) Criminal convictions.

(b) These changes may require the submission of a provider enrollment form, provider enrollment agreement, provider certification, or other related documentation.

(c) Claims submitted by, or payments made to, providers who have not timely furnished the notification of changes or have not submitted any of the items that are required due to a change may be denied or recovered.

(d) Notice of bankruptcy proceedings must be immediately provided to the Authority in writing.

(14) Tax Reporting and Withholding.

(a) Providers must submit the provider's SSN for individuals or a federal EIN for entities, whichever is required for tax reporting purposes on IRS Form 1099. Billing providers must submit the SSN or EIN of all performing providers in connection with claims or payments made to or on behalf of the performing provider, in addition to the billing provider's SSN or EIN. Providing this number is mandatory to be eligible to enroll as a provider. The provider's SSN or EIN is required pursuant to 42 CFR 433.37 federal tax laws at 26 USC 6041. SSN's and EIN's provided pursuant to this authority are used for the administration of state, federal, and local tax laws and the administration of this program for internal verification and admin-



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istrative purposes including but not limited to identifying the provider for payment and collection activities.

(b) The Authority must comply with the tax information reporting requirements of section 6041 of the Internal Revenue Code (26 USC 6041). Section 6041 requires the filing of annual information returns showing amounts paid to providers, who are identified by name, address, and SSN or EIN. The Authority files its information returns with the Internal Revenue Service (IRS) using Form 1099MISC.

(c) The IRS Code section 3406(a)(1)(B) requires the Authority to begin backup withholding when notified by the IRS that a taxpayer identification number reported on an information return is incorrect. If a provider receives notice of backup withholding from the Authority, the provider must timely comply with the notice and provide the Authority with accurate information. The Authority shall comply with IRS requirements for backup withholding.

(d) Failure to notify the Authority of a change in federal tax identification number (SSN or EIN) may result in the Authority imposing a sanction as specified in OAR 943-120-0360.

(e) If the Authority notifies a provider about an error in federal tax identification number, the provider must supply a valid federal tax identification number within 30 calendar days of the date of the Authority's notice. Failure to comply with this requirement may result in the Authority imposing a sanction as specified in OAR 943-120-0360, for each time the provider submits an inaccurate federal tax identification number, and may require back-up withholding. Federal tax identification number requirements described in this rule refer to any requirements established by the IRS.

(15) Providers of services to clients outside the State of Oregon must be enrolled as a provider under section (8) of this rule if they comply with the requirements of section (8) and meet the following conditions:

(a) The provider is appropriately licensed or certified and is enrolled in the provider's home state for participation in that state's Medicaid program or, for non-Medicaid services, enrolled or contracted with the state agency in the provider's state to provide the same program-specific service in the provider's state. Disenrollment or sanction from the other state's Medicaid program, or exclusion from any other federal or state health care program or comparable program-specific service delivery system is a basis for denial of enrollment, termination, or suspension from participation as an Authority provider;

(b) The Oregon Board of Pharmacy issued a license to provide pharmacy services to a noncontiguous out-of-state pharmacy provider;

(c) The services must be authorized in the manner required for out-of-state services under the program-specific rules or contract for an eligible client;

(d) The services for which the provider bills are covered services under the OHP or other Authority program for which covered services are authorized to be provided to the client;

(e) A facility, including but not limited to a hospital, rehabilitative facility, institution for care of individuals with mental retardation, psychiatric hospital, or residential care facility, is enrolled or contracted by the state agency in the state in which the facility is located or is licensed as a facility provider of services by Oregon; or

(f) If the provider is not domiciled in or registered to do business in Oregon, the provider must promptly provide to the Oregon Department of Revenue and the Oregon Secretary of State, Corporation Division all information required by those agencies relative to the provider enrollment form and provider enrollment agreement. The Authority shall withhold enrollment and payments until the out-of-state provider has provided documentation of compliance with this requirement to the Authority unit responsible for enrollment.

(16) The provider enrollment agreement may be terminated as follows:

(a) The provider may ask the Authority to terminate the provider enrollment agreement at any time, subject to any specific provider termination requirements in program-specific rules or contracts.

(A) The request must be in writing, signed by the provider, and mailed or delivered to the Authority provider enrollment unit. The notice must specify the Authority-assigned provider number, if known.

(B) When accepted, the Authority shall assign the provider number a termination status and the effective date of the termination status.

(C) Termination of the provider enrollment agreement does not relieve the provider of any obligations for covered services or items provided under these rules, program-specific rules or contracts in effect for dates of services during which the provider enrollment agreement was in effect.

(b) The Authority may terminate the provider enrollment agreement immediately upon notice to the provider, or a later date as the Authority may establish in the notice, upon the occurrence of any of the following events:

(A) The Authority fails to receive funding, appropriations, limitations, or other expenditure authority at levels that the Authority or the specific program determines to be sufficient to pay for the services or items covered under the agreement;

(B) Federal or state laws, regulations, or guidelines are modified or interpreted by the Authority in a manner that either providing the services or items under the agreement is prohibited or the Authority is prohibited from paying for such services or items from the planned funding source;

(C) The Authority has issued a final order revoking the Authority-assigned provider number based on a sanction under termination terms and conditions established in program-specific rules or contract;

(D) The provider no longer holds a required license, certificate or other authority to qualify as a provider. The termination shall be effective on the date the license, certificate, or other authority is no longer valid; or

(E) The provider fails to submit any claims for reimbursement for an 18-month period. The provider may reapply for enrollment.

(c) In the event of any dispute arising out of the termination of the provider enrollment agreement, the provider's sole monetary remedy is limited to covered services or items the Authority determines to be compensable under the provider agreement, a claim for unpaid invoices, hours worked within any limits set forth in the agreement but not yet billed, and Authority-authorized expenses incurred prior to termination. Providers may not recover indirect or consequential damages. Providers are not entitled to attorney fees, costs, or expenses of any kind.

(17) When a provider fails to meet one or more of the requirements governing participation as an Authority enrolled provider, the provider's Authority-assigned provider number may be immediately suspended, pursuant to OAR 943-120-0360. The provider may not provide services or items to clients during a period of suspension. The Authority shall deny claims for payment or other reimbursement requests for dates of service during a period of suspension.

(18) The provision of program-specific or contract covered services or items to eligible clients is voluntary on the part of the provider. Providers are not required to serve all clients seeking service. If a provider undertakes to provide a covered service or item to an eligible client, the provider must comply with these rules, program-specific rules or contract.

(a) The provider performs all services, or provides all items, as an independent contractor. The provider is not an officer, employee, or agent of the Authority.

(b) The provider is responsible for its employees, and for providing employment-related benefits and deductions that are required by law. The provider is solely responsible for its acts or omissions, including the acts or omissions of its own officers, employees or agents. The Authority's responsibility is limited to its authorization and payment obligations for covered services or items provided pursuant to these rules.

(19) For Medicaid services, a provider may not deny services to any eligible client because of the client's inability to pay the cost sharing amount imposed by the applicable program-specific or provider-specific rules or contract. A client's inability to pay does not eliminate the client's liability for the cost sharing charge.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.065

Hist.: OHA 14-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

### 943-120-0325

#### Compliance with Federal and State Statutes

(1) When a provider submits a claim for services or supplies provided to an Authority client, the Authority shall consider the submission as the provider's representation of the provider's compliance with the applicable sections of the federal and state statutes and rules referenced in this rule, and other program rules or contract requirements of the specific program under which the claim is submitted:

(a) 45 CFR Part 84 which implements Title V, Section 504 of the Rehabilitation Act of 1973;

(b) 42 CFR Part 493 Laboratory Requirements and ORS chapter 438 (Clinical Laboratories).

(c) The provider must comply and, as indicated, require all subcontractors to comply with the following federal and state requirements to the extent that they are applicable to the items and services governed by these rules, unless exempt under 45 CFR Part 87 for Faith-Based Organizations (Federal Register, July 16, 2004, Volume 69, #136), or other federal provi-

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sions. For purposes of these rules, all references to federal and state laws are references to federal and state laws as they may be amended from time to time that are in effect on the date of provider's service:

(A) The provider must comply and require all subcontractors to comply with all federal laws, regulations, executive orders applicable to the items and services provided under these rules. Without limiting the generality of the foregoing, the provider must comply and require all subcontractors to comply with the following laws, regulations and executive orders to the extent they are applicable to the items and services provided under these rules:

- (i) Title VI and VII of the Civil Rights Act of 1964, as amended;
- (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended;
- (iii) The Americans with Disabilities Act of 1990, as amended;
- (iv) Executive Order 11246, as amended;
- (v) The Health Insurance Portability and Accountability Act of 1996;
- (vi) The Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended;
- (vii) The Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended;
- (viii) all regulations and administrative rules established pursuant to the foregoing laws;
- (ix) All other applicable requirements of federal civil rights and rehabilitation statutes, rules, and regulations;
- (x) All federal laws governing operation of community mental health programs, including without limitation, all federal laws requiring reporting of client abuse. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the items and services governed by these rules and required by law to be so incorporated. No federal funds may be used to provide services in violation of 42 USC 14402.

(B) Any provider that receives or makes annual payments under Medicaid of at least \$5,000,000, as a condition of receiving such payments, shall:

- (i) Establish written policies for all employees of the entity (including management), and of any contractor, subcontractor, or agent of the entity, that provide detailed information about the False Claims Act established under 31 USC 3729 through 3733, administrative remedies for false claims and statements established under 31 USC 38, any Oregon state laws pertaining to civil or criminal penalties for false claims and statements, and whistle blowing protections under such laws, with respect to the role of such laws in preventing and detecting fraud, waste, and abuse in Federal health care programs (as defined in 42 USC 1320a-7b(f));
- (ii) Include as part of written policies, detailed provisions regarding the entity's policies and procedures for detecting and preventing fraud, waste, and abuse; and
- (iii) Include in any employee handbook for the entity, a specific discussion of the laws described in sub-paragraph (i), the rights of the employees to be protected as whistleblowers.

(C) If the items and services governed under these rules exceed \$10,000, the provider must comply and require all subcontractors to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in U.S. Authority of Labor regulations (41 CFR part 60);

(D) If the items and services governed under these rules exceed \$100,000, and are paid in any part with federal funds, the provider must comply and require all subcontractors to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7606), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act — 33 U.S.C. 1251 to 1387), specifically including, but not limited to, Section 508 (33 U.S.C. 1368). Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 32), which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations must be reported to the Authority, DHHS, and the appropriate Regional Office of the Environmental Protection Agency. The provider must include and require all subcontractors to include in all contracts with subcontractors receiving more than \$100,000, language requiring the subcontractor to comply with the federal laws identified in this section;

(E) The provider must comply and require all subcontractors to comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. 6201 et seq. (Pub. L. 94-163);

(F) The provider must provide written certification indicating that:

(i) No federal appropriated funds have been paid or shall be paid, by or on behalf of the provider, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement;

(ii) If any funds other than federal appropriated funds have been paid or shall be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the provider must complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions;

(iii) The provider must require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients and subcontractors must certify and disclose accordingly;

(iv) This certification is a material representation of fact upon which reliance was placed when this provider agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this provider agreement imposed by 31 USC 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(G) If the items and services funded in whole or in part with financial assistance provided under these rules are covered by HIPAA or the federal regulations implementing HIPAA, the provider must deliver the goods and services in compliance with HIPAA. The provider must comply and require all subcontractors to comply with the following:

(i) Individually identifiable health information about specific individuals is confidential. Individually identifiable health information relating to specific individuals may be exchanged between the provider and the Authority for purposes directly related to the provision to clients of services that are funded in whole or in part under these rules. The provider must not use or disclose any individually identifiable health information about specific individuals in a manner that would violate Authority privacy rules, (OAR 943-014-0000 to 0070.), or the Authority's Notice of Privacy Practices, if done by the Authority;

(ii) Providers who engage in EDI transactions with the Authority in connection with claims or encounter data, eligibility or enrollment information, authorizations or other electronic transactions must execute an EDI trading partner agreement with the Authority and must comply with the Authority's electronic data transmission rules (OAR 943-120-0100 to 943-120-0200);

(iii) If a provider reasonably believes that the provider's or the Authority's data transactions system or other application of HIPAA privacy or security compliance policy may result in a violation of HIPAA requirements, the provider must promptly consult the Authority's privacy officer. The provider or the Authority may initiate a request to test HIPAA transactions, subject to available resources and the Authority's testing schedule.

(H) The provider must comply and require all subcontractors to comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 USC 6901 et. seq.). Section 6002 of that Act (codified at 42 USC 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Parts 247;

(I) The provider must comply and require all subcontractors to comply with the applicable audit requirements and responsibilities set forth in the Office of Management and Budget Circular A-133 entitled "Audits of States, Local Governments and Non-Profit Organizations;"

(J) The provider may not permit any person or entity to be a subcontractor if the person or entity is listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or Nonprocurement Programs" pursuant to Executive Orders No. 12,549 and No. 12,689, "Debarment and Suspension". (See 45 CFR part 76). This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and providers and subcontractors declared ineligible under statutory authority other than Executive Order No. 12549. Subcontractors with awards that exceed the simplified acquisition threshold

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must provide the required certification regarding their exclusion status and that of their principals prior to award;

(K) The provider must comply and require all subcontractors to comply with the following provisions to maintain a drug-free workplace:

(i) Certify that it shall provide a drug-free workplace by publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance, except as may be present in lawfully prescribed or over-the-counter medications, is prohibited in the provider's workplace or while providing services to Authority clients. The provider's notice must specify the actions that shall be taken by the provider against its employees for violation of such prohibitions;

(ii) Establish a drug-free awareness program to inform its employees about the dangers of drug abuse in the workplace, the provider's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations;

(iii) Provide each employee to be engaged in the performance of services under these rules a copy of the statement required in paragraph (J)(i) above;

(iv) Notify each employee in the statement required by paragraph (J)(i) that, as a condition of employment to provide services under these rules, the employee shall abide by the terms of the statement and notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after the conviction;

(v) Notify the Authority within ten days after receiving notice under paragraph (J)(iv) from an employee or otherwise receiving actual notice of the conviction;

(vi) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is convicted as required by Section 5154 of the Drug-Free Workplace Act of 1988;

(vii) Make a good-faith effort to continue a drug-free workplace through implementation of paragraphs (J)(i) through (J)(vi);

(viii) Require any subcontractor to comply with paragraphs (J)(i) through (J)(vii);

(ix) The provider, the provider's employees, officers, agents, or subcontractors may not provide any service required under these rules while under the influence of drugs. For purposes of this provision, "under the influence" means observed abnormal behavior or impairments in mental or physical performance leading a reasonable person to believe the provider or provider's employee, officer, agent, or subcontractor has used a controlled substance, prescription, or non-prescription medication that impairs the provider or provider's employee, officer, agent, or subcontractor's performance of essential job function or creates a direct threat to Authority clients or others. Examples of abnormal behavior include but are not limited to hallucinations, paranoia or violent outbursts. Examples of impairments in physical or mental performance include but are not limited to slurred speech, difficulty walking or performing job activities;

(x) Violation of any provision of this subsection may result in termination of the provider agreement.

(L) The provider must comply and require all sub-contractors to comply with the Pro-Children Act of 1994 (codified at 20 USC section 6081 et. seq.);

(M) A provider reimbursed or seeking reimbursement with Medicaid funds must comply with all applicable federal and state laws and regulations pertaining to the provision of Medicaid services under the Medicaid Act, Title XIX, 42 USC Section 1396 et. seq., including without limitation:

(i) Maintain necessary records to fully disclose the extent of the services provided to individuals receiving Medicaid assistance and must furnish the information to any state or federal agency responsible for administering the Medicaid program regarding any payments claimed by the provider or institution for providing Medicaid services as the state or federal agency may from time to time request. 42 USC Section 1396a(a)(27); 42 CFR 431.107(b)(1) & (2);

(ii) Comply with all disclosure requirements of 42 CFR 1002.3(a) and 42 CFR 455 Subpart (B);

(iii) Maintain written notices and procedures respecting advance directives in compliance with 42 USC Section 1396(a)(57) and (w), 42 CFR 431.107(b)(4), and 42 CFR 489 subpart I;

(iv) Certify when submitting any claim for the provision of Medicaid services that the information submitted is true, accurate and complete. The provider must acknowledge provider's understanding that payment of the claim shall be from federal and state funds and that any falsification or concealment of a material fact may be prosecuted under federal and state laws.

(N) Providers must comply with the obligations intended for contractors under ORS 279B.220, 279B.225, 279B.230 and 279B.235 (if applicable). Providers shall, to the maximum extent economically feasible in the performance of covered services, use recycled paper (as defined in ORS 279A.010(1)(ee)), recycled PETE products (as defined in 279A.010(1)(ff)), and other recycled plastic resin products and recycled products (as "recycled product" is defined in 279A.010(1)(gg)).

(O) Providers must comply with all federal, state and local tax laws, including Social Security payment requirements, applicable to payments made by the Authority to the provider.

(2) Hospitals, nursing facilities, home health agencies (including those providing personal care), hospices, and health maintenance organizations shall comply with the Patient Self-Determination Act as set forth in Section 4751 of OBRA 1991. To comply with the obligation under the above listed laws to deliver information on the rights of the individual under Oregon law to make health care decisions, the named providers and organizations must provide capable individuals over the age of 18 a copy of "Your Right to Make Health Care Decisions in Oregon," copyright 1993, by the Oregon State Bar Health Law Section. Out-of-state providers of these services must comply with Medicare and Medicaid regulations in their state. Submittal to the Authority of the appropriate billing form requesting payment for medical services provided to a Medicaid eligible client shall be deemed representation to the Authority of the medical provider's compliance with the above-listed laws.

(3) Providers described in ORS chapter 419B must report suspected child abuse to their local Children, Adults and Families Division office or police, in the manner described in ORS chapter 419.

(4) The Clinical Laboratory Improvement Act (CLIA), requires all entities that perform even one laboratory test, including waived tests, on "materials derived from the human body for the purpose of providing information for the diagnosis, prevention or treatment of any disease or impairment of, or the assessment of the health of, human beings" to meet certain federal requirements. If an entity performs tests for these purposes, it is considered, under CLIA, to be a laboratory.

[Publication: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 413.042  
Stats. Implemented: ORS 414.065  
Hist.: OHA 14-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

### 943-120-0330

#### Billing Procedures

(1) These rules only apply to covered services and items provided to clients that are paid for by the Authority based on an Authority fee schedule or other reimbursement method (often referred to as fee-for-service), or for services that are paid for by the Authority at the request of a county for county-authorized services. .

(a) If a client's service or item is paid for by a PHP, the provider must comply with the billing and procedures related to claim submission established under contract with that PHP, or the rules applicable to non-participating providers if the provider is not under contract with that PHP.

(b) If the client is enrolled in a PHP, but the client is permitted by a contract or program-specific rules to obtain covered services reimbursed by the Authority (such as family planning services that may be obtained from any provider), the provider must comply with the billing and claim procedures established under these rules.

(2) All Authority-assigned provider numbers are issued at enrollment and are directly associated with the provider as defined in OAR 943-120-0320(12) and have the following uses:

(a) Log-on identification for the Authority web portal;

(b) Claim submission in the approved paper formats; and

(c) For electronic claims submission including the web portal for atypical providers pursuant to 45 CFR 160 and 162 where an NPI is not mandated. Use of the Authority-assigned provider number shall be considered authorized by the provider and the provider shall be accountable for its use.

(3) Except as provided in section (4) below, an enrolled provider may not seek payment for any covered services from:

(a) A client for covered benefits; or

(b) A financially responsible relative or representative of that client.

(4) Providers may seek payment from an eligible client or client representative as follows:

(a) From any applicable coinsurance, co-payments, deductibles, or other client financial obligation to the extent and as expressly authorized by program-specific rules or contract;

(b) From a client who failed to inform the provider of Authority program eligibility, of OHP or PHP enrollment, or of other third party insur-



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ance coverage at the time the service was provided or subsequent to the provision of the service or item. In this case, the provider may not bill the Authority, the PHP, or third party payer for any reason, including but not limited to timeliness of claims and lack of prior authorization. The provider must document attempts to obtain information on eligibility or enrollment;

(c) The client became eligible for Authority benefits retroactively but did not meet other established criteria described in the applicable program-specific rules or contracts.

(d) The provider may document that a TPR made payments directly to the client for services provided that are subject to recovery by the provider.;

(e) The service or item is not covered under the client's benefit package. The provider must document that prior to the delivery of services or items, the provider informed the client the service or item would not be covered by the Authority;

(f) The client requested continuation of benefits during the administrative hearing process and the final decision was not in favor of the client. The client shall be responsible for any charges since the effective date of the initial notice of denial; or

(g) In exceptional circumstances, a client may request continuation of a covered service while asserting the right to privately pay for that service. Under this circumstance, a provider may bill the client for a covered service only if the client is informed in advance of receiving the specific service of all of the following:

(A) The requested service is a covered service and the provider would be paid in full for the covered service if the claim is submitted to the Authority or the client's PHP;

(B) The estimated cost of the covered service, including all related charges, that the Authority or PHP would pay, and for which the client is billed cannot be an amount greater than the maximum Authority or PHP reimbursable rate or PHP rate;

(C) The provider may not require the client to enter into a voluntary payment agreement for any amount for the covered service; and

(D) The provider must be able to document, in writing, signed by the client or the client's representative, that the client was provided the information described above; was provided an opportunity to ask questions, obtain additional information, and consult with the client's caseworker or client representative; and the client agreed to be responsible for payment by signing an agreement incorporating all of the information described above. The provider must provide a copy of the signed agreement to the client. The provider may not submit a claim for payment for the service or item to the Authority or to the client's PHP that is subject to such an agreement.

(5) Reimbursement for Non-Covered Services.

(a) A provider may bill a client for services that are not covered by the Authority or a PHP, except as provided in these rules. The client must be informed in advance of receiving the specific service that it is not covered, the estimated cost of the service, and that the client or client's representative is financially responsible for payment for the specific service. Providers must provide written documentation, signed by the client, or the client's representative, dated prior to the delivery of services or item indicating that the client was provided this information and that the client knowingly and voluntarily agreed to be responsible for payment.

(b) Providers may not bill or accept payment from the Authority or a PHP for a covered service when a non-covered service has been provided and additional payment is sought or accepted from the client. Examples include but are not limited to charging the client an additional payment to obtain a gold crown (not covered) instead of the stainless steel crown (covered) or charging an additional client payment to obtain eyeglass frames not on the covered list of frames. This practice is called buying-up, which is prohibited, and a provider may be sanctioned for this practice regardless of whether a client waiver is documented.

(c) Providers may not bill clients or the Authority for a client's missed appointment.

(d) Providers may not bill clients or the Authority for services or items provided free of charge. This limitation does not apply to established sliding fee schedules where the client is subject to the same standards as other members of the public or clients of the provider.

(e) Providers may not bill clients for services or items that have been denied due to provider error such as required documentation not submitted or prior authorization not obtained.

(6) Providers must verify that the individual receiving covered services is, in fact, an eligible client on the date of service for the service provided and that the services is covered in the client's benefit package.

(a) Providers shall pay for costs incurred for failing to confirm eligibility or that services are covered.

(b) Providers must confirm the Authority's client eligibility and benefit package coverage using the web portal, or the Authority telephone eligibility system, and by other methods specified in program-specific or contract instructions.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.065

Hist.: OHA 14-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 943-120-0340

### Claim and PHP Encounter Submission

(1) All claims must be submitted using one of the following methods:

(a) Paper forms, using the appropriate form as described in the program-specific rules or contract;

(b) Electronically, using the web portal accessed by provider-specific PIN and password. Initial activation by provider of Authority-assigned provider number and PIN for web portal access invokes provider's agreement to meet all of the standards for HIPAA privacy, security, and transactions and codes sets standards as defined in 45 CFR 162;

(c) Electronically in a manner authorized by the Authority's EDT rules (OAR 943-120-0100 to 943-120-0200); or

(d) Electronically, for PHP encounters, in the manner required by the PHP contract with the Authority and authorized by the Authority's EDT rules.

(2) Claims may not be submitted prior to delivery of service unless otherwise authorized by program-specific rules or contracts. A claim for an item may not be submitted prior to dispensing, shipping, or mailing the item unless otherwise specified in the Authority's program-specific rules or contracts.

(3) Claims and PHP encounters must be submitted in compliance HIPAA transaction and code set rules. The HIPAA transaction and code set rules, 45 CFR 162, apply to all electronic transactions for which DHHS has adopted a standard.

(a) The Authority may deny or reject electronic transactions that fail to comply with the federal standard.

(b) The Authority shall comply with the HIPAA code set requirements in 45 CFR 162.1000 through 162.1011, regardless of whether a request is made verbally, or a claim is submitted on paper or electronically, and with regard to the electronic claims and encounter remittance advice information, including the web portal. Compliance with the code set requirements includes the codes and the descriptors of the codes established by the official entity that maintains the code set. These federal code set requirements are mandatory and the Authority may not delay or alter their application or effective dates established by DHHS.

(A) The issuance of a federal code does not mean that the Authority covers the item or service described by the federal code. When there is a variation between an Authority-listed code and a national code, the provider may seek clarification from the Authority program. The Authority shall apply the national code in effect on the date of request or date of service and the Authority-listed code may be used for the limited purpose of describing the Authority's intent in identifying whether the applicable national code represents an Authority covered service or item.

(B) For purposes of maintaining HIPAA code set compliance, the Authority adopts by reference the required use of the version of all national code set revisions, deletions, and additions pursuant to the HIPAA transaction and code set rules in effect on the date of this rule. This code set adoption may not be construed as Authority coverage or that the existence of a particular national code constitutes a determination by the Authority that the particular code is a covered service or item. If the provider is unable to identify an appropriate procedure code to use on the claim or PHP encounter, the provider may contact the Authority for assistance in identifying an appropriate procedure code reference in but not limited to the following:

(i) Current Procedural Terminology, Fourth Edition (CPT-4), (American Medical Association);

(ii) Current Dental Terminology (CDT), (American Dental Association);

(iii) Diagnosis Related Group (DRG), (DHHS);

(iv) Health Care Financing Administration Common Procedural Coding System (HCPCS), (DHHS);

(v) National Drug Codes (NDC), (DHHS); or

(vi) HIPAA related codes, DHHS, claims adjustment reason, claim status, taxonomy codes, and decision reason available at the Washington Publishing Company web site: <http://www.wpc.edi.com/content/view/180/223>.

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(C) For electronic claims and PHP encounters, the appropriate HIPAA claim adjustment reason code for third party payer, including Medicare, explanation of payment must be used.

(c) Diagnosis Code Requirement.

(A) For claims and PHP encounters that require the listing of a diagnosis code as the basis for the service provided, the code listed on the claim must be the code that most accurately describes the client's condition and the service or item provided.

(B) A primary diagnosis code is required on all claims, using the HIPAA nationally required diagnosis code set including the code and the descriptor of the code by the official entity that maintains the code set, unless the requirement for a primary diagnosis code is specifically excluded in the Authority's program-specific rules or contract. All diagnosis codes must be provided to the highest degree of specificity. Providers must use the ICD-9-CM diagnosis coding system when a diagnosis is required unless otherwise specified in the appropriate program-specific rules or contract.

(C) Hospitals must follow national coding guidelines and must bill using the 5th digit, in accordance with methodology used in the Medicare Diagnosis Related Groups.

(d) Providers must provide and identify the following procedures codes.

(A) The appropriate procedure code on claims and PHP encounters as instructed in the appropriate Authority program-specific rules or contract and must use the appropriate HIPAA procedure code set, set forth in 45 CFR 162.1000 through 162.1011, which best describes the specific service or item provided.

(B) Where there is one CPT, CDT, or HCPCS code that according to those coding guidelines or standards, describes an array of services, the provider must use that code rather than itemizing the services under multiple codes. Providers must not "unbundle" services in order to increase payment or to mischaracterize the service.

(4) No provider or its contracted agent (including billing service or billing agent) shall submit or cause to be submitted to the Authority:

(a) Any false claim for payment or false PHP encounter;

(b) Any claim or PHP encounter altered in such a way as to result in a duplicate payment for a service that has already been paid;

(c) Any claim or PHP encounter upon which payment has been made or is expected to be made by another source unless the amount paid or to be paid by the other party is clearly entered on the claim form or PHP encounter format; or

(d) Any claim or PHP encounter for providing services or items that have not been provided.

(5) Third Party Resources.

(a) A provider may not refuse to furnish covered services or items to an eligible client because of a third party's potential liability for the service or item.

(b) Providers must take all reasonable measures to ensure that the Authority shall be the payer of last resort. If available, private insurance, Medicare, or worker's compensation must be billed before the provider submits a claim for payment to the Authority, county, or PHP. For services provided to a Medicare and Medicaid dual eligible client, Medicare is the primary payer and the provider must first pursue Medicare payment (including appeals) prior to submitting a claim for payment to the Authority, county, or PHP. For services not covered by Medicare or other third party resource, the provider must follow the program-specific rules or contracts for appropriate billing procedures.

(c) When another party may be liable for paying the expenses of a client's injury or illness, the provider must follow program-specific rules or contract addressing billing procedures.

(6) Full Use of Alternate Community Resources.

(a) The Authority shall generally make payment only when other resources are not available for the client's needs. Full use must be made of reasonable alternate resources in the local community; and

(b) Providers must not accept reimbursement from more than one resource for the same service or item, except as allowed in program-specific or contract TPR requirements.

(7) Timely Submission of Claim or Encounter Data.

(a) Subsection (a) through (c) below apply only to the submission of claims data or other reimbursement document to the Authority, including provider reimbursement by the Authority pursuant to an agreement with a county. Unless requirements for timely filing provided for in program-specific rules or applicable contracts are more specific than the timely filing standard established in this rule, all claims for services or items must be submitted no later than 12 months from the date of service.

(b) A denied claim submitted within 12 months of the date of service may be resubmitted (with resubmission documentation, as indicated within the program-specific rules or contracts) within 18 months of the date of service. These claims must be submitted to the Authority in writing. The provider must present documentation acceptable to the Authority verifying the claim was originally submitted within 12 months of the date of service, unless otherwise stated in program-specific rules or contracts. Acceptable documentation is:

(A) A remittance advice or other claim denial documentation from the Authority to the provider showing the claim was submitted before the claim was one year old; or

(B) A copy of a billing record or ledger showing dates of submission to the Authority.

(c) Exceptions to the 12-month requirement that may be submitted to the Authority are as follows:

(A) When the Authority confirms the Authority or the client's branch office has made an error that caused the provider not to be able to bill within 12 months of the date of service;

(B) When a court or an administrative law judge in a final order has ordered the Authority to make payment;

(C) When the Authority determines a client is retroactively eligible for Authority program coverage and more than 12 months have passed between the date of service and the determination of the client's eligibility, to the extent authorized in the program-specific rules or contracts.

(d) PHP encounter data must be submitted pursuant to 45 CFR part 162.1001 and 162.1102 and the time periods established in the PHP contract with the Authority.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.065

Hist.: OHA 14-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

### 943-120-0350

#### Payments and Overpayments

(1) Payment Authorization.

(a) Some services or items covered by the Authority require authorization before a service, item, or level of care can be provided or before payment shall be made. Providers must check the appropriate program-specific rules or contracts for information on services or items requiring prior authorization and the process to follow to obtain authorization.

(b) Documentation submitted when requesting authorization must support the program-specific or contract justification for the service, item, or level of care. A request is considered complete if it contains all necessary documentation and meets any other requirements as described in the appropriate program-specific rules or contract.

(c) The authorizing program shall authorize the covered level of care, type of service, or item that meets the client's program-eligible need. The authorizing program shall only authorize services which meet the program-specific or contract coverage criteria and for which the required documentation has been submitted. The authorizing program may request additional information from the provider to determine the appropriateness of authorizing the service, item, or level of care within the scope of program coverage.

(d) Authorizing programs may not authorize services or make payment for authorized services when:

(A) The client was not eligible at the time services were provided. The provider must check the client's eligibility each time services are provided;

(B) The provider cannot produce appropriate documentation to support that the level of care, type of service, or item meets the program-specific or contract criteria, or the appropriate documentation was not submitted to the authorizing program;

(C) The delivery of the service, item, or level of care has not been adequately documented as described in OAR 943-120-0370. Requirements for financial, clinical and other records, and the documentation in the provider's files is not adequate to determine the type, medical appropriateness, or quantity of services, or items provided or the required documentation is not in the provider's files;

(D) The services or items identified in the claim are not consistent with the information submitted when authorization was requested or the services or items provided are retrospectively determined not to be authorized under the program-specific or contract criteria;

(E) The services or items identified in the claim are not consistent with those which were provided;

(F) The services or items were not provided within the timeframe specified on the authorization of services document; or

(G) The services or items were not authorized or provided in compliance with the program-specific rules or contracts.

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(e) Payment made for services or items described in subsections (d)(A) through (G) of this rule shall be recovered.

(f) Retroactive Authority Client Eligibility.

(A) When a client is determined to be retroactively eligible for an Authority program, or is retroactively disenrolled from a PHP or services provided after the client was disenrolled from a PHP, authorization for payment may be given if the following conditions are met:

(i) The client was eligible on the date of service and the program-specific rules or contract authorize the Authority to reimburse the provider for services provided to clients made retroactively eligible;

(ii) The services or items provided to the client meet all other program-specific or contract criteria and Oregon Administrative Rules;

(iii) The request for authorization is received by the appropriate Authority branch or program office within 90 days of the date of service; and

(iv) The provider is enrolled with the Authority on the date of service, or becomes enrolled with the Authority no later than the date of service as provided in OAR 943-120-0320(11).

(B) Requests for authorization received after 90 days from date of service require all the documentation required in subsection (f)(A)(i), (ii) and (iv) and documentation from the provider stating why the authorization could not have been obtained within 90 days of the date of service.

(g) Service authorization is valid for the time period specified on the authorization notice, but shall not exceed 12 months, unless the client's benefit package no longer covers the service, in which case the authorization terminates on the date coverage ended.

(h) Service authorization for clients with other insurance or for Medicare beneficiaries is governed by program-specific rules or contracts.

(2) Payments.

(a) This rule only applies to covered services and items provided to eligible clients within the program-specific or contract covered services or items in effect on the date of service that are paid for by the Authority based on program-specific or contract fee schedules or other reimbursement methods, or for services that are paid for by the Authority at the request of a county for county-authorized services.

(b) If the client's service or item is paid for by a PHP, the provider must comply with the payment requirements established under contract with that PHP, and pursuant to OAR 410-120 and 410-141, applicable to non-participating providers.

(c) The Authority shall pay for services or items based on the reimbursement rates and methods specified in the applicable program-specific rules or contract. Provider reimbursement on behalf of a county must include county service authorization information.

(d) Providers must accept, as payment in full, the amounts paid by the Authority pursuant to the fee schedule or reimbursement method specified in the program-specific rules or contract, plus any deductible, co-payment, or coinsurance required to be paid by the client. Payment in full includes:

(A) Zero payments for claims where a third party or other resource has paid an amount equivalent to or exceeding the Authority's allowable payment; or

(B) Denials of payment for failure to submit a claim in a timely manner, failure to obtain payment authorization in a timely and appropriate manner, or failure to follow other required procedures identified in the program-specific rules or contracts.

(e) The Authority may not make payments for duplicate services or items. The Authority may not make a separate payment or co-payment to a provider for services included in the provider's all-inclusive rate if the provider has been or shall be reimbursed by other resources for the service or item.

(f) Payment by the Authority does not limit the Authority or any state or federal oversight entity from reviewing or auditing a claim before or after the payment. Payment may be denied or subject to recovery if medical, clinical, program-specific or contract review, audit, or other post-payment review determines the service or item was not provided in accordance with applicable rules or contracts or does not meet the program-specific or contract criteria for quality of care, or appropriateness of the care, or authorized basis for payment.

(3) Recovery of Overpayments to Providers — Recoupments and Refunds

(a) The Authority may deny payment or may deem payments subject to recovery as an overpayment if a review or audit determines the item or service was not provided pursuant to the Authority's rules, terms of contract, or does not meet the criteria for quality of care, or appropriateness of the care or payment. Related provider billings shall also be denied or subject to recovery.

(b) If a provider determines that a submitted claim or encounter is incorrect, the provider must submit an individual adjustment request and refund the amount of the overpayment, if any, or adjust the claim or encounter.

(c) The Authority may determine, as a result of review or other information, that a payment should be denied or that an overpayment has been made to a provider, which indicates that a provider may have submitted claims or encounters, or received payment to which the provider is not properly entitled. The payment denial or overpayment determinations may be based on but not limited to the following:

(A) The Authority paid the provider an amount in excess of the amount authorized under a contract, state plan or Authority rule;

(B) A third party paid the provider for services, or portion thereof, previously paid by the Authority;

(C) The Authority paid the provider for services, items, or drugs that the provider did not perform or provide;

(D) The Authority paid for claims submitted by a data processing agent for whom a written provider or billing agent or billing service agreement was not on file at the time of submission;

(E) The Authority paid for services and later determined they were not part of the client's program-specific or contract-covered services;

(F) Coding, data processing submission, or data entry errors;

(G) Medical, dental, or professional review determines the service or item was not provided pursuant to the Authority's rules or contract or does not meet the program-specific or contract criteria for coverage, quality of care, or appropriateness of the care or payment;

(H) The Authority paid the provider for services, items, or drugs when the provider did not comply with the Authority's rules and requirements for reimbursement; or

(I) The provider submitted inaccurate, incomplete or false encounter data to the Authority.

(d) Prior to identifying an overpayment, the Authority may contact the provider requesting preliminary information and additional documentation. The provider must provide the requested documentation within the specified time frame.

(e) When an overpayment is identified, the Authority shall notify the provider in writing as to the nature of the discrepancy, the method of computing the overpayment, and any further action that the Authority may take on the matter. The notice may require the provider to submit applicable documentation for review prior to requesting an appeal from the Authority, and may impose reasonable time limits for when documentation must be provided for Authority consideration. The notice shall inform the provider of the process for appealing the overpayment determination.

(f) The Authority may recover overpayments made to a provider by direct reimbursement, offset, civil action, or other legal action:

(A) The provider must make a direct reimbursement to the Authority within 30 calendar days from the date of the notice of the overpayment, unless other regulations apply.

(B) The Authority may grant the provider an additional period of time to reimburse the Authority upon written request made within 30 calendar days from the date of the notice of overpayment. The provider must include a statement of the facts and reasons sufficient to show that repayment of the overpayment amount should be delayed pending appeal because:

(i) The provider shall suffer irreparable injury if the overpayment notice is not delayed;

(ii) There is a reason to believe that the overpayment is incorrect or is less than the amount in the notice, and the provider has timely filed an appeal of the overpayment, or that the provider accepts the amount of the overpayment but is requesting to make repayment over a period of time;

(iii) A proposed method for assuring that the amount of the overpayment can be repaid when due with interest including but not limited to a bond, irrevocable letter of credit, or other undertaking, or a repayment plan for making payments, including interest, over a period of time;

(iv) Granting the delay shall not result in substantial public harm; and

(v) Affidavits containing evidence relied upon in support of the request for stay.

(C) The Authority may consider all information in the record of the overpayment determination, including provider cooperation with timely provision of documentation, in addition to the information supplied in provider's request. If provider requests a repayment plan, the Authority may require conditions acceptable to the Authority before agreeing to a repayment plan. The Authority must issue an order granting or denying a repayment delay request within 30 calendar days after receiving it;

(D) A request for hearing or administrative review does not change the date the repayment of the overpayment is due; and



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(E) The Authority may withhold payment on pending claims and on subsequently received claims for the amount of the overpayment when overpayments are not paid as a result of paragraph (B)(i);

(g) In addition to any overpayment, the Authority may impose a sanction on the provider in connection with the actions that resulted in the overpayment. The Authority may, at its discretion, combine a notice of sanction with a notice of overpayment.

(h) Voluntary submission of an adjustment claim or encounter transaction or an individual adjustment request or overpayment amount after notice from the Authority does not prevent the Authority from issuing a notice of sanction. The Authority may take such voluntary payment into account in determining the sanction.

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## 943-120-0360

### Consequences of Non-Compliance and Provider Sanctions

(1) There are two classes of provider sanctions, mandatory and discretionary, that may be imposed for non-compliance with the provider enrollment agreement.

(2) Except as otherwise provided, the Authority shall impose provider sanctions at the direction of the Authority's division director or designee, whose budget includes payment for the services involved.

(3) Mandatory Sanctions. The Authority shall impose mandatory sanctions and suspend the provider from participation in the Authority's programs:

(a) When a provider has been convicted (as that term is defined in 42 CFR part 1001.2) of a felony or misdemeanor related to a crime, or violation of Title XVIII, XIX, or XX of the Social Security Act or related state laws, or other disqualifying criminal conviction pursuant to program-specific rules or contract;

(b) When a provider is excluded from participation in federal or state health care programs by the Office of the Inspector General of DHHS or from the Medicare (Title XVIII) program of the Social Security Act as determined by the Secretary of DHHS. The provider shall be excluded and suspended from participation with the Authority for the duration of exclusion or suspension from the Medicare program or by the Office of the Inspector General; or

(c) If the provider fails to disclose ownership or control information required under 42 CFR part 455.104 that must be reported at the time the provider submits a provider enrollment form or when there is a material change in the information that must be reported, or information related to business transactions required to be provided under 42 CFR part 455.105 upon request of federal or state authorities.

(4) Discretionary Sanctions. When the Authority determines the provider fails to meet one or more of the Authority's requirements governing participation in its programs the Authority may impose discretionary sanctions. Conditions that may result in a discretionary sanction include, but are not limited to when a provider has:

(a) Been convicted of fraud related to any federal, state, or locally financed health care program or committed fraud, received kickbacks, or committed other acts that are subject to criminal or civil penalties under the Medicare or Medicaid statutes;

(b) Been convicted of interfering with the investigation of health care fraud;

(c) Been convicted of unlawfully manufacturing, distributing, prescribing, or dispensing a controlled substance or other potentially disqualifying crime, as determined under program-specific rules or contracts;

(d) By actions of any state licensing authority for reasons relating to the provider's professional competence, professional conduct, or financial integrity either:

(A) Had the professional license suspended or revoked, or otherwise lost such license; or

(B) Surrendered the license while a formal disciplinary proceeding is pending before the relevant licensing authority.

(e) Been suspended or excluded from participation in any federal or state program for reasons related to professional competence, professional performance, or other reason;

(f) Billed excessive charges including but not limited to charging in excess of the usual charge, furnished items or services in excess of the client's needs or in excess of those services ordered by a provider, or in excess of generally accepted standards or quality that fail to meet professionally recognized standards;

(g) Failed to furnish necessary covered services as required by law or contract with the Authority if the failure has adversely affected or has a substantial likelihood of adversely affecting the client;

(h) Failed to disclose required ownership information;

(i) Failed to supply requested information on subcontractors and suppliers of goods or services;

(j) Failed to supply requested payment information;

(k) Failed to grant access or to furnish as requested, records, or grant access to facilities upon request of the Authority or the MFCU conducting their regulatory or statutory functions;

(l) In the case of a hospital, failed to take corrective action as required by the Authority, based on information supplied by the QIO to prevent or correct inappropriate admissions or practice patterns, within the time specified by the Authority;

(m) In the case of a licensed facility, failed to take corrective action under the license as required by the Authority within the time specified by the Authority;

(n) Defaulted on repayment of federal or state government scholarship obligations or loans in connection with the provider's health profession education;

(A) Providers must have made a reasonable effort to secure payment;

(B) The Authority must take into account access of beneficiaries to services; and

(C) Shall not exclude a community's sole physician or source of essential specialized services;

(o) Repeatedly submitted a claim with required data missing or incorrect:

(A) When the missing or incorrect data has allowed the provider to:

(i) Obtain greater payment than is appropriate;

(ii) Circumvent prior authorization requirements;

(iii) Charge more than the provider's usual charge to the general public;

(iv) Receive payments for services provided to individuals who were not eligible; or

(v) Establish multiple claims using procedure codes that overstate or misrepresent the level, amount, or type of services or items provided.

(B) Does not comply with the requirements of OAR 410-120-1280.

(p) Failed to develop, maintain, and retain, pursuant to relevant rules and standards, adequate clinical or other records that document the client's eligibility and coverage, authorization (if required by program-specific rules or contracts), appropriateness, nature, and extent of the services or items provided;

(q) Failed to develop, maintain, and retain pursuant to relevant rules and standards, adequate financial records that document charges incurred by a client and payments received from any source;

(r) Failed to develop, maintain, and retain adequate financial or other records that support information submitted on a cost report;

(s) Failed to follow generally accepted accounting principles or accounting standards or cost principles required by federal or state laws, rules, or regulations;

(t) Submitted claims or written orders contrary to generally accepted standards of professional practice;

(u) Submitted claims for services that exceed the requested or agreed upon amount by the OHP client, the client representative, or requested by another qualified provider;

(v) Breached the terms of the provider contract or agreement;

(w) Failed to comply with the terms of the provider certifications on the claim form;

(x) Rebated or accepted a fee or portion of a fee for a client referral; or collected a portion of a service fee from the client and billed the Authority for the same service;

(y) Submitted false or fraudulent information when applying for an Authority-assigned provider number, or failed to disclose information requested on the provider enrollment form;

(z) Failed to correct deficiencies in operations after receiving written notice of the deficiencies from the Authority;

(aa) Submitted any claim for payment for which the Authority has already made payment or any other source unless the amount of the payment from the other source is clearly identified;

(bb) Threatened, intimidated, or harassed clients, client representatives, or client relatives in an attempt to influence payment rates or affect the outcome of disputes between the provider and the Authority;

(cc) Failed to properly account for a client's personal incidental funds including but not limited to using a client's personal incidental funds for

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payment of services which are included in a medical facility's all-inclusive rates;

(dd) Provided or billed for services provided by ineligible or unsupervised staff;

(ee) Participated in collusion that resulted in an inappropriate money flow between the parties involved;

(ff) Refused or failed to repay, in accordance with an accepted schedule, an overpayment established by the Authority;

(gg) Failed to report to Authority payments received from any other source after the Authority has made payment for the service; or

(hh) Collected or made repeated attempts to collect payment from clients for services covered by the Authority, under OAR 410-120-1280.

(5) A provider who has been excluded, suspended, or terminated from participation in a federal or state medical program, such as Medicare or Medicaid, or whose license to practice has been suspended or revoked by a state licensing board, may not submit claims for payment, either personally or through claims submitted by any billing agent or service, billing provider or other provider, for any services or supplies provided under the medical assistance programs, except those services or supplies provided prior to the date of exclusion, suspension or termination.

(6) Providers may not submit claims for payment to the Authority for any services or supplies provided by an individual or provider entity that has been excluded, suspended, or terminated from participation in a federal or state medical program, such as Medicare or Medicaid, or whose license to practice has been suspended or revoked by a state licensing board, except for those services or supplies provided prior to the date of exclusion, suspension or termination.

(7) When the provisions of sections (5) or (6) are violated, the Authority may suspend or terminate the billing provider or any provider who is responsible for the violation.

(8) Sanction Types and Conditions.

(a) A mandatory sanction imposed by the Authority pursuant to section (3) may result in any of the following:

(A) The provider shall either be terminated or suspended from participation in the Authority's programs. No payments of Title XIX, Title XXI or other federal or state funds shall be made for services provided after the date of termination. Termination is permanent unless:

(i) The exceptions cited in 42CFR part 1001.221 are met; or

(ii) Otherwise stated by the Authority at the time of termination.

(B) No payments of Title XIX, Title XXI, or other federal or state funds shall be made for services provided during the suspension. The Authority shall automatically reactivate the provider number y after the suspension period has elapsed if the conditions that caused the suspension have been resolved. The minimum duration of a suspension shall be determined by the DHHS Secretary, under the provisions of 42 CFR parts 420, 455, 1001, or 1002. The Authority may suspend a provider from participation in the medical assistance programs longer than the minimum suspension determined by the DHHS secretary.

(b) The Authority may impose the following discretionary sanctions on a provider pursuant to OAR 410-120-1400(4):

(A) The provider may be terminated from participation in the Authority's programs. No payments of Title XIX, Title XXI or other federal or state funds shall be made for services provided after the date of termination. Termination is permanent unless:

(i) The exceptions cited in 42 CFR part 1001.221 are met; or

(ii) Otherwise stated by the Authority at the time of termination.

(B) The provider may be suspended from participation in the Authority's programs for a specified length of time, or until specified conditions for reinstatement are met and approved by the Authority. No payments of Title XIX, Title XXI, or other federal or state funds shall be made for services provided during the suspension. The Authority shall automatically reactivate the provider number after the suspension period has elapsed if the conditions that caused the suspension have been resolved.

(C) The Authority may withhold payments to a provider;

(D) The provider may be required to attend provider education sessions at the expense of the sanctioned provider;

(E) The Authority may require that payment for certain services are made only after the Authority has reviewed documentation supporting the services;

(F) The Authority may require repayment of amounts paid or provide for reduction of any amount otherwise due the provider; and

(G) Any other sanctions reasonably designed to remedy or compel future compliances with federal, state, or Authority regulations.

(c) The Authority shall consider the following factors in determining the sanction to be imposed. Factors include but are not limited to:

(A) Seriousness of the offense;

(B) Extent of violations by the provider;

(C) History of prior violations by the provider;

(D) Prior imposition of sanctions;

(E) Prior provider education;

(F) Provider willingness to comply with program rules;

(G) Actions taken or recommended by licensing boards or a QIO;

(H) Adverse impact on the availability of program-specific or contract covered services or the health of clients living in the provider's service area; and

(I) Potential financial sanctions related to the non-compliance may be imposed in an amount that is reasonable in light of the anticipated or actual harm caused by the non-compliance, the difficulties of proof of loss, and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy.

(d) When a provider fails to meet one or more of the requirements identified in OAR 943-120-0300 through 943-120-0400, the Authority, in its sole discretion, may immediately suspend the provider's Authority assigned billing number and any electronic system access code to prevent public harm or inappropriate expenditure of public funds.

(A) The provider subject to immediate suspension is entitled to a contested case hearing pursuant to ORS 183 to determine whether the provider's Authority assigned number and electronic system access code may be revoked; and

(B) The notice requirements described in section (5) of this rule do not preclude immediate suspension, in the Authority's sole discretion, to prevent public harm or inappropriate expenditure of public funds. Suspension may be invoked immediately while the notice and contested case hearing rights are exercised.

(e) If the Authority sanctions a provider, the Authority shall notify the provider by certified mail or personal delivery service of the intent to sanction. The notice of immediate or proposed sanction shall identify:

(A) The factual basis used to determine the alleged deficiencies and a reference to the particular sections of the statutes and rules involved;

(B) Explanation of actions expected of the provider;

(C) Explanation of the Authority's intended action;

(D) The provider's right to dispute the Authority's allegations and submit evidence to support the provider's position;

(E) The provider's right to appeal the Authority's proposed actions pursuant to ORS 183;

(F) A statement of the authority and jurisdiction under which the appeal may be requested and description of the procedure and time to request an appeal; and

(G) A statement indicating whether and under what circumstances an order by default may be entered.

(f) If the Authority decides to sanction a provider, the Authority shall notify the provider in writing at least 15 days before the effective date of action, except in the case of immediate suspension to avoid public harm or inappropriate expenditure of funds.

(g) The provider may appeal the Authority's immediate or proposed sanction or other actions the Authority intends to take. The provider must appeal this action separately from any appeal of audit findings and overpayments. These include but are not limited to the following:

(A) Termination or suspension from participation in the Medicaid-funded medical assistance programs;

(B) Termination or suspension from participation in the Authority's state-funded programs; or

(C) Revocation of the provider's Authority assigned provider number.

(h) Other provisions:

(A) When a provider has been sanctioned, all other provider entities in which the provider has ownership of five percent or greater, or control of, may also be sanctioned;

(B) When a provider has been sanctioned, the Authority may notify the applicable professional society, board of registration or licensure, federal or state agencies, OHP, PHP's, and the National Practitioner Data Base of the findings and the sanctions imposed;

(C) At the discretion of the Authority, providers who have previously been sanctioned or suspended may or may not be re-enrolled as Authority providers;

(D) Nothing in this rule prevents the Authority from simultaneously seeking monetary recovery and imposing sanctions against the provider;

(E) Following a contested case hearing in which a provider has been found to violate ORS 411.675, the provider shall be liable to the Authority for treble the amount of payments received as a result of each violation.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.065

Hist.: OHA 14-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

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## 943-120-0370

### Requirements for Financial, Clinical, and Other Records

(1) The Authority shall analyze and monitor the operation of its programs and audit and verify the accuracy and appropriateness of payment, utilization of services, or items.

(2) The Authority shall comply with client coverage criteria and requirements for the level of care or service or item authorized or reimbursed by the Authority and the quality of covered services or items and service or item delivery, and access to covered services or items.

(3) The provider and the provider's designated billing service or other entity responsible for the maintenance of financial, service delivery, and other records must:

(a) Develop and maintain adequate financial and service delivery records and other documentation which supports the specific care, items, or services for which payment has been requested. The Authority may not make payment for services that are not adequately documented. The following documentation must be completed before the service is billed to the Authority:

(A) All records documenting the specific service provided, the number of services or items comprising the service provided, the extent of the service provided, the dates on which the service was provided, and identification of the individual who provided the service. Patient account and financial records must also include documentation of charges, identify other payment resources pursued, indicate the date and amount of all debit or credit billing actions, and support the appropriateness of the amount billed and paid. For cost reimbursed services, the provider must maintain adequate records to thoroughly and accurately explain how the amounts reported on the cost statement were determined.

(B) Service delivery, clinical records, and visit data, including records of all therapeutic services, must document the basis for service delivery and record visit data if required under program-specific rules or contracts. A client's clinical record must be annotated each time a service is provided and signed or initialed by the individual providing the service or must clearly identify the individual providing the service. Information contained in the record must be sufficient in quality and quantity to meet the professional standards applicable to the provider or practitioner and any additional standards for documentation found in this rule, program-specific rules, and any pertinent contracts.

(C) All information about a client obtained by the provider or its officers, employees, or agents in the performance of covered services, including information obtained in the course of determining eligibility, seeking authorization, and providing services, is confidential. The client information must be used and disclosed only to the extent necessary to perform these functions.

(b) Implement policies and procedures to ensure confidentiality and security of the client's information. These procedures must ensure the provider may release such information pursuant to program-specific federal and state statutes or contract, which may include but is not limited to, ORS 179.505 to 179.507, 411.320, 433.045, 42 CFR part 2, 42 CFR part 431 subpart F, 45 CFR 205.50, and ORS 433.045(3) with respect to HIV test information.

(c) Ensure the use of electronic record-keeping systems does not alter the requirements of this rule.

(A) A provider's electronic record-keeping system includes electronic transactions governed by HIPAA transaction and code set requirements and records, documents, documentation, and information include all information, whether maintained or stored in electronic media, including electronic record-keeping systems, and information stored or backed up in an electronic medium.

(B) If a provider maintains financial or clinical records electronically, the provider must be able to provide the Authority with hard-copy versions. The provider must also be able to provide an auditable means of demonstrating the date the record was created and the identity of the creator of a record, the date the record was modified, what was changed in the record and the identity of any individual who has modified the record. The provider must supply the information to individuals authorized to review the provider's records under subsection (e) of this rule.

(C) Providers may comply with the documentation review requirements in this rule by providing the electronic record in an electronic format acceptable to an authorized reviewer. The authorized reviewer must agree to receive the documentation electronically.

(d) Retain service delivery, visit, and clinical records for seven years and all other records described in this rule, program-specific rules and contract for at least five years from the date of service.

(e) Furnish requested documentation (including electronically recorded information or information stored or backed up in an electronic medium) immediately or within the time-frame specified in the written request received from the Authority, the Oregon Secretary of State, DHHS or other federal funding agency, Office of Inspector General, the Comptroller General of the United States (for federally funded programs), MFCU (for Medicaid-funded services or items), or the client representative. Copies of the documents may be furnished unless the originals are requested. At their discretion, official representatives of the Authority, Medicaid Fraud Unit, DHHS, or other authorized reviewers may review and copy the original documentation in the provider's place of business. Upon written request of the provider, the program or the unit, may, at its sole discretion, modify or extend the time for provision of such records if, in the opinion of the program or unit good cause for such extension is shown. Factors used in determining if good cause exists include:

(A) Whether the written request was made prior to the deadline for production;

(B) If the written request is made after the deadline for production, the amount of time lapsed since that deadline;

(C) The efforts already made to comply with the request;

(D) The reasons the deadline cannot be met;

(E) The degree of control that the provider had over its ability to produce the records prior to the deadline; and

(F) Other extenuating factors.

(f) Except as otherwise provided access to records, inclusive of clinical charts and financial records does not require authorization or release from the client, if the purpose of the access is:

(A) To perform billing review activities;

(B) To perform utilization review activities;

(C) To review quality, quantity, medical appropriateness of care, items, and services provided;

(D) To facilitate service authorization and related services;

(E) To investigate a client's hearing request;

(F) To facilitate investigation by the MFCU or DHHS; or

(G) To review records necessary to the operation of the program.

(g) Failure to comply with requests for documents within the specified time-frame means that the records subject to the request may be deemed by the Authority not to exist for purposes of verifying appropriateness of payment, clinical appropriateness, the quality of care, and the access to care in an audit or overpayment determination, and subjects the provider to possible denial or recovery of payments made by the Authority or to sanctions.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.065

Hist.: OHA 14-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 943-120-0380

### Fraud and Abuse

(1) Providers shall promptly refer all suspected fraud and abuse, including fraud or abuse by its employees or in Authority administration, to the MFCU, or to the Authority's audit unit.

(2) Providers must permit the MFCU and the Authority to inspect, copy, evaluate, or audit books, records, documents, files, accounts, and facilities, without charge, as required to investigate allegations or incidents of fraud or abuse.

(3) Providers aware of suspected fraud or abuse by a client must report the incident to the Authority's fraud unit.

(4) The Authority may share information for health oversight purposes with the MFCU and other federal or state health oversight authorities.

(5) The Authority may take actions necessary to investigate and respond to substantiated allegations of fraud and abuse including but not limited to suspending or terminating the provider from participation in the Authority's programs, withholding payments or seeking recovery of payments made to the provider, or imposing other sanctions provided under state law or regulations. Such actions by the Authority may be reported to CMS or other federal or state entities as appropriate.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.065

Hist.: OHA 14-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 943-120-0400

### MMIS Replacement Communication Plan

(1) The purpose of this rule is to describe the Authority's plan for communicating instructions and guidance related to the Authority's implementation of the replacement MMIS that began on December 9, 2008. System issues are anticipated to be identified for a period of time during and after implementation. This rule is adopted to be effective retroactively



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to December 9, 2008 for the purpose of providing continuity of all MMIS communication efforts throughout the transition implementation process and regular operations following the transition. By adopting this communication plan in rule, the Authority seeks to assure that eligible Authority clients receive all necessary and appropriate services, and that Authority providers and PHPs are correctly reimbursed for covered services provided to eligible clients.

(2) To the extent necessary to accomplish the purposes of this rule, the Authority shall provide guidance and instructions related to MMIS for providers and PHPs using its web site and MMIS provider announcements.

(a) In cases of limitations or system errors in the replacement MMIS, the Authority shall provide update information and important action required in concert with, or in place of, normal established procedures.

(b) In other cases, the Authority shall provide instructions and guidance about the use of revised or improved functionality that is available through the replacement MMIS, such as the use of the web portal.

(3) Providers and PHPs must follow all applicable instructions given on the Authority's web page and any provider announcements for the dates specifically noted in the communications, or if a date is not specified, until further instructions are provided. Authority web site information and links to specific topics may be accessed at: [http://www.oregon.gov/DHS/healthplan/tools\\_prov/main.shtml](http://www.oregon.gov/DHS/healthplan/tools_prov/main.shtml).

(4) This rule does not amend existing rules or contracts that require providers or PHPs to confirm eligibility, respond to requests for prior authorization, submit claims or encounter data, or comply with any other rule or contract that imposes obligations on a provider or PHP as a condition of receiving reimbursement for services. This rule is intended to provide assurance to providers and PHPs that the MMIS-related processes for meeting those obligations are being addressed by the Authority by providing guidance and instruction related to the provider's or PHP's interface with MMIS processes, and by identifying the resources providers and PHPs may use to obtain information during this time of transition to the replacement MMIS and during regular MMIS operations.

(5) The Authority shall work with providers and PHPs by providing instructions and guidance to assure that service delivery and reimbursement disruptions related to transition to the replacement MMIS are minimized. Providers and PHPs must appropriately document all eligibility, services, authorization, claims, and payment information during the transition time, and their efforts to comply with instructions and guidance provided by the Authority, so that reimbursement may be correctly provided.

(6) Providers and PHPs must immediately communicate to the Authority any issues they encounter that are not addressed in the Authority's instructions or guidance in seeking eligibility information or activities related to reimbursement for services through MMIS, errors discovered in the correct amount of any reimbursement received for those services, or in applying the instruction or guidance to resolve an issue.

(7) After the transition period is complete, the Authority shall continue to implement this communication plan as long as necessary during regular MMIS operations in order to assist providers and PHPs with technical and system requirements of the replacement MMIS.

Stat. Auth.: ORS 413.042  
Stats. Implemented: ORS 414.065  
Hist.: OHA 14-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

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**Rule Caption:** Audits and Overpayment Recovery for Providers and Contractors receiving payments from or through the Authority.

**Adm. Order No.:** OHA 15-2011(Temp)

**Filed with Sec. of State:** 7-1-2011

**Certified to be Effective:** 7-1-11 thru 12-27-11

**Notice Publication Date:**

**Rules Adopted:** 943-120-1505

**Subject:** This rule adopts and incorporates by reference the Department of Human Services' (Department) Audits and Overpayment Recovery rule: chapter 407-120-1505. Providers or contractors receiving payments from or through the Oregon Health Authority are subject to audit or other post payment review procedures for all payments applicable to items or services furnished or supplied by the provider or contractor to or on behalf of the Authority or to its clients.

HB 2009 (2009) created the Oregon Health Authority (Authority) and transferred to the Authority the Department of Human Services' Divisions with respect to health and health care. Effective July 1, 2011 the Authority is adopting its own operational and programmatic rules as a part of the operational transfer from functions previously performed by the Department as result of HB 2009(2009).

This rule adoption adopts and incorporates by reference the Department's rule which provides the Authority with the authority to conduct audits and overpayment recovery with respect to providers or contractors receiving payments from the Authority.

**Rules Coordinator:** Kym Gasper—(503) 945-6302

## 943-120-1505

### Audits and Overpayment Recovery

Providers or contractors receiving payments from or through the Oregon Health Authority are subject to audit or other post payment review procedures for all payments applicable to items or services furnished or supplied by the provider or contractor to or on behalf of the Authority or to its clients.

(1) The Authority adopts and incorporates by reference the rules established in OAR 407-120-1505, for those matters that involve providers or contractors of the Authority, except as otherwise provided in this rule. Audit rules and procedures from OAR 407-120-1505 as incorporated into this rule ensure proper payments were made by the Authority based on requirements applicable to covered services and promote program integrity.

(2) Any reference to OAR 407-120-1505 in rules or contracts of the Authority are deemed to be references to the requirements of this rule, and shall be construed to apply to providers or contractors receiving payments from or through the Authority.

(3) The Authority authorizes the Department to act on its behalf in carrying out audits and establishing overpayment amounts associated with the administration of programs or activities administered by the Authority.

(4) Provider appeals for the Authority shall be handled by the Authority under the procedures set forth in OAR 407-120-1505. References to "the OPAR Administrator" or "the Administrator" are hereby incorporated as references to "the Authority Director."

[Publication: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 413.042 & 2009 OL Ch. 595, § 9-25  
Stats. Implemented: ORS 411.010, 413.032, 414.065 & 414.715  
Hist.: OHA 15-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

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

**Rule Caption:** 7/11 – Allows the Authority to conduct medical assistance eligibility determinations using OAR chapter 461 medical eligibility rules.

**Adm. Order No.:** DMAP 10-2011

**Filed with Sec. of State:** 6-29-2011

**Certified to be Effective:** 7-1-11

**Notice Publication Date:** 6-1-2011

**Rules Adopted:** 410-120-0006

**Subject:** The General Rules program administrative rules govern Division payments for services to clients. The Division adopted a new rule (OAR 410-120-0006) to allow the Oregon Health Authority to conduct medical assistance-eligibility determinations using the Department of Human Services' OAR chapter 461 medical assistance eligibility rules. This rule also allows the appeal processes for Authority determinations to be conducted pursuant to OAR chapter 461, division 25.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-120-0006

### Medical Eligibility Standards

As the state Medicaid and CHIP agency, the Oregon Health Authority (Authority) is responsible for establishing and implementing eligibility policies and procedure consistent with applicable law. As outlined in 943-001-0020, the Authority, and the Department of Human Services (Department) work together to adopt rules to assure that medical assistance eligibility procedures and determinations are consistent across both agencies.

(1) The Authority adopts and incorporates by reference the rules established in OAR Chapter 461, for all medical eligibility requirements for medical assistance when the Authority conducts eligibility determinations.

(2) Any reference to OAR Chapter 461 in Oregon Administrative Rules or contracts of the Authority are deemed to be references to the requirements of this rule, and shall be construed to apply to all eligibility policies, procedures and determinations by or through the Authority.

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(3) For purposes of this rule, references in OAR chapter 461 to the Department or to the Authority shall be construed to be references to both agencies.

(4) Effective July 1, 2011 the Authority shall conduct medical eligibility determinations using the OAR chapter 461 rules which are in effect on the date the Authority makes the medical eligibility determination.

(5) A request for a hearing resulting from a determination under this rule, made by the Authority shall be handled pursuant to the hearing procedures set out in division 25 of OAR Chapter 461. References to "the Administrator" in division 25 of chapter 461 or "the Department" are hereby incorporated as references to the "Authority."

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.042 & 414.065

Hist.: DMAP 10-2011, f. 6-29-11, cert. ef. 7-1-11

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**Rule Caption:** 7/11 – NCCI edit appeals; Oregon Health Authority (OHA) definition; Pilot project for CAWEM women.

**Adm. Order No.:** DMAP 11-2011

**Filed with Sec. of State:** 6-29-2011

**Certified to be Effective:** 7-1-11

**Notice Publication Date:** 6-1-2011

**Rules Amended:** 410-120-0000, 410-120-0030, 410-120-1560

**Subject:** The General Rules program administrative rules govern Division payments for services to clients. The Division amended as follows:

- **OAR 410-120-0000, Definitions:** 2009 Legislative session created the Oregon Health Authority and moved various Divisions from the Department of Human Services. The Division revised this rule to reflect this change. The Division also added a definition for the National Correct Coding Initiative (NCCI) edits required by the Affordable Care Act.

- **OAR 410-120-0030, Children's Health Insurance Program:** The Division amended this rule to add Columbia, Crook, Douglas, Jefferson, Morrow, Union and Wasco counties to participate in the prenatal care expansion providing prenatal care during pregnancy and labor and delivery services under CHIP for women who are not eligible for Medicare and who are at or below 185% of FPL, subject to the Centers for Medicare and Medicaid Services (CMS) approval.

- **OAR 410-120-1560, Provider Appeals:** The Affordable Care Act requires Medicaid agencies to use NCCI edits. The Division amended this rule to specify the inclusion of provider appeals for an NCCI edit.

- All above rules reflect the Oregon Health Authority name change and updated statutory reference.

- Other text may be revised to improve readability and to take care of necessary "housekeeping" corrections.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-120-0000

### Acronyms and Definitions

Identification of acronyms and definitions within this rule specifically pertain to their use within the Oregon Health Authority (Authority), Division of Medical Assistance Programs (Division) administrative rules. This rule does not include an exhaustive list of Division acronyms and definitions. For more information, see Oregon Health Plan (OHP) program OAR 410-141-0000, Acronyms and Definitions, and any appropriate governing acronyms and definitions in the Department of Human Services (Department) chapter 407 administrative rules, or contact the Division.

(1) AAA – Area Agency on Aging.

(2) Abuse – Provider practices that are inconsistent with sound fiscal, business, or medical practices and result in an unnecessary cost to the Division, or in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care. It also includes recipient practices that result in unnecessary cost to the Division.

(3) Acupuncturist – A person licensed to practice acupuncture by the relevant state licensing board.

(4) Acupuncture services – Services provided by a licensed acupuncturist within the scope of practice as defined under state law.

(5) Acute – A condition, diagnosis or illness with a sudden onset and that is of short duration.

(6) Acquisition cost – Unless specified otherwise in individual program administrative rules, the net invoice price of the item, supply or equipment, plus any shipping and/or postage for the item.

(7) Addiction and Mental Health Division (AMH) – A division within the Authority that administers mental health and addiction programs and services.

(8) Adequate record keeping – Documentation that supports the level of service billed. See 410-120-1360, Requirements for Financial, Clinical, and Other Records, and the individual provider rules.

(9) Administrative medical examinations and reports – Examinations, evaluations, and reports, including copies of medical records, requested on the DMAP 729 form through the local Department branch office or requested or approved by the Division to establish client eligibility for a medical assistance program or for casework planning.

(10) Adverse event – An undesirable and unintentional, though not unnecessarily unexpected, result of medical treatment.

(11) All-inclusive rate – The nursing facility rate established for a facility. This rate includes all services, supplies, drugs and equipment as described in OAR 411-070-0085, and in the health departments, schools, education service districts, developmental disability service programs, area agencies on aging (AAAs), federally recognized American Indian tribes).

(13) Ambulance – A specially equipped and licensed vehicle for transporting sick or injured persons which meets the licensing standards of the Department or the licensing standards of the state in which the ambulance provider is located.

(14) Ambulatory Surgical Center (ASC) – A facility licensed as an ASC by the Department.

(15) American Indian/Alaska Native (AI/AN) – A member of a federally recognized Indian tribe, band or group, an Eskimo or Aleut or other Alaska native enrolled by the Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. 1601, or a person who is considered by the Secretary of the Interior to be an Indian for any purpose.

(16) American Indian/Alaska Native (AI/AN) clinic – A clinic recognized under Indian Health Services (IHS) law or by the Memorandum of Agreement between IHS and the Centers for Medicare and Medicaid Services (CMS).

(17) Ancillary services – Services supportive of or necessary to the provision of a primary service (e.g., anesthesiology is an ancillary service necessary for a surgical procedure); Typically, such medical services are not identified in the definition of a condition/treatment pair, but are medically appropriate to support a service covered under the OHP benefit package; ancillary services and limitations are specified in the OHP (Managed Care) administrative rules related to the Oregon Health Services Commission's Prioritized List of Health Services (410-141-0480 through 410-141-0520), the General Rules Benefit Packages (410-120-1210), Exclusions (410-120-1200) and applicable individual program rules.

(18) Anesthesia services – Administration of anesthetic agents to cause loss of sensation to the body or body part.

(19) Atypical provider – Entity able to enroll as a billing provider (BP) or performing provider for medical assistance programs related non-health care services but which does not meet the definition of health care provider for National Provider Identification (NPI) purposes.

(20) Audiologist – A person licensed to practice audiology by the State Board of Examiners for Speech Pathology and Audiology.

(21) Audiology – The application of principles, methods and procedures of measurement, testing, appraisal, prediction, consultation, counseling and instruction related to hearing and hearing impairment for the purpose of modifying communicative disorders involving speech, language, auditory function, including auditory training, speech reading and hearing aid evaluation, or other behavior related to hearing impairment.

(22) Automated Voice Response (AVR) – A computer system that provides information on clients' current eligibility status from the Division by computerized phone or Web-based response.

(23) Benefit Package – The package of covered health care services for which the client is eligible.

(24) Billing agent or billing service – Third party or organization that contracts with a provider to perform designated services in order to facilitate an Electronic Data Interchange (EDI) transaction on behalf of the provider.

(25) Billing provider (BP) – A person, agent, business, corporation, clinic, group, institution, or other entity who submits claims to and/or receives payment from the Division on behalf of a performing provider and has been delegated the authority to obligate or act on behalf of the performing provider.

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(26) **Buying Up** – The practice of obtaining client payment in addition to the Division or managed care plan payment to obtain a non-covered service or item. (See 410-120-1350 Buying Up)

(27) **By Report (BR)** – Services designated, as BR require operative or clinical and other pertinent information to be submitted with the billing as a basis for payment determination. This information must include an adequate description of the nature, and extent of need for the procedure. Information such as complexity of symptoms, final diagnosis, pertinent physical findings, diagnostic and therapeutic procedures, concurrent problems, and follow-up care will facilitate evaluation.

(28) **Children, Adults and Families Division (CAF)** – A division within the Department, responsible for administering self-sufficiency and child-protective programs.

(29) **Children's Health Insurance Program (CHIP)** – A federal and state funded portion of the Oregon Health Plan (OHP) established by Title XXI of the Social Security Act and administered by the Division.

(30) **Chiropractor** – A person licensed to practice chiropractic by the relevant state licensing board.

(31) **Chiropractic services** – Services provided by a licensed chiropractor within the scope of practice, as defined under state law and Federal regulation.

(32) **Citizen/Alien-Waived Emergency Medical (CAWEM)** – Aliens granted lawful temporary resident status, or lawful permanent resident status under the Immigration and Nationality Act, are eligible only for emergency services and limited service for pregnant women. Emergency services for CAWEM are defined in OAR 410-120-1210 (3)(f).

(33) **Claimant** – a person who has requested a hearing.

(34) **Client** – A person who is currently receiving medical assistance (also known as a recipient).

(35) **Clinical Social Worker** – A person licensed to practice clinical social work pursuant to State law.

(36) **Contiguous Area** – The area up to 75 miles outside the border of the State of Oregon.

(37) **Contiguous area provider** – A provider practicing in a contiguous area.

(38) **Co-payments** – The portion of a claim or medical, dental or pharmaceutical expense that a client must pay out of their own pocket to a provider or a facility for each service. It is usually a fixed amount that is paid at the time service is rendered. (See 410-120-1230 Client Copayment)

(39) **Cost effective** – The lowest cost health care service or item that, in the judgment of Division staff or its contracted agencies, meets the medical needs of the client.

(40) **Current Dental Terminology (CDT)** – A listing of descriptive terms identifying dental procedure codes used by the American Dental Association.

(41) **Current Procedural Terminology (CPT)** – The physicians' CPT is a listing of descriptive terms and identifying codes for reporting medical services and procedures performed by physicians and other health care providers.

(42) **Date of receipt of a claim** – The date on which the Division receives a claim, as indicated by the Internal Control Number (ICN) assigned to a claim. Date of receipt is shown as the Julian date in the 5th through 7th position of the ICN.

(43) **Date of service** – The date on which the client receives medical services or items, unless otherwise specified in the appropriate provider rules. For items that are mailed or shipped by the provider, the date of service is the date on which the order was received, the date on which the item was fabricated, or the date on which the item was mailed or shipped.

(44) **Dental emergency services** – Dental services provided for severe tooth pain, unusual swelling of the face or gums, or an avulsed tooth.

(45) **Dental Services** – Services provided within the scope of practice as defined under state law by or under the supervision of a dentist.

(46) **Dentist** – A person licensed to practice dentistry pursuant to state law of the state in which he/she practices dentistry, or a person licensed to practice dentistry pursuant to Federal law for the purpose of practicing dentistry as an employee of the Federal government.

(47) **Denturist** – A person licensed to practice denture technology pursuant to State law.

(48) **Denturist services** – Services provided, within the scope of practice as defined under State law, by or under the personal supervision of a denturist.

(49) **Dental hygienist** – A person licensed to practice hygiene under the direction of a licensed professional within the scope of practice pursuant to State law.

(50) **Dental hygienist with Limited Access Certification (LAC)** – A person licensed to practice dental hygiene with LAC pursuant to State law.

(51) **Department** – the Department of Human Services.

(52) **Department of Human Services (Department)** – The Department or DHS means the Department of Human Services established in ORS Chapter 409, including such divisions, programs and offices as may be established therein. Wherever the former Office of Medical Assistance Programs, OMAP or DMAP is used in contract or in administrative rule, it shall mean the Division of Medical Assistance Programs (Division). Wherever the former Office of Mental Health and Addiction Services or OMHAS is used in contract or in rule, it shall mean the Addictions and Mental Health Division (AMHD). Wherever the former Seniors and People with Disabilities or SPD is used in contract or in rule, it shall mean the Seniors and People with Disabilities Division (SPD). Wherever the former Children Adults and Families or CAF is used in contract or rule, it shall mean the Children, Adults and Families Division (CAF). Wherever the former Health Division is used in Contract or in rule, it shall mean the Public Health Division (PHD).

(53) **Department representative** – A person who represents the Department and presents the position of the Department in a hearing.

(54) **Diagnosis code** – As identified in the International Classification of Diseases, 9th revision, Clinical Modification (ICD-9-CM), the primary diagnosis code is shown in all billing claims, unless specifically excluded in individual provider rule(s). Where they exist, diagnosis codes shall be shown to the degree of specificity outlined in OAR 410-120-1280, Billing.

(55) **Diagnosis Related Group (DRG)** – A system of classification of diagnoses and procedures based on the ICD-9-CM.

(56) **Division of Medical Assistance Programs (Division)** – A division within the Authority; the Division is responsible for coordinating the medical assistance programs within the State of Oregon including the Oregon Health Plan (OHP) Medicaid demonstration, the State Children's Health Insurance Program (SCHIP -Title XXI), and several other programs.

(57) **Division member** – An OHP client enrolled with a PHP.

(58) **Durable Medical Equipment, Prosthetics, Orthotics and Medical Supplies (DMEPOS)** – Equipment that can stand repeated use and is primarily and customarily used to serve a medical purpose. Examples include wheelchairs, respirators, crutches and custom built orthopedic braces. Medical supplies are non-reusable items used in the treatment of illness or injury. Examples of medical supplies include diapers, syringes, gauze bandages and tubing.

(59) **Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Services (aka, Medichex)** – The Title XIX program of EPSDT services for eligible clients under age 21. It is a comprehensive child health program to assure the availability and accessibility of required medically appropriate health care services and to help Division clients and their parents or guardians effectively use them.

(60) **Electronic Data Interchange (EDI)** – The exchange of business documents from application to application in a federally mandated format or, if no federal standard has been promulgated, using bulk transmission processes and other formats as the Authority designates for EDI transactions. For purposes of rules 407-120-0100 through 407-120-0200, EDI does not include electronic transmission by web portal.

(61) **EDI submitter** – An individual or an entity authorized to establish an electronic media connection with the Authority to conduct and EDI transaction. An EDI submitter may be a trading partner or an agent of a trading partner.

(62) **Electronic Verification System (EVS) eligibility information** that has met the legal and technical specifications of the Division in order to offer eligibility information to enrolled providers of the Division.

(63) **Emergency department** – The part of a licensed hospital facility open 24 hours a day to provide care for anyone in need of emergency treatment.

(64) **Emergency medical condition** – a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in placing the health of the individual (or with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part. An emergency medical condition is determined based on the presenting symptoms (not the final diagnosis) as perceived by a prudent layperson (rather than a health care professional) and includes cases in which the absence of immediate medical attention would not in fact have had the adverse results described in the previous sentence. (This defi-



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dition does not apply to clients with CAWEM benefit package. CAWEM emergency services are governed by OAR 410-120-1210(3)(f)(B)).

(65) Emergency Medical transportation – Transportation necessary for a client with an emergency medical condition, as defined in this rule, and requires a skilled medical professional such as an Emergency Medical Technician (EMT) and immediate transport to a site, usually a hospital, where appropriate emergency medical service is available.

(66) Evidence-based medicine- is the conscientious, explicit, and judicious use of current best evidence in making decisions about the care of individual patients. The practice of evidence based medicine means integrating individual clinical expertise with the best available external clinical evidence from systematic research. By individual clinical expertise we mean the proficiency and judgment that individual clinicians acquire through clinical experience and clinical practice. Increased expertise is reflected in many ways, but especially in more effective and efficient diagnosis and in the more thoughtful identification and compassionate use of individual patients' predicaments, rights, and preferences in making clinical decisions about their care. By best available external clinical evidence we mean clinically relevant research, often from the basic sciences of medicine, but especially from patient centered clinical research into the accuracy and precision of diagnostic tests (including the clinical examination), the power of prognostic markers, and the efficacy and safety of therapeutic, rehabilitative, and preventive regimens. External clinical evidence both invalidates previously accepted diagnostic tests and treatments and replaces them with new ones that are more powerful, more accurate, more efficacious, and safer. (Source: BMJ 1996; 312:71-72 (13 January))

(67) False claim – A claim that a provider knowingly submits or causes to be submitted that contains inaccurate, misleading or omitted information and such inaccurate, misleading or omitted information would result, or has resulted, in an overpayment.

(68) Family planning services – Services for clients of child bearing age (including minors who can be considered to be sexually active) who desire such services and which are intended to prevent pregnancy or otherwise limit family size.

(69) Federally Qualified Health Center (FQHC) – A federal designation for a medical entity which receives grants under Section 329, 330, or 340 of the Public Health Service Act; or a facility designated as a FQHC by Centers for Medicare and Medicaid (CMS) upon recommendation of the U.S. Public Health Service.

(70) Fee-for-service provider – A medical provider who is not reimbursed under the terms of a Division contract with a Prepaid Health Plan (PHP), also referred to as a Managed Care Organization (MCO). A medical provider participating in a PHP may be considered a fee-for-service provider when treating clients who are not enrolled in a PHP.

(71) Fraud – An intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person. It includes any act that constitutes fraud under applicable federal or state law.

(72) Fully dual eligible – For the purposes of Medicare Part D coverage (42 CFR 423.772), Medicare clients who are also eligible for Medicaid, meeting the income and other eligibility criteria adopted by the Department for full medical assistance coverage.

(73) General Assistance (GA) – Medical assistance administered and funded 100% with State of Oregon funds through OHP.

(74) Healthcare Common Procedure Coding System (HCPCS) – A method for reporting health care professional services, procedures, and supplies. HCPCS consists of the Level I – American Medical Association's Physician's Current Procedural Terminology (CPT), Level II – National codes, and Level III – Local codes. The Division uses HCPCS codes; however, Division uses Current Dental Terminology (CDT) codes for the reporting of dental care services and procedures.

(75) Health Maintenance Organization (HMO) – A public or private health care organization which is a federally qualified HMO under Section 1310 of the U.S. Public Health Services Act. HMOs provide health care services on a capitated, contractual basis.

(76) Hearing aid dealer – A person licensed by the Board of Hearing Aid Dealers to sell, lease or rent hearing aids in conjunction with the evaluation or measurement of human hearing and the recommendation, selection, or adaptation of hearing aids.

(77) Home enteral nutrition – Services provided in the client's place of residence to an individual who requires nutrition supplied by tube into the gastrointestinal tract, as described in the Home Enteral/Parenteral Nutrition and IV Services program provider rules.

(78) Home health agency – A public or private agency or organization which has been certified by Medicare as a Medicare home health agency

and which is licensed by the Authority as a home health agency in Oregon, and meets the capitalization requirements as outlined in the Balanced Budget Act (BBA) of 1997.

(79) Home health services – Part-time or intermittent skilled nursing services, other therapeutic services (physical therapy, occupational therapy, speech therapy), and home health aide services made available on a visiting basis in a place of residence used as the client's home.

(80) Home intravenous services – Services provided in the client's place of residence to an individual who requires that medication (antibiotics, analgesics, chemotherapy, hydrational fluids, or other intravenous medications) be administered intravenously as described in the Home Enteral/Parenteral Nutrition and IV Services program administrative rules.

(81) Home parenteral nutrition – Services provided in the client's residence to an individual who is unable to absorb nutrients via the gastrointestinal tract, or for other medical reasons, requires nutrition be supplied parenterally as described in the Home Enteral/Parenteral Nutrition and IV Services program administrative rules.

(82) Hospice – A public agency or private organization or subdivision of either that is primarily engaged in providing care to terminally ill individuals, is certified for Medicare, accredited by the Oregon Hospice Association, and is listed in the Hospice Program Registry.

(83) Hospital – A facility licensed by the Office of Public Health Systems as a general hospital which meets requirements for participation in the OHP under Title XVIII of the Social Security Act. The Division does not consider facilities certified by the CMS as long-term care hospitals, long term acute care hospitals or religious non-medical facilities as hospitals for reimbursement purposes. Out-of-state hospitals will be considered hospitals for reimbursement purposes if they are licensed as a short term acute care or general hospital by the appropriate licensing authority within that state, and if they are enrolled as a provider of hospital services with the Medicaid agency within that state.

(84) Hospital-based professional services – Professional services provided by licensed practitioners or staff based on a contractual or employee/employer relationship and reported as a cost on the Hospital Statement of Reasonable Cost report for Medicare and the Calculation of Reasonable Cost (Division 42) report for the Division.

(85) Hospital laboratory – A laboratory providing professional technical laboratory services as outlined under laboratory services, in a hospital setting, as either an inpatient or outpatient hospital service whose costs are reported on the hospital's cost report to Medicare and to the Division.

(86) Indian Health Program – Any Indian health service facility, any Federally recognized Tribe or Tribal organization, or any FQHC with a 638 designation.

(87) Individual Adjustment Request Form (DMAP 1036) – Form used to resolve an incorrect payment on a previously paid claim, including underpayments or overpayments.

(88) Inpatient hospital services – Services that are furnished in a hospital for the care and treatment of an inpatient. (See Division Hospital Services program administrative rules in chapter 410, division 125 for inpatient covered services.)

(89) Institutional Level of Income Standards (ILIS) – Three times the amount SSI pays monthly to a person who has no other income and who is living alone in the community. This is the standard used for Medicaid eligible individuals to calculate eligibility for long-term nursing care in a nursing facility, Intermediate Care Facilities for the Mentally Retarded (ICF/MR) and individuals on ICF/MR waivers or eligibility for services under Seniors and People with Disabilities' (SPD) Home and Community Based Waiver.

(90) Institutionalized – A patient admitted to a nursing facility or hospital for the purpose of receiving nursing and/or hospital care for a period of 30 days or more.

(91) International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM) (including volumes 1, 2, and 3, as revised annually) – A book of diagnosis codes used for billing purposes when treating and requesting reimbursement for treatment of diseases.

(92) Laboratory – A facility licensed under ORS 438 and certified by CMS, Department of Health and Human Services (DHHS), as qualified to participate under Medicare, to provide laboratory services (as defined in this rule) within or apart from a hospital. An entity is considered to be a laboratory if the entity derives materials from the human body for the purpose of providing information for the diagnosis, prevention or treatment of any disease or impairment of, or the assessment of the health of, human beings. If an entity performs even one laboratory test, including waived tests for these purposes, it is considered to be a laboratory, under the Clinical Laboratory Improvement Act (CLIA).

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(93) Laboratory services – Those professional and technical diagnostic analyses of blood, urine, and tissue ordered by a physician or other licensed practitioner of the healing arts within his/her scope of practice as defined under State law and provided to a patient by or under the direction of a physician or appropriate licensed practitioner in an office or similar facility, hospital, or independent laboratory.

(94) Licensed Direct Entry Midwife – A practitioner who has acquired the requisite qualifications to be registered and/or legally licensed to practice midwifery by the Public Health Division.

(95) Liability insurance – Insurance that provides payment based on legal liability for injuries or illness. It includes, but is not limited to, automobile liability insurance, uninsured and underinsured motorist insurance, homeowner's liability insurance, malpractice insurance, product liability insurance, Worker's Compensation, and general casualty insurance. It also includes payments under state wrongful death statutes that provide payment for medical damages.

(96) Managed Care Organization (MCO) – Contracted health delivery system providing capitated or prepaid health services, also known as a Prepaid Health Plan (PHP). An MCO is responsible for providing, arranging and making reimbursement arrangements for covered services as governed by state and federal law. An MCO may be a Chemical Dependency Organization (CDO), Fully Capitated Health Plan (FCHP), Dental Care Organization (DCO), Mental Health Organization (MHO), or Physician Care Organization (PCO).

(97) Maternity Case Management – A program available to pregnant clients. The purpose of Maternity Case Management is to extend prenatal services to include non-medical services, which address social, economic and nutritional factors. For more information refer to the Division's Medical-Surgical Services Program administrative rules.

(98) Medicaid – A federal and state funded portion of the medical assistance programs established by Title XIX of the Social Security Act, as amended, administered in Oregon by the Authority.

(99) Medical assistance eligibility confirmation – Verification through the Electronic Verification System (EVS), AVR, Secure Web site or Electronic Data Interchange (EDI), or an authorized Department or Authority representative.

(100) Medical services – Care and treatment provided by a licensed medical provider directed at preventing, diagnosing, treating or correcting a medical problem.

(101) Medical transportation – Transportation to or from covered medical services.

(102) Medically appropriate – Services and medical supplies that are required for prevention, diagnosis or treatment of a health condition which encompasses physical or mental conditions, or injuries, and which are:

(a) Consistent with the symptoms of a health condition or treatment of a health condition;

(b) Appropriate with regard to standards of good health practice and generally recognized by the relevant scientific community, evidence-based medicine and professional standards of care as effective;

(c) Not solely for the convenience of an OHP client or a provider of the service or medical supplies; and

(d) The most cost effective of the alternative levels of medical services or medical supplies which can be safely provided to a Division client or Primary Care Manager (PCM) Member in the PHP's or PCM's judgment.

(103) Medicare – A federally administered program offering health insurance benefits for persons aged 65 or older and certain other aged or disabled persons. This program includes:

(a) Hospital Insurance (Part A) for Inpatient services in a hospital or skilled nursing facility, home health care, and hospice care; and

(b) Medical Insurance (Part B) for physicians' services, outpatient hospital services, home health care, end-stage renal dialysis, and other medical services and supplies;

(c) Prescription drug coverage (Part D) – Covered Part D drugs include prescription drugs, biological products, insulin as described in specified paragraphs of section 1927(k) of the Social Security Act, and vaccines licensed under section 351 of the Public Health Service Act; also includes medical supplies associated with the injection of insulin; Part D covered drugs prohibit Medicaid Title XIX Federal Financial Participation (FFP). For limitations, see the Division's Pharmaceutical Services program administrative rules in chapter 410, division 121.

(104) Medichex for Children and Teens – Services also known as Early and Periodic Screening, Diagnosis and Treatment (EPSDT) services – The Title XIX program of EPSDT services for eligible clients under age 21. It is a comprehensive child health program to assure the availability and

accessibility of required medically appropriate health care services and to help Division clients and their parents or guardians effectively use them.

(105) NCCI- National Correct Coding Initiative— The Centers for Medicare and Medicaid Services (CMS) developed the National Correct Coding Initiative (NCCI) to promote national correct coding methodologies and to control improper coding leading to inappropriate payment.

(106) National Provider Identification (NPI) – Federally directed provider number mandated for use on HIPAA covered transactions; individuals, provider organizations and subparts of provider organizations that meet the definition of health care provider (45 CFR 160.103) and who conduct HIPAA covered transactions electronically are eligible to apply for an NPI; Medicare covered entities are required to apply for an NPI.

(107) Naturopath – A person licensed to practice naturopathy pursuant to State law.

(108) Naturopathic services – Services provided within the scope of practice as defined under State law.

(109) Non-covered services – Services or items for which the Division is not responsible for payment or reimbursement. Non-covered services are identified in:

(a) OAR 410-120-1200, Excluded Services and Limitations; and,

(b) 410-120-1210, Medical Assistance Benefit Packages and Delivery System;

(c) 410-141-0480, OHP Benefit Package of Covered Services;

(d) 410-141-0520, Prioritized List of Health Services; and

(e) Any other applicable Division administrative rules.

(110) Nurse Anesthetist, C.R.N.A. – A registered nurse licensed in the State of Oregon who is currently certified by the American Association of Nurse Anesthetists Council on Certification.

(111) Nurse Practitioner – A person licensed as a registered nurse and certified by the Board of Nursing to practice as a Nurse Practitioner pursuant to State law.

(112) Nurse Practitioner services – Services provided within the scope of practice of a Nurse Practitioner as defined under State law and by rules of the Board of Nursing.

(113) Nursing facility – A facility licensed and certified by the Department SPD and defined in OAR 411-070-0005.

(114) Nursing services – Health care services provided to a patient by a registered professional nurse or a licensed practical nurse under the direction of a licensed professional within the scope of practice as defined by State law.

(115) Nutritional counseling – Counseling which takes place as part of the treatment of a person with a specific condition, deficiency or disease such as diabetes, hypercholesterolemia, or phenylketonuria.

(116) Occupational Therapist – A person licensed by the State Board of Examiners for Occupational Therapy.

(117) Occupational Therapy – The functional evaluation and treatment of individuals whose ability to adapt or cope with the task of living is threatened or impaired by developmental deficiencies, physical injury or illness, aging process, or psychological disability; the treatment utilizes task-oriented activities to prevent or correct physical and emotional difficulties or minimize the disabling effect of these deficiencies on the life of the individual.

(118) Optometric services – Services provided, within the scope of practice of optometrists as defined under State law.

(119) Optometrist – A person licensed to practice optometry pursuant to State law.

(120) Oregon Health Authority (OHA)— The Authority or OHA means the Oregon Health Authority established in ORS Chapter 413, that administers the funds for Titles XIX and XXI of the Social Security Act. It is the single state agency for the administration of the medical assistance program under ORS chapter 414. For purposes of these rules the agencies under the authority of the OHA are the Public Health Division, the Addictions and Mental Health Division, and the Division of Medical Assistance Programs. These divisions are referred to as the Authority whereas the divisions under authority of the Department of Human Services are CAF and SPD and are referred to as the Department.

(121) Oregon Youth Authority (OYA) – The state department charged with the management and administration of youth correction facilities, state parole and probation services and other functions related to state programs for youth corrections.

(122) Out-of-State providers – Any provider located outside the borders of the State of Oregon:

(a) Contiguous area providers are those located no more than 75 miles from the border of the State of Oregon;

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(b) Non-contiguous area providers are those located more than 75 miles from the borders of the State of Oregon.

(123) Outpatient hospital services – Services that are furnished in a hospital for the care and treatment of an outpatient. For information on outpatient-covered services, see the Division's Hospital Services administrative rules found in chapter 410, division 125.

(124) Overdue claim – A valid claim that is not paid within 45 days of the date it was received.

(125) Overpayment – Payment(s) made by Division to a provider in excess of the correct Division payment amount for a service. Overpayments are subject to repayment to the Division.

(126) Overuse – Use of medical goods or services at levels determined by Division medical staff and/or medical consultants to be medically unnecessary or potentially harmful.

(127) Panel – The Hearing Officer Panel established by section 3, chapter 849, Oregon Laws 1999.

(128) Payment Authorization – Authorization granted by the responsible agency, office or organization for payment prior or subsequent to the delivery of services, as described in these General Rules and the appropriate program rules. See the individual program rules for services requiring authorization.

(129) Peer Review Organization (PRO) – An entity of health care practitioners of services contracted by the State to review services ordered or furnished by other practitioners in the same professional field.

(130) Pharmaceutical Services – Services provided by a Pharmacist, including medications dispensed in a pharmacy upon an order of a licensed practitioner prescribing within his/her scope of practice.

(131) Pharmacist – A person licensed to practice pharmacy pursuant to state law.

(132) Physical Capacity Evaluation – An objective, directly observed measurement of a person's ability to perform a variety of physical tasks combined with subjective analysis of abilities of the person.

(133) Physical Therapist – A person licensed by the relevant State licensing authority to practice Physical Therapy.

(134) Physical Therapy – Treatment comprising exercise, massage, heat or cold, air, light, water, electricity or sound for the purpose of correcting or alleviating any physical or mental disability, or the performance of tests as an aid to the assessment, diagnosis or treatment of a human being. Physical Therapy shall not include radiology or electrosurgery.

(135) Physician – A person licensed to practice medicine pursuant to state law of the state in which he/she practices medicine, or a person licensed to practice medicine pursuant to federal law for the purpose of practicing medicine under a contract with the federal government.

(136) Physician Assistant – A person licensed as a physician assistant in accordance with ORS 677. Physician assistants provide medical services under the direction and supervision of an Oregon licensed physician according to a practice description approved by the Board of Medical Examiners.

(137) Physician Services – Services provided, within the scope of practice as defined under state law, by or under the personal supervision of a physician.

(138) Podiatric Services – Services provided within the scope of practice of podiatrists as defined under state law.

(139) Podiatrist – A person licensed to practice podiatric medicine pursuant to state law.

(140) Post-Payment Review – Review of billings and/or other medical information for accuracy, medical appropriateness, level of service or for other reasons subsequent to payment of the claim.

(141) Practitioner – A person licensed pursuant to state law to engage in the provision of health care services within the scope of the practitioner's license and/or certification.

(142) Premium sponsorship – Premium donations made for the benefit of one or more specified Division clients (See 410-120-1390).

(143) Prepaid Health Plan (PHP) – A managed health, dental, chemical dependency, or mental health organization that contracts with the Division and/or AMH on a case managed, prepaid, capitated basis under OHP. PHP's may be a Chemical Dependency Organization (CDO), Dental Care Organization (DCO), Fully Capitated Health Plan (FCHP), Mental Health Organization (MHO), or Physician Care Organization (PCO)

(144) Primary Care Physician – A physician who has responsibility for supervising, coordinating and providing initial and primary care to patients, initiating Referrals for consultations and specialist care, and maintaining the continuity of patient care.

(145) Primary Care Provider (PCP) – Any enrolled medical assistance provider who has responsibility for supervising, coordinating, and provid-

ing initial and primary care within their scope of practice for identified clients. PCPs initiate Referrals for care outside their scope of practice, consultations and specialist care, and assure the continuity of medically appropriate client care.

(146) Prior Authorization (PA) – Payment authorization for specified medical services or items given by Division staff, or its contracted agencies prior to provision of the service. A physician referral is not a PA.

(147) Prioritized List of Health Services – Also referred to as the Prioritized List, the Oregon Health Services Commission's (HSC) listing of health services with "expanded definitions" of ancillary Services and preventive services and the HSC practice guidelines, as presented to the Oregon Legislative Assembly. The Prioritized List is generated and maintained by HSC. The Prioritized List governs medical assistance programs' health services and benefit packages pursuant to these General Rules (OAR 410-120-0000 et seq.) and OAR 410-141-0480 through 410-141-0520.

(148) Private Duty Nursing Services – Nursing services provided within the scope of license by a registered nurse or a licensed practical nurse, under the general direction of the patient's physician to an individual who is not in a health care facility.

(149) Provider – An individual, facility, institution, corporate entity, or other organization which supplies health care services or items, also termed a performing provider, or bills, obligates and receives reimbursement on behalf of a performing provider of services, also termed a billing provider (BP). The term provider refers to both performing providers and BP(s) unless otherwise specified.

(150) Provider Organization – a group practice, facility, or organization that is:

(a) An employer of a provider, if the provider is required as a condition of employment to turn over fees to the employer; or

(b) The facility in which the service is provided, if the provider has a contract under which the facility submits claims; or

(c) A foundation, plan, or similar organization operating an organized health care delivery system, if the provider has a contract under which the organization submits the claim; and

(d) Such group practice, facility, or organization is enrolled with the Authority, and payments are made to the group practice, facility or organization.

(e) If such entity solely submits billings on behalf of providers and payments are made to each provider, then the entity is an agent.

(See Subparts of Provider Organization)

(151) Public Health Clinic – A clinic operated by county government.

(152) Public Rates – The charge for services and items that providers, including Hospitals and nursing facilities, made to the general public for the same service on the same date as that provided to Division clients.

(153) Qualified Medicare Beneficiary (QMB) – A Medicare beneficiary, as defined by the Social Security Act and its amendments.

(154) Qualified Medicare and Medicaid Beneficiary (QMM) – A Medicare beneficiary who is also eligible for Division coverage.

(155) Quality Improvement Organization (QIO) – An entity that has a contract with CMS under Part B of Title XI to perform utilization and quality control review of the health care furnished, or to be furnished, to Medicare and Medicaid clients; formerly known as a Peer Review Organization.

(156) Radiological Services – Those professional and technical radiological and other imaging services for the purpose of diagnosis and treatment ordered by a physician or other licensed practitioner of the healing arts within the scope of practice as defined under state law and provided to a patient by or under the direction of a physician or appropriate licensed practitioner in an office or similar facility, Hospital, or independent radiological facility.

(157) Recipient – A person who is currently eligible for medical assistance (also known as a client).

(158) Recreational therapy – recreational or other activities that are diversional in nature (includes, but is not limited to, social or recreational activities or outlets).

(159) Recoupment – An accounts receivable system that collects money owed by the provider to the Division by withholding all or a portion of a provider's future payments.

(160) Referral – The transfer of total or specified care of a client from one provider to another. As used by the Division, the term referral also includes a request for a consultation or evaluation or a request or approval of specific services. In the case of clients whose medical care is contracted through a Prepaid Health Plan (PHP), or managed by a Primary Care Physician, a referral is required before non-emergency care is covered by the PHP or the Division.



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(161) Remittance Advice (RA) – The automated notice a provider receives explaining payments or other claim actions. It is the only notice sent to providers regarding claim actions.

(162) Request for Hearing – A clear expression, in writing, by an individual or representative that the person wishes to appeal a Department or Authority decision or action and wishes to have the decision considered by a higher authority.

(163) Retroactive Medical Eligibility – Eligibility for medical assistance granted to a client retroactive to a date prior to the client's application for medical assistance.

(164) Sanction – An action against providers taken by the Division in cases of fraud, misuse or abuse of division requirements.

(165) School Based Health Service – A health service required by an Individualized Education Plan (IEP) during a child's education program which addresses physical or mental disabilities as recommended by a physician or other licensed practitioner.

(166) Seniors and People with Disabilities Division (SPD) – An Office of the Department responsible for the administration of programs for seniors and people with disabilities.

(167) Service agreement – An agreement between the Division and a specified provider to provide identified services for a specified rate. Service agreements may be limited to services required for the special needs of an identified client. Service agreements do not preclude the requirement for a provider to enroll as a provider.

(168) Sliding Fee Schedule – A fee schedule with varying rates established by a provider of health care to make services available to indigent and low-income individuals. The sliding-fee schedule is based on ability to pay.

(169) Social Worker – A person licensed by the Board of Clinical Social Workers to practice clinical social work.

(170) Speech-Language Pathologist – A person licensed by the Oregon Board of Examiners for Speech Pathology.

(171) Speech-Language Pathology Services – The application of principles, methods, and procedure for the measuring, evaluating, predicting, counseling or instruction related to the development and disorders of speech, voice, or language for the purpose of preventing, habilitating, rehabilitating, or modifying such disorders in individuals or groups of individuals.

(172) Spend-Down – The amount the client must pay for medical expenses each month before becoming eligible for medical assistance under the Medically Needy Program. The spend-down is equal to the difference between the client's total countable income and Medically Needy program income limits.

(173) State Facility – A Hospital or training center operated by the State of Oregon, which provides long-term medical or psychiatric care.

(174) Subparts (of a provider organization) – For NPI application, subparts of a health care provider organization would meet the definition of health care provider (45 CFR 160.103) if it were a separate legal entity and if it conducted HIPAA-covered transactions electronically, or has an entity do so on its behalf, could be components of an organization or separate physical locations of an organization.

(175) Subrogation – Right of the State to stand in place of the client in the collection of third party resources (TPR).

(164) Supplemental Security Income (SSI) – A program available to certain aged and disabled persons which is administered by the Social Security Administration through the Social Security office.

(177) Surgical Assistant – A person performing required assistance in surgery as permitted by rules of the State Board of Medical Examiners.

(178) Suspension – A sanction prohibiting a provider's participation in the medical assistance programs by deactivation of the provider's Division-assigned billing number for a specified period of time. No payments, Title XIX or State Funds, will be made for services provided during the suspension. The number will be reactivated automatically after the suspension period has elapsed.

(179) Targeted Case Management (TCM)- Activities that will assist the client in a target group in gaining access to needed medical, social, educational and other services. This includes locating, coordinating, and monitoring necessary and appropriate services. TCM services are often provided by Allied Agency providers.

(180) Termination – A sanction prohibiting a provider's participation in the Division's programs by canceling the provider's Division-assigned billing number and agreement. No payments, Title XIX or State Funds, will be made for services provided after the date of termination. Termination is permanent unless:

(a) The exceptions cited in 42 CFR 1001.221 are met; or

(b) Otherwise stated by the Division at the time of termination.

(181) Third Party Resource (TPR) – A medical or financial resource which, under law, is available and applicable to pay for medical Services and items for a Division client.

(182) Transportation – See Medical Transportation.

(183) Type A Hospital – A hospital identified by the Office of Rural Health as a Type A hospital.

(184) Type B AAA Unit – A Type B Area Agency on Aging (AAA) funded by Oregon Project Independence (OPI), Title III – Older Americans Act, and Title XIX of the Social Security Act.

(185) Type B Hospital – A hospital identified by the Office of Rural Health as a Type B hospital.

(186) Usual Charge (UC) – The lesser of the following unless prohibited from billing by federal statute or regulation:

(a) The provider's charge per unit of service for the majority of non-medical assistance users of the same service based on the preceding month's charges;

(b) The provider's lowest charge per unit of service on the same date that is advertised, quoted or posted. The lesser of these applies regardless of the payment source or means of payment;

(c) Where the provider has established a written sliding fee scale based upon income for individuals and families with income equal to or less than 200% of the federal poverty level, the fees paid by these individuals and families are not considered in determining the usual charge. Any amounts charged to third party resources (TPR) are to be considered.

(187) Utilization Review (UR) – The process of reviewing, evaluating, and assuring appropriate use of medical resources and services. The review encompasses quality, quantity, and appropriateness of medical care to achieve the most effective and economic use of health care services.

(188) Valid Claim – An invoice received by the Division or the appropriate Authority/Department office for payment of covered health care services rendered to an eligible client which:

(a) Can be processed without obtaining additional information from the provider of the goods or services or from a TPR; and

(b) Has been received within the time limitations prescribed in these General Rules (OAR 410 division 120).

(189) Vision Services – Provision of corrective eyewear, including ophthalmological or optometric examinations for determination of visual acuity and vision therapy and devices.

Stat. Auth.: ORS 409.050, 409.010, 409.110 & 414.065

Stats. Implemented: ORS 414.065

Hist.: AFS 5-1981, f. 1-23-81, ef. 3-1-81; AFS 33-1981, f. 6-23-81, ef. 7-1-81; AFS 47-1982, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82, for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 57-1982, f. 6-28-82, ef. 7-1-82; AFS 81-1982, f. 8-30-82, ef. 9-1-82; AFS 4-1984, f. & ef. 2-1-84; AFS 12-1984, f. 3-16-84, ef. 4-1-84; AFS 13-1984(Temp), f. & ef. 4-2-84; AFS 37-1984, f. 8-30-84, ef. 9-1-84; AFS 24-1985, f. 4-24-85, ef. 6-1-85; AFS 13-1987, f. 3-31-87, ef. 4-1-87; AFS 7-1988, f. & cert. ef. 2-1-88; AFS 69-1988, f. & cert. ef. 12-5-88; HR 2-1990, f. 2-12-90, cert. ef. 3-1-90, Renumbered from 461-013-0005; HR 25-1991(Temp), f. & cert. ef. 7-1-91; HR 41-1991, f. & cert. ef. 10-1-91; HR 32-1993, f. & cert. ef. 11-1-93; HR 2-1994, f. & cert. ef. 2-1-94; HR 31-1994, f. & cert. ef. 11-1-94; HR 40-1994, f. 12-30-94, cert. ef. 1-1-95; HR 5-1997, f. 1-31-97, cert. ef. 2-1-97; HR 21-1997, f. & cert. ef. 10-1-97; OMAP 20-1998, f. & cert. ef. 7-1-98; OMAP 10-1999, f. & cert. ef. 4-1-99; OMAP 31-1999, f. & cert. ef. 10-1-99; OMAP 11-2000, f. & cert. ef. 6-23-00; OMAP 35-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 42-2002, f. & cert. ef. 10-1-02; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 62-2003, f. 9-8-03, cert. ef. 10-1-03; OMAP 67-2004, f. 9-14-04, cert. ef. 10-1-04; OMAP 10-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; OMAP 65-2005, f. 11-30-05, cert. ef. 1-1-06; OMAP 15-2006, f. 6-12-06, cert. ef. 7-1-06; OMAP 45-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 24-2007, f. 12-11-07 cert. ef. 1-1-08; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 13-2009, f. 6-12-09, cert. ef. 7-1-09; DMAP 11-2011, f. 6-29-11, cert. ef. 7-1-11

## 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 Oregon Health Authority (Authority) in accordance with the Oregon Health Plan waiver and the CHIP state plan. The General Rules Program (OAR 410-120-0000 et. seq.) and Oregon Health Plan Program rules (OAR 410-141-0000 et. seq.) applicable to the Medicaid program are also applicable to the Authority'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.

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(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 OAR 410-120-1210).

(4) CHIP Prenatal coverage for women not eligible for Medicaid at or below 185% of the FPL:

(a) Notwithstanding subsections (2) and (3) of this rule, pregnant women, who are not eligible for Medicaid and who reside 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 expansion program. The benefit identifier for this category is BMH, PERC code CX:

- (A) Effective 4/1/08 Multnomah and Deschutes;
- (B) Effective 10/1/09 Benton, Clackamas, Hood River and Jackson;
- (C) Effective 1/1/11 Lane.
- (D) Effective 7/1/11 Columbia, Crook, Douglas, Jefferson, Morrow, Union and Wasco.

(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 Authority-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:

- (i) Postpartum care beyond the global payment;
- (ii) Sterilization;
- (iii) Abortion;
- (iv) Death with dignity services;
- (v) Hospice.

Stat. Auth.: ORS 409.010, 409.040 & 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; DMAP 23-2010, f. & cert. ef. 9-1-10; DMAP 39-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 11-2011, f. 6-29-11, cert. ef. 7-1-11

## 410-120-1560

### Provider Appeals

(1) For purposes of Division of Medical Assistance Programs (Division) provider appeal rules in chapter 410, division 120 the following terms and definitions are used:

(a) "Provider" means a person or entity enrolled with the Division, or under contract with the Division that is subject to the Division rules, that has requested an appeal in relation to health care, items, drugs or services provided or requested to be provided to a client on a fee-for-service basis or under contract with the Division where that contract expressly incorporates these rules;

(b) "Provider Applicant" means a person or entity that has submitted an application to become an enrolled provider with the Division but the application has not been approved;

(c) "Prepaid Health Plan" has the meaning in OAR 410-141-0000, except to the extent that Mental Health Organizations (MHO) have separate procedures applicable to provider grievances and appeals;

(d) "Prepaid Health Plan provider" means a person or entity enrolled with the Division but that provided health care services, supplies or items to a client enrolled with a PHP, including both participating providers and non-participating providers as those terms are defined in OAR 410-141-0000, except that services provided to a client enrolled with an MHO shall be governed by the provider grievance and appeal procedures administered by the Office of Mental Health and Addiction Services;

(e) The "Provider Appeal Rules" refers to the rules in OAR 410-120-1560 to 410-120-1700, describing the availability of appeal procedures and the procedures applicable to each appeal procedure.

(f) "Non-participating provider" has the meaning in OAR 410-141-0000

(2) A Division of Medical Assistance Programs (Division) enrolled provider may appeal a Division decision in which the provider is directly adversely affected such as the following:

(a) A denial or limitation of payment allowed for services or items provided;

(b) A denial related to a NCCI edit;

(c) A denial of provider's application for new or continued participation in the Medical Assistance Program; or

(d) Sanctions imposed, or intended to be imposed, by the Medical Assistance program on a provider or provider entity; and

(e) Division overpayment determinations made under OAR 410-120-1397.

(3) Client appeals of actions must be handled in accordance with OAR 140-120-1860 and 410-120-1865.

(4) A provider appeal is initiated by filing a timely request in writing for review with the Division.

(a) A provider appeal request is not required to follow a specific format as long as it provides a clear written expression from a provider or provider applicant expressing disagreement with a Division decision or from a Prepaid Health Plan (PHP) provider expressing disagreement with a decision by a PHP.

(b) The request should identify the decision made by the Division or a PHP that is being appealed and the reason the provider disagrees with that decision.

(c) A provider appeal request is timely if it is received by the Division within 180 calendar days of the date of the Division's decision or the date of the PHP decision on the provider's appeal to the PHP.

(5) Types and methods for provider appeals are listed below.

(a) A Division of Medical Assistance Programs (Division) denial of or limitation of payment allowed, Division claim decision including prior authorization decision, or Division overpayment determination for services or items provided to a client must be appealed as claim re-determinations under OAR 410-120-1570.

(b) A notice of sanctions imposed, or intended to be imposed, the effect of the notice of sanction is, or will be, to deny suspend or revoke a provider number necessary to participate in the medical assistance on a provider, or provider applicant is entitled to appeal under OAR 410-120-1600. A provider that is entitled to appeal a notice of sanction as a contested case may request administrative review instead of contested case hearing if the provider submits a written request for administrative review of the notice of sanction and agrees in writing to waive the right to a contested case hearing and the Division agrees to review the appeal of the notice of sanction as an administrative review.

(c) All provider appeals of Division decisions not described in paragraphs (4)(a) or (b) are handled as administrative reviews in accordance with OAR 410-120-1580, unless Division issues an order granting a contested case hearing.

(6) Decisions that adversely affect a provider may be made by different program areas within the Department/Authority.

(a) Decisions issued by the Office of Payment Accuracy and Recovery (OPAR) or the Department information security office shall be appealed in accordance with the process described in the notice.

(b) Other program areas within the Department/Authority that have responsibility for administering medical assistance funding, such as nursing home care or community mental health and developmental disabilities program services, may make decisions that adversely affect a provider. Those providers are subject to the provider grievance or appeal processes applicable to those payment or program areas.

(c) Some decisions that adversely affect a provider are issued on behalf of the Division by Department or Authority contractors such as the Division pharmacy benefits manager, by entities performing statutory functions related to the medical assistance programs such as the Drug Use Review Board, or by other entities in the conduct of program integrity activities applicable to the administration of the medical assistance programs. For these decisions made on behalf of the division in which the Division has legal authority to make the final decision in the matter, a provider may appeal such a decision to the Division as an administrative review and the Division may accept such review.

(d) This rule does not apply to contract administration issues that may arise solely between the Division and a PHP. Such issues shall be governed by the terms of the applicable contract.

(e) The Division provides limited provider appeals for Prepaid Health Plan providers (PHP providers) or non-participating providers concerning a decision by a Prepaid Health Plan (PHP). In general, the relationship between a PHP and PHP providers is a contract matter between them. Client appeals are handled under the client appeal rules, not provider appeal rules.

(i) The PHP provider seeking a provider appeal must have a current valid provider enrollment agreement with the Division and, unless the provider is a non-participating provider, must also have a contract with the Prepaid Health Plan as a PHP provider; and

(ii) The PHP provider or non-participating provider must have exhausted the applicable appeal procedure established by the PHP and the

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request for provider appeal must include a copy of the written decision(s) of the PHP that is being appealed from and a copy of any PHP policy being applied in the appeal; and

(iii) The PHP provider appeal or non-participating provider appeal from a PHP decision is limited to issues related to the scope of coverage and authorization of services under the Oregon Health Plan, including whether services are included as covered on the Prioritized List, guidelines, and in the OHP Benefit package. The Division provider appeal process does not include PHP payment or claims reimbursement amount issues, except in relation to non-participating provider matters governed by Division rule.

(iv) A timely provider appeal must be made within 30 calendar days from the date of the PHP's decision and include evidence that the PHP was sent a copy of the provider appeal. In every provider appeal involving a PHP decision, the PHP will be treated as a participant in the appeal.

(7) In the event a request for provider appeal is not timely, the Division will determine whether the failure to file the request was caused by circumstances beyond the control of the provider, provider applicant or PHP provider. In determining whether to accept a late request for review, the Division requires the request to be supported by a written statement that explains why the request for review is late. The Division may conduct such further inquiry as the Division deems appropriate. In determining timeliness of filing a request for review, the amount of time that the Division determines accounts for circumstances beyond the control of the provider is not counted. The Division may refer an untimely request to the Office of Administrative Hearings for a hearing on the question of timeliness.

(8) The burden of presenting evidence to support a provider appeal is on the provider, provider applicant or PHP provider.

(a) Consistent with OAR 410-120-1360, payment on a claim will only be made for services that are adequately documented and billed in accordance with OAR 410-120-1280 and all applicable administrative rules related to covered services for the client's benefit package and establishing the conditions under which services, supplies or items are covered, such as the Prioritized List, medical appropriateness and other applicable standards.

(b) Eligibility for enrollment and for continued enrollment is based on compliance with applicable rules, the information submitted or required to be submitted with the application for enrollment and the enrollment agreement, and the documentation required to be produced or maintained in accordance with OAR 410-120-1360.

(9) Provider appeal proceedings, if any, will be held in Salem, unless otherwise stipulated to by all parties and agreed to by the Division.

Stat. Auth.: ORS 409.050, 409.010, 409.110 & 414.065  
Stats. Implemented: ORS 409.010

Hist.: AFS 13-1984(Temp), f. & ef. 4-2-84; AFS 37-1984, f. 8-30-44, ef. 9-1-84; AFS 51-1985, f. 8-16-85, ef. 9-1-85; AFS 47-1982, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; HR 2-1990, f. 2-12-90, cert. ef. 3-1-90, Renumbered from 461-013-0191; HR 41-1991, f. & cert. ef. 10-1-91; HR 32-1993, f. & cert. ef. 11-1-93, Renumbered from 410-120-0780; HR 5-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 41-2000, f. & cert. ef. 12-1-00; OMAP 19-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; OMAP 15-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 24-2007, f. 12-11-07 cert. ef. 1-1-08; DMAP 13-2009 f. 6-12-09, cert. ef. 7-1-09; DMAP 11-2011, f. 6-29-11, cert. ef. 7-1-11

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**Rule Caption:** 7/11 – Expanding access to diabetic supplies by allowing both DMEPOS providers and pharmacies to dispense.

**Adm. Order No.:** DMAP 12-2011

**Filed with Sec. of State:** 6-29-2011

**Certified to be Effective:** 7-1-11

**Notice Publication Date:** 6-1-2011

**Rules Amended:** 410-122-0520

**Subject:** The Durable Medical Equipment, Prosthetics, Orthotics and Supplies Program administrative rules govern Division payments for services to certain clients. The Division amended this administrative rule governing diabetic supplies to:

- Accommodate pharmacies as eligible dispensing agents of this supply type;
- Clarify the requirements of prior authorization and supply limitations;
- Add new claims submission criteria that are needed to implement this expansion to client access;
- Reflect the Division's governing agency change from Department of Human Resources to Oregon Health Authority and update statutory reference.

- Improve readability and to take care of other necessary "house-keeping" corrections.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-122-0520

### Glucose Monitors and Diabetic Supplies

(1) Indications and limitations of coverage and medical appropriateness:

(a) The Division of Medical Assistance Programs (Division) may cover home blood glucose monitors and related diabetic supplies for clients with diabetes who can self-monitor blood glucose (SMBG) or be monitored with assistance;

(b) Coverage of home blood glucose monitors is limited to clients meeting all of the following conditions:

(A) The client has diabetes which is being treated by a practitioner; and

(B) The glucose monitor and related accessories and supplies have been ordered by a practitioner who is treating the client's diabetes; and

(C) The client or caregiver has successfully completed training or is scheduled to begin training in the use of the monitor, test strips, and lancing devices; and

(D) The client or caregiver is capable of using the test results to assure the client's appropriate glycemic control; and

(E) The device is designed for home use;

(c) Home blood glucose monitors with special features (E2100 or E2101) may be covered for clients who meet the basic coverage criteria (1)(b)(A)-(E) of this rule; and:

(A) The treating practitioner certifies that the client has a severe visual impairment (i.e., best corrected visual acuity of 20/200 or worse) requiring use of this special monitoring system; or

(B) For code E2101, the treating practitioner certifies that the client has an impairment of manual dexterity severe enough to require the use of this special monitoring system.

(d) If a glucose monitor is covered, lancets blood glucose test reagent strips glucose control solutions insulin syringes and spring powered devices for lancets) may also be covered. Coverage limitations for these supplies are as follows:

(A) A4258 – only one spring powered device every six months;

(B) A4253 and A4259 – The provider of the test strips and lancets must maintain, in their records, the order from the treating practitioner. Before dispensing more test strips and lancets, the client must have nearly exhausted their supply. The amount of test strips and lancets covered are based on the needs of the client according to the following limitations:

(i) Up to 100 test strips and 100 lancets every three months for clients who are not currently being treated with insulin injections;

(ii) Up to 100 test strips and 100 lancets every month for clients who are currently being treated with insulin injections;

(iii) For clients under age 19 with Type I diabetes, up to 100 test strips and 100 lancets every month;

(iv) For clients with gestational diabetes:

(I) Insulin-treated: Up to 100 test strips and 100 lancets per month no longer than 60 days beyond the duration of the pregnancy;

(II) Non-insulin treated: Up to 100 test strips and 100 lancets per month no longer than 60 days beyond the duration of the pregnancy;

(v) Upon refills of quantities that exceed the utilization guidelines, the treating practitioner must have:

(I) Documented in the client's medical record the specific reason for the additional supplies for that particular client; and

(II) Seen the client and have evaluated their diabetes control within six months prior to ordering quantities that exceed the utilization guidelines; and

(III) Documented in the client's medical record, a specific narrative statement that adequately specifies the frequency at which the client is actually testing or a copy of the client's log; or there must be documentation in the provider's records, (e.g., a copy of the client's log) that the client is actually testing at a frequency that corroborates the quantity of supplies that have been dispensed. If the client is regularly using quantities of supplies that exceed the utilization guidelines, new documentation must be present at least every six months;

(C) Home blood glucose monitors are subject to a limit of one monitor per two calendar years.

(e) Diabetic supply providers must not dispense a quantity of supplies exceeding a client's expected utilization. Providers should stay attuned to atypical utilization patterns on behalf of their clients and verify with the ordering practitioner that the atypical utilization is, in fact, warranted.



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Regardless of utilization, a provider must not dispense more than a three month quantity of glucose testing supplies (i.e. up to 300 test strips, 300 lancets, and 500 insulin syringes) at a time. A PA must be obtained prior to dispensing amounts in excess of these utilization limits.;

(f) Providers may contact the treating practitioner to renew an order; however, the request for renewal may only be made with the client's continued monthly use of testing supplies and only with the client's or caregiver's request to the provider for order renewal;

(g) An order refill does not have to be approved by the ordering practitioner; however, a client or their caregiver must specifically request refills of glucose monitor supplies before they are dispensed. The provider must not automatically dispense a quantity of supplies on a predetermined regular basis, even if the client has "authorized" this in advance;

(h) Purchase fee for a glucose monitor includes normal, low and high-calibrator solution/chips (A4256), a battery (A4233, A4234, A4235 or A4236) and a spring-powered lancet device (A4258);

(i) The following services are not covered:

(A) Peroxide (A4244), betadine or phisoHex (A4246, A4247); (B) Alternate site blood glucose monitors;

(C) Blood glucose monitors and related supplies prescribed on an "as needed" basis;

(D) Blood glucose test or reagent strips that use a visual reading and are not used in a glucose monitor;

(E) Continuous glucose monitoring devices;

(F) Disposable gloves;

(G) Home blood glucose disposable monitors;

(H) Jet injectors;

(I) Insulin delivery devices and related supplies;

(J) Reflectance colorimeter devices used for measuring blood glucose levels in clinical settings;

(K) Urine test or reagent strips or tablets.

(2) Guidelines:

(a) Insulin-treated means that the client is receiving insulin injections to treat their diabetes. Insulin does not exist in an oral form and therefore clients taking oral medication to treat their diabetes are not insulin-treated;

(b) A severe visual impairment is defined as a best corrected visual acuity of 20/200 or worse in both eyes;

(c) An order renewal is the act of obtaining an order for an additional period of time beyond that previously ordered by the treating practitioner;

(d) An order refill is the act of replenishing quantities of previously ordered items during the time period in which the current order is valid;

(e) A4256 describes control solutions containing high, normal, and low concentrations of glucose that can be applied to test strips to check the integrity of the test strips. This code does not describe the strip or chip which is included in a vial of test strips and which calibrates the glucose monitor to that particular vial of test strips;

(f) For glucose test strips (A4253), 1 unit of service = 50 strips. For lancets (A4259), 1 unit of service = 100 lancets;

(3) Documentation requirements:

(a) For codes requiring prior authorization (PA), submit documentation which supports coverage criteria as specified in this rule are met;

(b) The order for home blood glucose monitors and/or diabetic testing supplies must include all of the following:

(A) All item(s) to be dispensed;

(B) The specific frequency of testing;

(C) The treating practitioner's signature;

(D) The date of the treating practitioner's signature;

(E) A start date of the order - only required if the start date is different than the signature date;

(c) A new order must be obtained when there is a change in the testing frequency;

(d) For E2100 or E2101 in a client with impaired visual acuity, submit documentation which includes a narrative statement from the practitioner that indicates the client's specific numerical visual acuity (e.g., 20/400) and that this result represents "best corrected" vision;

(e) For E2101 - clients with impaired manual dexterity, submit documentation which includes a narrative statement from the practitioner that indicates an explanation of the client's medical condition necessitating the monitor with special features;

(f) When requesting quantities of supplies which exceed utilization guidelines as specified in (1)(d)(B)(i)-(iv) (e.g., more than 100 blood glucose test strips per month for insulin-dependent diabetes mellitus), submit documentation supporting the medical appropriateness for the higher utilization as specified in (1)(d)(B)(v)(I)-(III) to the appropriate authorization authority for PA;

(g) Documentation which supports condition of coverage requirements for codes billed in this rule must be kept on file by the DMEPOS provider and made available to the Division on request;

(h) The appropriate diagnosis code describing the condition that necessitates glucose testing must be included on each claim for the monitor, accessories and supplies;(k) Diabetic supply providers are not prohibited from creating data collection forms in order to gather medically appropriate information; however, the Division will not rely solely on those forms to prove the medical appropriateness of services provided;

(l) A client's medical records must support the justification for supplies dispensed and billed to the Division.

(4) Billing and Payment Guidelines

(a) Diabetic supplies must be billed using a National Drug Code (NDC) and be submitted to the Division via the Web Portal or Point of Sale Systems via pharmacy claim format. Claims submitted on these systems without NDC's will not be processed. This NDC requirement applies to:

(A) Home glucose monitors; and

(B) Blood glucose test reagent strips;

(C) Lancets;

(D) Insulin syringes;

(E) Spring powered lancet devices;

(F) Calibrating solutions and chips.

(b) For specialized glucose monitors and the respective testing supplies, such as those with special features for the visually impaired and those with manual dexterity problems, provider must obtain a prior authorization (PA). After PA the provider can submit a professional claim to the Division.

(c) For orders received from prescribing clinician for blood glucose test reagent strips that exceed utilization guidelines outlined in Section (1)(d)(B)(i-iv) will require PA from the Division. Diabetic supply providers may initially dispense up to utilization limits (i.e. 300 test strips, 300 lancets, and 500 insulin syringes) prior to obtaining PA for orders that exceed utilization guidelines. After PA is issued the remaining amount may be dispensed for a three month time period.

(3) Procedure Codes: Table 122-0520 – Diabetic Supplies

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 409.010, 409.050, 409.110, 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 13-1991, f. & cert. ef. 3-1-91; HR 9-1993, f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 41-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1996, f. & cert. ef. 8-1-96; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 35-2006, f. 9-15-06, cert. ef. 10-1-06; DMAP 12-2007, f. 6-29-07, cert. ef. 7-1-07; DMAP 17-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 15-2009 f. 6-12-09, cert. ef. 7-1-09; DMAP 12-2011, f. 6-29-11, cert. ef. 7-1-11

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**Rule Caption:** 7/11 – Implement, administer and audit the Oregon Medicaid Electronic Health Record (EHR) Incentive Program.

**Adm. Order No.:** DMAP 13-2011

**Filed with Sec. of State:** 6-29-2011

**Certified to be Effective:** 7-1-11

**Notice Publication Date:** 6-1-2011

**Rules Adopted:** 410-165-0000, 410-165-0020, 410-165-0040, 410-165-0080, 410-165-0100, 410-165-0120, 410-165-0140

**Subject:** The Medicaid (EHR) Incentive Program administrative rules govern Division of Medical Assistance Programs payments to certain providers. The Division adopted the rules listed above because Section 4201 of the American Reinvestment and Recovery Act of 2009 established a voluntary program to disburse incentive payments to Medicaid providers who adopt, implement, or upgrade, or become meaningful users of certified electronic health record systems.

These rules outline the Medicaid EHR Incentive Program criteria for participation of eligible professionals and eligible hospitals that adopt, implement, or upgrade, or successfully demonstrate meaningful use of certified electronic health record technology, and are qualified by the program.

Implementation of these rules is pending approval from the Centers for Medicare and Medicaid Services.

*Note: OAR 410-165 0060 is re-filed to be effective July 22, 2011.*

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

# ADMINISTRATIVE RULES

## 410-165-0000

### Basis and Purpose

(1) Oregon Administrative Rules (OAR) chapter 410, division 165, govern the Oregon Health Authority (Authority), Division of Medical Assistance Programs (Division), Medicaid Electronic Health Record (EHR) Incentive Program. The Medicaid EHR Incentive Program provides incentive payments to eligible providers participating in the Medicaid program who adopt, implement or upgrade, or successfully demonstrate meaningful use of certified EHR technology and who are qualified by the program.

(2) The Medicaid EHR Incentive Program is implemented pursuant to:

(a) The American Reinvestment and Recovery Act of 2009, Pub. L. No. 111-5, section 4201;

(b) The Centers for Medicare and Medicaid Services (CMS) federal regulation 42 CFR Part 495 (2010) pursuant to the Social Security Act sections 1903(a)(3)(F) and 1903(t);

(c) The Division's General Rules Program, OAR chapter 410, division 120;

(d) The Authority's General Rules Program, OAR chapter 943, division 120; and

(e) The Department of Human Services' Administrative Services Division and Director's Office Provider Rules, OAR chapter 407, division 120.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 409.010, 413.042, 414.033

Hist.: DMAP 13-2011, f. 6-29-11, cert. ef. 7-1-11

## 410-165-0020

### Definitions

For the purposes of the Medicaid Electronic Health Record (EHR) Incentive Program Oregon Administrative Rules (OAR), chapter 410, division 165, the following definitions apply:

(1) Acceptance documents – Written evidence supplied by a provider to demonstrate that the provider met Medicaid EHR Incentive Program eligibility criteria or participation requirements according to standards specified by the Oregon Health Authority's (Authority) Division of Medicaid Assistance Programs.

(2) Acute care hospital – A healthcare facility, including but not limited to a critical access hospital, with a Centers for Medicare and Medicaid Services' (CMS) certification number (CCN) that ends in 0001-0879 or 1300-1399; and where the average length of patient stay is 25 days or fewer.

(3) Adopt, implement or upgrade:

(a) Acquire, purchase, or secure access to certified EHR technology

(b) Install or commence utilization of certified EHR technology capable of meeting meaningful use requirements; or

(c) Expand the available functionality of certified EHR technology capable of meeting meaningful use requirements at the practice site, including staffing, maintenance, and training, or upgrade from existing EHR technology to certified EHR technology.

(4) Certified EHR technology – As defined in 42 CFR 495.4 (2010) and 45 CFR 170.102 (2010 and 2011) per the Office of the National Coordinator for Health Information Technology EHR certification criteria.

(5) Children's hospital – A separately certified hospital, either free-standing or hospital-within hospital that has a CCN that ends in 3300-3399; and predominantly treats individuals under 21 years of age.

(6) Dentist – As defined in OAR 410-120-0000; and as defined in 42 CFR 440.100.

(7) Eligible hospital – An acute care hospital with at least 10% Medicaid patient volume or a children's hospital.

(8) Eligible professional – A physician; a dentist; a nurse practitioner, including a nurse-midwife nurse practitioner; or a physician assistant practicing in a Federally Qualified Health Center (FQHC) led by a physician assistant or a Rural Health Clinic (RHC), that is so led by a physician assistant, and meets patient volume requirements described in OAR 410-165-0060.

(9) Eligible provider – Eligible hospital or eligible professional.

(10) Encounter:

(a) For an eligible hospital either may apply:

(A) Services rendered to an individual per inpatient discharge; or

(B) Services rendered in an emergency department on any one day;

(b) For an eligible professional, services rendered to an individual on any one day.

(11) Enrolled provider – A hospital or health care practitioner who is actively registered with the Authority pursuant to OAR 407-120-0320.

(12) Entity promoting the adoption of certified EHR technology – An entity, designated by the Authority, that promotes the adoption of certified EHR technology by enabling: oversight of the business, operational and legal issues involved in the adoption and implementation of certified EHR technology; or the exchange and use of electronic clinical and administrative data between participating providers, in a secure manner, including but not limited to maintaining the physical and organizational relationship integral to the adoption of certified EHR technology by eligible providers.

(13) Federal fiscal year (FFY) – October 1 to September 30.

(14) Federally Qualified Health Center (FQHC) – As defined in OAR 410-120-0000.

(15) Group – A clinic as defined in OAR 407-120-0100.

(16) Hospital-based – An eligibility criterion that excludes an eligible professional from participating in the Medicaid EHR Incentive Program when an eligible professional furnishes 90 percent or more of the eligible professional's Medicaid covered services in a hospital emergency room (place of service code 23), or inpatient hospital (place of service code 21) in the calendar year (CY) preceding the payment year.

(17) Individuals receiving Medicaid – Individuals served by an eligible provider where the services rendered would qualify under the Medicaid encounter definition.

(18) Meaningful EHR user – An eligible provider that, for an EHR reporting period for a payment year, demonstrates (in accordance with 42 CFR 495.8) meaningful use of certified EHR technology by meeting the applicable objectives and associated measures in 42 CFR 495.6 and as prescribed by 42 CFR Part 495.

(19) Medicaid encounter:

(a) For an eligible hospital either may apply:

(A) Services rendered to an individual per inpatient discharge where Medicaid (or a Medicaid demonstration project approved under the Social Security Act section 1115) paid for part or all of the service; or Medicaid (or a Medicaid demonstration project approved under the Social Security Act section 1115) paid all or part of the individual's premiums, copayments, or cost-sharing; or

(B) Services rendered in an emergency department on any one day where Medicaid (or a Medicaid demonstration project approved under the Social Security Act section 1115) paid for part or all of the service; or Medicaid (or a Medicaid demonstration project approved under the Social Security Act section 1115) paid all or part of the individual's premiums, copayments, and cost-sharing;

(b) For an eligible professional either may apply:

(A) Services rendered to an individual on any one day where Medicaid (or a Medicaid demonstration project approved under the Social Security Act section 1115) paid for part or all of the service; or

(B) Medicaid (or a Medicaid demonstration project approved under the Social Security Act section 1115) paid all or part of the individual's premiums, copayments, and cost-sharing.

(20) National Provider Identifier – As defined in 45 CFR Part 160 and OAR 410-120-0000.

(21) Needy individual – Individuals served by an eligible professional where the services rendered qualify under the needy individual encounter definition.

(22) Needy individual encounter – Services rendered to an individual on any one day where:

(a) Medicaid or Children's Health Insurance Program (CHIP) (or a Medicaid or CHIP demonstration project approved under the Social Security Act section 1115) paid for part or all of the service;

(b) Medicaid or CHIP (or a Medicaid or CHIP demonstration project approved under the Social Security Act section 1115) paid all or part of the individual's premiums, copayments, or cost-sharing;

(c) The services were furnished at no cost, and calculated consistent with 42 CFR 495.310(h); or

(d) The services were paid for at a reduced cost based on a sliding scale determined by the individual's ability to pay.

(23) Nurse practitioner – As defined in OAR 410-120-0000; and as defined in 42 CFR 440.166.

(24) Panel – A managed care panel, medical or health home program panel, or similar provider structure with capitation or case assignment that assigns patients to providers.

(25) Payment year –

(a) The CY for an eligible professional; or

(b) The FFY for an eligible hospital.

(26) Pediatrician – A physician who predominately treats individuals under 21.

# ADMINISTRATIVE RULES

(27) Physician – As defined in OAR 410-120-0000; and as defined in 42 CFR 440.50.

(28) Physician assistant – As defined in OAR 410-120-0000; and as defined in 42 CFR 440.60.

(29) Practices predominately – An eligibility criterion to permit use of needy individual patient volume that applies when more than 50 percent of an eligible professional's total patient encounters over a period of six months in the calendar year preceding the payment year occur at an FQHC or RHC.

(30) Preparer – A person authorized by a provider to act on behalf of the provider to complete an application for a Medicaid EHR incentive via an electronic media connection with the Authority.

(31) Provider Web Portal – The Department of Human Services' web site that provides a secure gateway for authorized providers to apply for the Medicaid EHR Incentive Program.

(32) Qualify – The Medicaid EHR Incentive Program determines an eligible provider meets the eligibility criteria and participation requirements to receive a Medicaid EHR incentive payment for the payment year.

(33) Rural Health Clinic (RHC) – A clinic located in a rural and medically underserved community, designated as an RHC by CMS. Payment by Medicare and Medicaid to an RHC is on a cost-related basis for outpatient physician and certain non-physician services.

(34) So led – When an FQHC or RHC has a physician assistant who is:

- (a) The primary provider in the clinic;
- (b) A clinical or medical director at the clinical site of practice; or
- (c) An owner of the RHC.

Stat. Auth.: ORS 413.042  
Stats. Implemented: ORS 409.010, 413.042, 414.033  
Hist.: DMAP 13-2011, f. 6-29-11, cert. ef. 7-1-11

## 410-165-0040

### Application

(1) An eligible provider must apply to the Medicaid Electronic Health Record (EHR) Incentive Program each year that the eligible provider seeks an incentive payment. In order to apply, an eligible provider must:

- (a) Register with the Centers for Medicare and Medicaid Services (CMS) for each payment year;
- (b) Apply to the Oregon Medicaid EHR Incentive Program after registering with CMS for each payment year; and
- (c) Attest, and ensure that the eligible provider's preparer attests, that:
  - (A) The information submitted is true, accurate, and complete; and
  - (B) Any falsification or concealment of a material fact may be prosecuted under federal and state laws;
- (d) Maintain, for a period of no less than seven years from the date of completed application, complete, accurate, and unaltered copies of all acceptance documents associated with all data transmissions and attestations. The information maintained must include, at a minimum documentation to support:

(A) The adoption, implementation, or upgrade of certified EHR technology including, but not limited to the purchase agreement or contract;

(B) Demonstration of meaningful use for the year corresponding to the payment year;

(C) Patient volume for the year corresponding to the payment year; and

(D) The eligible hospital's payment calculation data including, but not limited to Medicare cost reports.

(2) An eligible provider may submit to Oregon the acceptance documents to support attestation at application.

(3) The Medicaid EHR Incentive Program reviews the completed application and the documentation provided to determine if the eligible provider qualifies for an incentive payment:

(a) The information provided may be subject to verification by the program;

(b) The Medicaid EHR Incentive Program determines if the eligible provider's information complies with the eligibility criteria and participation requirements;

(c) The program notifies the eligible provider about the incentive payment determination;

(d) The Oregon Health Authority (Authority) may reduce the incentive payment to pay off debt if an eligible provider or incentive payment recipient owes a debt under a collection mandate to the state of Oregon. The incentive payment is considered paid to the eligible provider even when part or all of the incentive may offset the debt. The Authority may not reduce the incentive payment amount for any other purpose unless permitted or required by federal or state regulation; and

(e) The Authority distributes 1099 forms to the tax identification number designated to receive the Medicaid EHR incentive payment.

Stat. Auth.: ORS 413.042  
Stats. Implemented: ORS 409.010, 413.042, 414.033  
Hist.: DMAP 13-2011, f. 6-29-11, cert. ef. 7-1-11

## 410-150-0080

### Meaningful Use

(1) An eligible provider must demonstrate being a meaningful Electronic Health Record (EHR) user as prescribed by 42 CFR 495.4 and 42 CFR 495.8.

(2) An eligible provider must satisfy meaningful use objectives and measures as prescribed by 42 CFR 495.6. The state of Oregon has an exception that requires an eligible provider to satisfy the objective "Capability to submit electronic data to immunization registries or immunization information systems and actual submission in accordance with applicable law and practice" as part of the core requirements for Stage 1:

(a) If an eligible hospital is deemed to be a meaningful EHR user by Medicare for a payment year, then the eligible hospital is automatically deemed to be a meaningful EHR user for the Medicaid EHR Incentive Program for the same payment year;

(b) An eligible hospital deemed to be a meaningful EHR user by Medicare for a payment year does not have to meet Oregon's exception to qualify for the Medicaid EHR incentive payment for the same payment year.

Stat. Auth.: ORS 413.042  
Stats. Implemented: ORS 409.010, 413.042 & 414.033  
Hist.: DMAP 13-2011, f. 6-29-11, cert. ef. 7-1-11

## 410-165-0100

### Participation and Incentive Payments

(1) An eligible provider applying for a Medicaid Electronic Health Record (EHR) incentive payment must meet the Medicaid EHR Incentive Program eligibility criteria and participation requirements for each year that the eligible provider applies to qualify for an incentive payment:

(a) An eligible provider must meet the eligibility criteria for each payment year of:

(A) Type of eligible provider;

(B) Patient volume minimum; and

(C) Certified EHR technology requirements for the first payment year and meaningful use requirements for the subsequent payment years;

(b) An eligible provider must meet the participation requirements for each payment year including:

(A) Be an enrolled Medicaid provider with the Oregon Health Authority's (Authority) Division of Medical Assistance Programs (Division);

(B) Provide up to date provider information to the Division;

(C) Possess an active professional license and comply with all licensing statutes and regulations within the state where the eligible provider practices;

(D) Possess an active Provider Web Portal account;

(E) Be able to receive electronic funds transfer from the Authority; and

(F) Comply with all applicable Oregon Administrative Rules (OAR), including chapter 407, division 120, chapter 410, division 120, and chapter 943, division 120;

(c) An eligible professional may reassign the entire amount of the incentive payment to:

(A) The eligible professional's employer with which the eligible professional has a contractual arrangement allowing the employer to bill and receive payments for the eligible professional's covered professional services;

(B) An entity with which the eligible professional has a contractual arrangement allowing the entity to bill and receive payments for the eligible professional's covered professional services; or

(C) An entity promoting the adoption of certified EHR technology.

(2) An eligible professional must follow the Medicaid EHR Incentive Program participation conditions including an eligible professional must:

(a) Receive an incentive payment from only one state for a payment year;

(b) Only receive an incentive payment from either Medicare or Medicaid for a payment year, but not both;

(c) Not receive more than the maximum incentive amount of \$63,750 over a six-year period; or the maximum incentive of \$42,500 over a six-year period if the eligible professional qualifies as a pediatrician who meets the 20 percent patient volume minimum and less than the 30 percent patient volume;



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- (d) Participate in the Medicaid EHR Incentive Program:
- (A) Starting as early as calendar year (CY) 2011, but no later than CY 2016;
- (B) Ending no later than CY 2021;
- (C) For a maximum of six years; and
- (D) On a consecutive or non-consecutive annual basis;
- (e) Be allowed to switch between the Medicare and Medicaid EHR Incentive Program only one time after receiving at least one incentive payment, and only for a payment year before 2015.
- (3) Payments are disbursed to an eligible professional on a rolling basis following verification of eligibility for the payment year:
- (a) An eligible professional is paid an incentive amount for the corresponding payment year for each year of qualified participation in the Medicaid EHR Incentive Program;
- (b) The payment structure is as follows for:
- (A) An eligible professional qualifying with 30 percent minimum patient volume:
- (i) The first payment year incentive amount is \$21,250; and
- (ii) The second, third, fourth, fifth, or sixth payment year incentive amount is \$8,500; or
- (B) An eligible pediatrician qualifying with 20 percent, but less than 30 percent minimum patient volume:
- (i) The first payment year incentive amount is \$14,167; and
- (ii) The second, third, fourth, fifth, or sixth payment year incentive amount is \$5,667.
- (4) An eligible hospital must follow the Medicaid EHR Incentive Program participation conditions including that the eligible hospital:
- (a) Receives a Medicaid EHR incentive payment from only one state for a payment year;
- (b) May participate in both the Medicare and Medicaid EHR Incentive Programs if the eligible hospital meets all eligibility criteria for the payment year for both programs;
- (c) Participates in the Medicaid EHR Incentive Program:
- (A) Starting as early as federal fiscal year (FFY) 2011 but no later than FFY 2016;
- (B) Ending no later than FFY 2021;
- (C) For a maximum of three years;
- (D) On a consecutive or non-consecutive annual basis for federal fiscal years prior to FFY 2016; and
- (E) On a consecutive annual basis for federal fiscal years starting in FFY 2016;
- (d) A multi-site hospital with one Centers for Medicare and Medicaid Services' Certification Number is considered one hospital for purposes of calculating payment.
- (5) Payments are disbursed to an eligible hospital on a rolling basis following verification of eligibility for the payment year. An eligible hospital is paid the aggregate incentive amount over three years of qualified participation in the Medicaid EHR Incentive Program:
- (a) The payment structure as listed in Table 165-0100-1 is as follows:
- (A) The first payment year incentive amount is equal to 50% of the aggregate amount;
- (B) The second payment year incentive amount is equal to 40% of the aggregate amount; and
- (C) The third payment year incentive amount is equal to 10% of the aggregate amount;
- (b) The aggregate EHR hospital incentive amount is calculated as the product of the "overall EHR amount" times the "Medicaid Share" as listed in Table 165-00100-2. The aggregate amount is calculated once, for the first year participation, and then paid over three years according to the payment schedule:
- (A) The overall EHR amount for an eligible hospital is based upon a theoretical four years of payment the hospital would receive, and is the sum of the following calculation performed for each of such four years. For each year, the overall EHR amount is the product of the initial amount, the Medicare share and the transition factor:
- (i) The initial amount as listed in Table 165-0100-3 is equal to the sum of the base amount, which is set at \$2,000,000 for each of the theoretical four years, plus the discharge-related amount, that is calculated for each of the theoretical four years:
- (I) The discharge-related amount is \$200 per discharge for the 1,150th through the 23,000th discharge, based upon the total discharges for the eligible hospital (regardless of source of payment) from the hospital fiscal year that ends during the FFY prior to the fiscal year that serves as the first payment year. No discharge-related amount is added for discharges prior to the 1,150th or any discharges after the 23,000th;

(II) For purposes of calculating the discharge-related amount for the last three of the theoretical four years of payment, discharges are assumed to increase each year by the provider's average annual rate of growth; negative rates of growth must also be applied. Average annual rate of growth is calculated as the average of the annual rate of growth in total discharges for the most recent three years for which data are available per year.

- (ii) The Medicare share that equals 1;
- (iii) The transition factor, that equals:
- (I) 1 for the first of the theoretical four years;
- (II) 0.75 for the second of the theoretical four years;
- (III) 0.5 for the third of the theoretical four years; and
- (IV) 0.25 for the fourth of the theoretical four years;
- (B) The Medicaid share for an eligible hospital is equal to a fraction:
- (i) The numerator for the FFY and with respect to the eligible hospital is the sum of:
- (I) The estimated number of inpatient-bed-days that are attributable to Medicaid individuals; and
- (II) The estimated number of inpatient-bed-days that are attributable to individuals who are enrolled in a managed care organization, a pre-paid inpatient health plan, or a pre-paid ambulatory health plan administered under 42 CFR Part 438;
- (ii) The denominator is the product of:
- (I) The estimated total number of inpatient-bed-days with respect to the eligible hospital during such period; and
- (II) The estimated total amount of the eligible hospital's charges during such period, not including any charges that are attributable to charity care, divided by the estimated total amount of the hospital's charges during such period;
- (iii) In computing inpatient-bed-days for the Medicaid share, an eligible hospital may not include the following:
- (I) Estimated inpatient-bed-days attributable to individuals that may be made under Medicare Part A; or
- (II) Inpatient-bed-days attributable to individuals who are enrolled with a Medicare Advantage organization under Medicare Part C;
- (iv) If an eligible hospital's charity care data necessary to calculate the portion of the formula for the Medicaid share are not available, the eligible hospital's data on uncompensated care may be used to determine an appropriate proxy for charity care, but must include a downward adjustment to eliminate bad debt from uncompensated care data if bad debt is not otherwise differentiated from uncompensated care. Auditable data sources must be used; and
- (v) If an eligible hospital's data necessary to determine the inpatient bed-days attributable to Medicaid managed care patients are not available, that amount is deemed to equal 0. In the absence of an eligible hospital's data necessary to compute the percentage of inpatient bed days that are not charity care as described under (B)(ii)(II) in this section, that amount is deemed to be 1.

- (6) Table 165-0100-1  
(7) Table 165-0100-2  
(8) Table 165-0100-3

[ED. NOTE: Tables referenced are available from the agency.]  
Stat. Auth.: ORS 413.042  
Stats. Implemented: ORS 409.010, 413.042, 414.033  
Hist.: DMAP 13-2011, f. 6-29-11, cert. ef. 7-1-11

## 410-165-0120

### Appeals

(1) The appeals process for the Medicaid Electronic Health Record (EHR) Incentive Program is pursuant to 42 CFR 495.370 and the Oregon Health Authority's (Authority) Provider Appeals Rules in the Oregon Administrative Rules (OAR) chapter 410, division 120.

(2) For purposes of OAR chapter 410, division 165, a provider who applies for a Medicaid EHR incentive payment may appeal a decision by the Medicaid EHR Incentive Program as outlined in the Authority's Division of Medical Assistance Programs' Provider Appeal Rules (OAR chapter 410, division 120). The provider's appeal must note the specific reason for the appeal, which must be due to:

- (a) An incentive payment;
- (b) An incentive payment amount;
- (c) A provider eligibility determination;
- (d) The demonstration of adopting, implementing or upgrading; or
- (e) Meaningful use eligibility.

Stat. Auth.: ORS 413.042  
Stats. Implemented: ORS 409.010, 413.042, 414.033  
Hist.: DMAP 13-2011, f. 6-29-11, cert. ef. 7-1-11

# ADMINISTRATIVE RULES

## 410-165-0140

### Oversight and Audits

(1) A provider who qualifies for a Medicaid Electronic Health Record (EHR) incentive payment under the Medicaid (EHR) Incentive Program is subject to audit or other post-payment review procedures as authorized in Oregon Administrative Rule (OAR) 407-120-1505.

(2) The Oregon Health Authority and the Department of Human Services have the authority to recover overpayments from the person or entity who received an incentive payment from the Medicaid EHR Incentive Program.

(3) The person or entity who received a Medicaid EHR incentive overpayment must repay the amount specified within 30 calendar days from the mailing date of written notification of the overpayment as prescribed by OAR 407-120-1505

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 409.010, 413.042, 414.033

Hist.: DMAP 13-2011, f. 6-29-11, cert. ef. 7-1-11

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**Rule Caption:** 7/11 – Semi-Annual PDL updates, expansion of 90-day fill list of maintenance medications, changes to allow for the billing of certain diabetic supplies by pharmacies, and updates for vaccination billing, PA criteria update.

**Adm. Order No.:** DMAP 14-2011

**Filed with Sec. of State:** 6-29-2011

**Certified to be Effective:** 7-1-11

**Notice Publication Date:** 6-1-2011

**Rules Amended:** 410-121-0147, 410-121-0155, 410-121-0157, 410-121-0160, 410-121-0185, 410-121-0200

**Subject:** • **410-121-0147:** Clarification of coverage for certain drug products, nutritional supplements, vitamins, vaccines, and active pharmaceutical ingredients

• **410-121-0155:** New language relating to program changes to allow pharmacies to be reimbursed for the provision of certain diabetic supplies

• **410-121-0157:** Inclusion of requirements under the Affordable Care Act for drug manufacturers that participate in the CMS Medicaid Drug Rebate Program that require the Division to collect drug rebates for drugs dispensed by Medicaid Managed Care Organizations

• **410-121-0160:** Inclusion of terms and conditions for enrolled pharmacies to participate in an annual claims volume survey for dispensing fee determination

• **410-121-0185:** Changes to billing requirements for pharmacy based immunizations.

• **410-121-0200:** Billing requirements for reimbursement of certain diabetic supplies

• All above rules reflect the Division's agency authority from the Department of Human Services to the Oregon Health Authority and updated statutory reference.

• Other text may be revised to improve readability and to take care of necessary "housekeeping" corrections.

*Note: Not all "Rule Filing Caption" issues listed above are included in this permanent filing. Permanent filing is delayed for "PA Criteria Guide updates" (OAR 410-121-0040 and "Expansion of 90-day fill list of maintenance medications." OAR 410-121-0030, (Preferred Drug List updates) is filed on a separate Permanent Certificate to be effective 7/17/11.*

**Rules Coordinator:** Darlene Nelson — (503) 945-6927

## 410-121-0147

### Exclusions and Limitations

(1) The following items are not covered for payment by the Division of Medical Assistance Programs (Division):

(a) Drug products for diagnoses below the funded line on the Health Services Commission Prioritized List or an excluded service under Oregon Health Plan (OHP) coverage;

(b) Home pregnancy kits;

(c) Fluoride for individuals over 18 years of age;

(d) Expired drug products;

(e) Drug products from non-rebatable manufacturers, with the exception of selected oral nutritionals, vitamins, and vaccines;

(f) Active Pharmaceutical Ingredients (APIs) and Excipients as described by Centers for Medicare and Medicaid (CMS);

(g) Drug products that are not assigned a National Drug Code (NDC) number;

(h) Drug products that are not approved by the Food and Drug Administration (FDA);

(i) Drug products dispensed for Citizen/Alien-Waived Emergency Medical client benefit type;

(j) Drug Efficacy Study Implementation (DESI) drugs (see OAR 410-121-0420);

(k) Medicare Part D covered drugs or classes of drugs for fully dual eligible clients.

(2) Effective on or after April 1, 2008, Section 1903(i) of the Social Security Act requires that written (nonelectronic) prescriptions for covered outpatient drugs for Medicaid clients be executed on a tamper-resistant pad in order to be eligible for federal matching funds. To meet this requirement, the Division shall only reimburse for covered Medicaid outpatient drugs only when the written (nonelectronic) prescription is executed on a tamper-resistant pad, or the prescription is electronically submitted to the pharmacy.

(3) Drugs requiring a skilled medical professional for safe administration will be billed by the medical professional's office; unless otherwise specified by the Division.

Stat. Auth.: ORS 409.010 & 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 22-1993(Temp).f. & cert. ef. 9-1-93; HR 34-1993(Temp).f. & cert. ef. 12-1-93; HR 11-1994, f. 2-25-94, cert. ef. 2-27-94; HR 25-1994, f. & cert. ef. 7-1-94; HR 2-1995, f. & cert. ef. 2-1-95; HR 22-1997, f. & cert. ef. 10-1-97; OMAP 1-1999, f. & cert. ef. 2-1-99; OMAP 31-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 18-2004, f. 3-15-04 cert. ef. 4-1-04; OMAP 65-2005, f. 11-30-05, cert. ef. 1-1-06; OMAP 16-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 9-2008, f. 3-31-08, cert. ef. 4-1-08; DMAP 17-2010, f. 6-15-10, cert. ef. 7-1-10; DMAP 14-2011, f. 6-29-11, cert. ef. 7-1-11

## 410-121-0155

### Reimbursement

(1) The Division shall pay the lesser of the provider's usual charge to the general public for a drug or the estimated acquisition cost (EAC) plus a dispensing fee. The EAC is defined by the Division as the lesser of:

(a) The Average Actual Acquisition Cost (AAAC) of the drug;

(b) In cases where no AAAC is available, the Division shall reimburse at Wholesale Acquisition Cost (WAC);

(c) The Federally Mandated Upper Limit (FUL) for certain multiple source drugs as established and published by CMS;

(d) 340B covered entities and federally qualified health centers or their contracted agents that fill Medicaid patient prescriptions with drugs purchased at the prices authorized under Section 340B of the Public Health Service Act must bill Medicaid for the actual acquisition cost.

(2) The Division shall revise its EAC file weekly. Pharmacies must make available to the Division, or its contractor, any information necessary to determine the pharmacy's actual acquisition cost of drug products dispensed to the Division's clients.

(3) The AAAC shall serve as the basis for reimbursement. Individual pharmacies are required to participate in an AAC survey conducted by the Division, or its contractor, not more than one time per every 18 to 24-month period. Pharmacies that do not respond to AAC survey requests may be subject to disenrollment as providers for the Oregon Health Plan.

(4) If a provider is unable to purchase a particular drug product at the AAAC the provider shall report this to the Division or its contractor for further review through a dispute resolution process. Providers may submit inquiries via telephone, facsimile, via electronic mail, or the contractor's secure web site: <http://or.msle.com/RequestRateReview.aspx>:

(a) The Division or its contractor shall respond to all inquiries or complaints within 24 hours and resolve the issue within 5 business days;

(b) The pricing dispute resolution process shall include the Division or its contractor verifying the accuracy of pricing to ensure consistency with marketplace pricing and drug availability;

(c) Price adjustments shall be made during the next weekly pricing update.

(5) Payment for covered fee-for-service drug products shall be the lesser of the billed amount or the EAC of the generic form, minus applicable copayments, plus a professional dispensing fee.

(6) Payment for trade name forms of multiple source products:

(a) Shall be the EAC of the trade name form, minus applicable copayments, plus a professional dispensing fee;

(b) The Division shall pay only if the prescribing practitioner has received a prior authorization for the trade name drug, or;

(c) The brand drug is listed on the Division's Preferred Drug List.

# ADMINISTRATIVE RULES

(7) No professional dispensing fee is allowed for dispensing pill splitters/cutters or diabetic supplies and glucose monitors which are exempt from co-payments under OHP General Rules.

(8) Payment for pill splitters/cutters with a National Drug Code (NDC) number shall be reimbursed at the lesser of the billed amount or the EAC, and:

(a) A practitioner prescription is required, and;

(b) The Division shall only pay for one pill splitter/cutter per client in a twelve-month period.

(9) A prescription is required for glucose monitors and related diabetic supplies.

(10) Payment for glucose monitors and related diabetic supplies billed with an NDC shall be reimbursed at a percentage of Medicare's rate for the HCPCS procedure code. The Division's reimbursement rates are listed in the DMAP fee schedule located at: [http://www.oregon.gov/DHS/healthplan/data\\_pubs/feeschedule/downloads.shtml](http://www.oregon.gov/DHS/healthplan/data_pubs/feeschedule/downloads.shtml)

Stat. Auth.: ORS 184.750, 184.770, 409.050 & 414.065

Stats. Implemented: ORS 414.065

Hist.: PWC 818(Temp), f. 10-22-76, ef. 11-1-76; PWC 831, f. 2-18-77, ef. 3-1-77; PWC 846(Temp), f. & ef. 7-1-77; PWC 858, f. 10-14-77, ef. 11-1-77; PWC 869, f. 12-30-77, ef. 1-1-78; AFS 15-1979(Temp), f. 6-29-79, ef. 7-1-79; AFS 41-1979, f. & ef. 11-1-79; AFS 15-1981, f. 3-5-81, ef. 4-1-81; AFS 35-1981(Temp), f. 6-26-81, ef. 7-1-81; AFS 53-1981(Temp), f. & ef. 8-14-81; AFS 70-1981, f. 9-30-81, ef. 10-1-81; AFS 44-1982, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices. AFS 74-1982 (Temp), f. 7-22-81, ef. 8-1-82; AFS 99-1982, f. 10-25-82, ef. 11-1-82; AFS 113-1982(Temp), f. 12-28-82, ef. 1-1-83; AFS 13-1983, f. & ef. 3-21-83; AFS 51-1983(Temp), f. 9-30-83, ef. 10-1-83; AFS 56-1983, f. 11-17-83, ef. 12-1-83; AFS 18-1984, f. 4-23-84, ef. 5-1-84; AFS 53-1985, f. 9-20-85, ef. 10-1-85; AFS 42-1986(Temp), f. 6-10-86, ef. 7-1-86; AFS 52-1986, f. & ef. 7-2-86; AFS 12-1987, f. 3-3-87, ef. 4-1-87; AFS 56-1989, f. 9-28-89, cert. ef. 10-1-89, Renumbered from 461-016-0100; HR 29-1990, f. 8-31-90, cert. ef. 9-1-90, Renumbered from 461-016-0250; HR 20-1991, f. & cert. ef. 4-16-91; HR 20-1994, f. 4-29-94, cert. ef. 5-1-94; OMAP 29-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 31-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 61-2001(Temp), f. 12-13-01, cert. ef. 12-15-01 thru 3-15-02; OMAP 1-2002, cert. ef. 2-15-02; OMAP 32-2002, f. & cert. ef. 8-1-02; OMAP 40-2003, f. 5-27-03, cert. ef. 6-1-03; OMAP 57-2003, f. 9-5-03, cert. ef. 10-1-03; OMAP 18-2004, f. 3-15-04 cert. ef. 4-1-04; OMAP 19-2005, f. 3-21-05, cert. ef. 4-1-05; OMAP 16-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 26-2007, f. 12-11-07, cert. ef. 1-1-08; DMAP 5-2009(Temp), f. 3-26-09, cert. ef. 4-1-09 thru 9-25-09; DMAP 14-2009, f. 6-12-09, cert. ef. 7-1-09; DMAP 40-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 14-2011, f. 6-29-11, cert. ef. 7-1-11

## 410-121-0157

### Participation in the Medicaid Drug Rebate Program

(1) The Oregon Medicaid Pharmaceutical Services Program is a participant in the Centers for Medicare and Medicaid Services (CMS) Medicaid Drug Rebate Program, created by the Omnibus Budget Reconciliation Act (OBRA) of 1990. The Patient Protection and Affordable Care Act (PPACA) enacted on March 23, 2010 and the Health Care and Education Reconciliation Act of 2010, (HCERA) enacted on March 30, 2010, together called the Affordable Care Act, requires the Division to collect drug rebates for covered outpatient drugs dispensed to enrollees of Medicaid managed care organizations, (MCOs). The Medicaid Drug Rebate Program requires a drug manufacturer to enter into and have in effect a national rebate agreement with the Secretary of the Department of Health and Human Services for States to receive federal funding for outpatient drugs dispensed to Medicaid patients. The drug rebate program is administered by CMS's Center for Medicaid and State Operations (CMSO). Pharmaceutical companies participating in this program have signed agreements with CMS to provide rebates to the Division of Medical Assistance Programs (Division) on all their drug products. The Division will reimburse providers only for outpatient drug products manufactured or labeled by companies participating in this program.

(2) Documents in rule by reference: Names and Label Code numbers for participants in the Medicaid Drug Rebate Program are the responsibility of and maintained by CMS. The Division receives this information from CMS in the form of numbered and dated Releases. The Division includes in rule by reference, the CMS Releases online at: available on the Oregon Health Authority's website: [www.dhs.state.or.us/policy/healthplan/guides/pharmacy/main.html](http://www.dhs.state.or.us/policy/healthplan/guides/pharmacy/main.html). CMS Releases Drug Product Data and Drug Company Contact information that are available at: [www.cms.hhs.gov/MedicaidDrugRebateProgram/02\\_StateReleases.asp](http://www.cms.hhs.gov/MedicaidDrugRebateProgram/02_StateReleases.asp)

(3) Retroactive effective dates: The CMS Medicaid Drug Rebate Program experiences frequent changes in participation and often this information is submitted to the Division after the effective date(s) of some changes. Therefore, certain participant additions and deletions may be effective retroactively. See specific instructions in the CMS Releases for appropriate effective date(s) of changes.

(4) The Division contracts with a Pharmacy Benefit Manager (PBM) to manage the Medicaid Rebate Dispute Resolution program. Pharmacy providers must verify the accuracy of their Medicaid pharmacy claims with

the PBM within 30 days of request in instances where drug manufacturers dispute their claim information. Verification can be photocopies of drug invoices showing that the billed products were in stock during the time of the date of service.

(5) The actual National Drug Code (NDC) dispensed and the actual metric decimal quantity dispensed, must be billed.

Stat. Auth.: ORS 409.050 & 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 16-1991(Temp), f. 4-12-91, cert. ef. 4-15-91; HR 22-1991, f. & cert. ef. 5-16-91; HR 23-1991(Temp), f. 6-14-91, cert. ef. 6-17-91; HR 31-1991, f. & cert. ef. 7-16-91; HR 36-1991(Temp), f. 9-16-91, cert. ef. 10-1-91; HR 45-1992, f. & cert. ef. 10-16-91; HR 50-1991(Temp), f. & cert. ef. 10-29-91; HR 1-1992, f. & cert. ef. 1-2-92; HR 13-1992, f. & cert. ef. 6-1-92; HR 21-1992, f. 7-31-92, cert. ef. 8-1-92; HR 31-1992, f. & cert. ef. 10-1-92; HR 34-1992, f. & cert. ef. 12-1-92; HR 4-1993, f. 3-10-93, cert. ef. 3-11-93; HR 7-1993(Temp), f. & cert. ef. 4-1-93; HR 14-1993, f. & cert. ef. 7-2-93; HR 24-1993, f. & cert. ef. 10-1-93; HR 17-1994, f. & cert. ef. 4-1-94; HR 25-1994, f. & cert. ef. 7-1-94; HR 2-1995, f. & cert. ef. 2-1-95; HR 6-1995, f. 3-31-95, cert. ef. 4-1-95; HR 14-1995, f. 6-29-95, cert. ef. 7-1-95; HR 23-1995, f. 12-29-95, cert. ef. 1-1-96; HR 22-1997, f. & cert. ef. 10-1-97; HR 27-1997, f. & cert. ef. 12-1-97; OMAP 2-1998, f. 1-30-98, cert. ef. 2-1-98; OMAP 29-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 43-2000(Temp), f. 12-29-00, cert. ef. 1-1-01 thru 5-1-01; OMAP 3-2001, f. & cert. ef. 3-16-01; OMAP 24-2001(Temp), f. 5-9-01, cert. ef. 5-10-01 thru 11-1-01; OMAP 25-2001(Temp), f. 6-28-01, cert. ef. 7-1-01 thru 12-1-01; OMAP 27-2001(Temp), f. 7-30-01, cert. ef. 8-1-01 thru 1-26-02; OMAP 48-2001(Temp), f. 9-28-01, cert. ef. 10-1-01 thru 3-1-02; OMAP 56-2001(Temp), f. & cert. ef. 11-1-01 thru 4-15-02; OMAP 57-2001(Temp), f. 11-28-01, cert. ef. 12-1-01 thru 4-15-02; OMAP 66-2001(Temp), f. 12-28-01, cert. ef. 1-1-02 thru 5-15-02; OMAP 4-2002(Temp), f. & cert. ef. 3-5-02 thru 8-1-02; OMAP 16-2002(Temp), f. & cert. ef. 4-12-02 thru 9-1-02; OMAP 20-2002(Temp), f. & cert. ef. 5-15-02 thru 10-1-02; OMAP 34-2002(Temp), f. & cert. ef. 8-14-02 thru 1-15-03; OMAP 67-2002(Temp), f. & cert. ef. 11-1-02 thru 3-15-03; OMAP 6-2003(Temp), f. & cert. ef. 2-14-03 thru 7-1-03; OMAP 38-2003, f. & cert. ef. 5-9-03; OMAP 39-2003(Temp), f. & cert. ef. 5-15-03; OMAP 48-2003, f. & cert. ef. 7-7-03; OMAP 74-2003, f. & cert. ef. 10-1-03; OMAP 5-2004(Temp), f. & cert. ef. 2-4-04 thru 6-15-04; OMAP 24-2004, f. & cert. ef. 3-30-04; OMAP 31-2004(Temp), f. & cert. ef. 5-14-04 thru 10-15-04; OMAP 42-2004, f. 6-24-04 cert. ef. 7-1-04; OMAP 53-2004(Temp), f. & cert. ef. 9-10-04 thru 2-15-05; OMAP 82-2004, f. 10-29-04 cert. ef. 11-1-04; OMAP 1-2005(Temp), f. & cert. ef. 1-14-05 thru 6-1-05; OMAP 6-2005, f. 3-1-05, cert. ef. 3-31-05; OMAP 7-2005(Temp), f. 3-1-05, cert. ef. 4-1-05 thru 8-1-05; OMAP 30-2005, f. & cert. ef. 6-6-05; OMAP 55-2005, f. 10-25-05, cert. ef. 11-1-05; OMAP 5-2006, f. 3-22-06, cert. ef. 4-1-06; OMAP 7-2006(Temp), f. 3-29-06, cert. ef. 4-1-06 thru 9-15-06; OMAP 12-2006, f. 5-26-06, cert. ef. 6-1-06; OMAP 49-2006, f. 12-28-06, cert. ef. 1-1-07; DMAP 16-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 14-2011, f. 6-29-11, cert. ef. 7-1-11

## 410-121-0160

### Dispensing Fees

(1) Professional dispensing fees allowable for services shall be based on an individual pharmacy's annual claims volume as follows:

(a) Less than 49,999 claims a year = \$14.01;

(b) Between 50,000 and 69,999 claims per year = \$10.14;

(c) 70,000 or more claims per year = \$9.68;

(2) All Division enrolled pharmacies shall be required to complete an annual survey that collects claim volumes from enrolled pharmacies and other information from the previous 12 month period to determine the appropriate dispensing fee reimbursement:

(a) Claims volume shall be stated by total OHP covered prescriptions and claims from all payer types;

(b) Survey activities shall be conducted by either the Division or its contractor and must be completed and returned by pharmacies within 14 days of receipt;

(c) Completed surveys must be signed with a letter of attestation by:

(A) The store owner or majority owner for independent pharmacies;

(B) The Pharmacy manager and the store manager or a corporate officer for chain pharmacies;

(d) Pharmacies that fail to respond to the survey or do not include the letter of attestation shall default to the lowest dispensing tier.

(3) Once a tier is established for a calendar year, the pharmacy's dispensing fee shall remain in that tier until the next annual claims volume survey is conducted.

(4) Pharmacies newly enrolled with the Division shall be defaulted to the lowest dispensing tier until the next claims volume survey is conducted.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 184.750, 184.770, 409.050 & 414.065

Stats. Implemented: ORS 414.065

Hist.: AFS 51-1983(Temp), f. 9-30-83, ef. 10-1-83; AFS 56-1983, f. 11-17-83, ef. 12-1-83; AFS 41-1984(Temp), f. 9-24-84, ef. 10-1-84; AFS 1-1985, f. & ef. 1-3-85; AFS 54-1985(Temp), f. 9-23-85, ef. 10-1-85; AFS 66-1985, f. 11-5-85, ef. 12-1-85; AFS 13-1986(Temp), f. 2-5-86, ef. 3-1-86; AFS 36-1986, f. 4-15-86, ef. 6-1-86; AFS 52-1986, f. & ef. 7-2-86; AFS 12-1987, f. 3-3-87, ef. 4-1-87; AFS 28-1987(Temp), f. & ef. 7-14-87; AFS 50-1987, f. 10-20-87, ef. 11-1-87; AFS 41-1988(Temp), f. 6-13-88, cert. ef. 7-1-88; AFS 64-1988, f. 10-3-88, cert. ef. 12-1-88; AFS 56-1989, f. 9-28-89, cert. ef. 10-1-89, Renumbered from 461-016-0101; AFS 63-1989(Temp), f. & cert. ef. 10-17-89; AFS 79-1989, f. & cert. ef. 12-21-89; HR 20-1990, f. & cert. ef. 7-9-90, Renumbered from 461-016-0260; HR 29-1990, f. 8-31-90, cert. ef. 9-1-90; HR 21-1993(Temp), f. & cert. ef. 9-1-93; HR 12-1994, f. 2-25-94, cert. ef. 2-27-94; OMAP 5-1998(Temp), f. & cert. ef. 2-11-98 thru 7-15-98; OMAP 22-1998, f. & cert. ef. 7-15-98; OMAP 1-1999, f. & cert. ef. 2-1-99; OMAP 50-2001(Temp), f. 9-28-01, cert. ef. 10-1-01 thru 3-1-02; OMAP 60-2001, f. & cert. ef. 12-11-01; OMAP 32-2003(Temp), f. & cert. ef. 4-15-03 thru 9-15-03; OMAP 57-2003, f. 9-5-03, cert. ef. 10-1-03;



# ADMINISTRATIVE RULES

OMAP 7-2004, f. 2-13-04 cert. ef. 3-15-04; OMAP 19-2004(Temp), f. & cert. ef. 3-15-04 thru 4-14-04; OMAP 21-2004, f. 3-15-04, cert. ef. 4-15-04; OMAP 19-2005, f. 3-21-05, cert. ef. 4-1-05; OMAP 16-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 26-2007, f. 12-11-07, cert. ef. 1-1-08; DMAP 40-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 14-2011, f. 6-29-11, cert. ef. 7-1-11

## 410-121-0185

### Pharmacy Based Immunization Delivery

(1) When administering immunizations for adults (ages 19+) the pharmacy can bill either:

(a) Through Point-of-Sale (POS) using the appropriate National Drug Code (NDC) for the serum and the administration fee shall automatically be applied equivalent to Current Procedural Terminology (CPT) codes 90470-90474 ; or

(b) Bill on a CMS-1500 claim form using the appropriate immunization CPT code for the serum.

(2) If using a CMS-1500, you must also include:

(a) An ICD-9 diagnosis in field 21, and;

(b) The diagnosis code must be shown to the highest degree of specificity, and;

(c) Use the appropriate CPT code for the serum, code ranges 90476-90749; and

(d) Use the appropriate CPT code for the administration, code ranges 90470-90474.

(3) Pursuant to ORS 689.205 and the Board of Pharmacy administrative rules 855-019-0270 through 855-019-0290; pharmacists may prescribe and administer vaccines to children who are from the age of 11 through 18 years of age only if the pharmacy is enrolled in the Vaccines for Children (VFC) Program. The Division will not reimburse providers the cost of privately purchased vaccination.

(4) If the pharmacy is enrolled in the VFC Program, then only the administration fee shall be reimbursed by the Division and must be billed on a CMS-1500 claim form. For detailed information on billing for the VFC Program, refer to Medical Surgical Services OAR 410-130-0255.

Stat. Auth.: ORS 409.025, 409.040, 409.110, 413.042, & 414.065

Stats. Implemented: ORS 414.065

Hist.: OMAP 31-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 7-2002, f. & cert. ef. 4-1-02; OMAP 18-2004, f. 3-15-04 cert. ef. 4-1-04; OMAP 9-2005, f. 3-9-05, cert. ef. 4-1-05; DMAP 36-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 17-2010, f. 6-15-10, cert. ef. 7-1-10; DMAP 14-2011, f. 6-29-11, cert. ef. 7-1-11

## 410-121-0200

### Billing Forms

Guidelines for using the Prescription Drug Invoice 5.1 Universal Claim Form:

(1) When a paper claim form is needed, this form is used to bill for all pharmacy services, home blood glucose monitors, and related diabetic supplies. These services must be billed with a National Drug Code (NDC);

(2) The provider may bill on the form when a valid Medical Care Identification has been presented (Refer to OAR 410-120-1140 Verification of Eligibility);

(3) All completed 5.1 Universal Claim Forms must be mailed to the Division of Medical Assistance Programs (Division);

(4) All other durable medical equipment and certain Enteral/Parenteral nutrition and IV services must be billed on the CMS-1500, using the billing instructions found in the Division's Durable Medical Equipment and Medical Supplies administrative rules (Division 122) and Supplemental Information, and the Division's Home Enteral/Parenteral Nutrition and IV Services Administrative rules (Division 148) and Supplemental Information. These services are billed with HCPCS procedure codes.

[ED NOTE: Publications referenced are available from the agency.]

Stat. Auth.: ORS 409.050 & 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 29-1990, f. 8-31-90, cert. ef. 9-1-90; HR 20-1994, f. 4-29-94, cert. ef. 5-1-94; OMAP 20-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 40-2003, f. 5-27-03, cert. ef. 6-1-03; OMAP 18-2004, f. 3-15-04 cert. ef. 4-1-04; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 14-2011, f. 6-29-11, cert. ef. 7-1-11

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**Rule Caption:** July 1, 2011 – Alignment with current licensing board rules.

**Adm. Order No.:** DMAP 15-2011

**Filed with Sec. of State:** 6-29-2011

**Certified to be Effective:** 7-1-11

**Notice Publication Date:** 6-1-2011

**Rules Amended:** 410-133-0040, 410-133-0080, 410-133-0120

**Subject:** The School-based Health Services Program administrative rules govern Division payments for services to certain clients. The Division amended as follows:

- To revise and correct references to OARs cited in the rules listed above to align with the State's licensing boards.

- All above rules will reflect the Oregon Health Authority name change and updated statutory reference.

- Other text may be revised to improve readability and to take care of necessary "housekeeping" corrections.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-133-0040

### Definitions

(1) Adapted vehicle – Vehicle specifically designed or modified to transport passengers with disabilities.

(2) Adequate recordkeeping – In addition to General Rules OAR 410-120-0000, Definitions and 410-120-1360, Requirements for financial, clinical, and other records, documentation in the student's educational record and on the Individualized Education Plan (IEP) or Individualized Family Service Plan (IFSP) showing the necessary and appropriate health services provided to the student detailed in the School-Based Health Services (SBHS) administrative rules (410-133-0000 and 410-133-0320).

(3) Agent – means a third party or organization that contracts with a provider, allied agency, or Prepaid Health Plan (PHP) to perform designated services in order to facilitate a transaction or conduct other business functions on its behalf. Agents include billing agents, claims clearinghouses, vendors, billing services, service bureaus, and accounts receivable management firms. Agents may also be clinics, group practices, and facilities that submit billings on behalf of providers but the payment is made to a provider, including the following: an employer of a provider, if a provider is required as a condition of employment to turn over his fees to the employer; the facility in which the service is provided, if a provider has a contract under which the facility submits the claim; or a foundation, plan, or similar organization operating an organized health care delivery system, if a provider has a contract under which the organization submits the claim. Agents may also include electronic data transmission submitters.

(4) Allied Agency – Local and regional governmental agencies and regional authorities that contract with the Department of Human Services (Department) or the Oregon Health Authority (Authority) to provide the delivery of services to covered individuals. (e.g., local mental health authority, community mental health program, Oregon Youth Authority, Department of Corrections, local health departments, public schools, Education Service Districts (ESDs), developmental disability service programs, Area Agencies on Aging (AAAs), federally recognized American Indian tribes).

(5) Assessment – A process of obtaining information to determine if a student qualifies for or continues to qualify for the Division of Medical Assistance Programs (Division) covered school-based health services.

(6) Assistive technology service – Services provided by medically qualified staff within the scope of practice under State law with training and expertise in the use of assistive technology (see 410-133-0080 Coverage and 410-133-0200 Not Covered Services in these rules).

(7) Audiologist – A person licensed to practice audiology by the State Board of Examiners for Speech Pathology and Audiology or holds a Certificate of Clinical Competency (CCC) from the American Speech and Hearing Association (ASHA) and meet the requirements in 42 CFR 440.110.

(8) Audiology – Assessment of children with hearing loss; determination of the range, nature and degree of hearing loss, including the referral for medical or other professional attention for restoration or rehabilitation due to hearing disorders; provision of rehabilitative activities, such as language restoration or rehabilitation, auditory training, hearing evaluation and speech conversation, and determination of the child's need for individual amplification; obtaining and interpreting information; and coordinating care and integrating services relative to the student receiving services.

(9) "Authority" means the Oregon Health Authority (Please see General Rules 410-120-0000 Acronyms and Definitions)

(10) Automated Voice Response (AVR) – A computer system that provides information on clients' current eligibility status from the Division of Medical Assistance Programs by computerized phone or web-based response.

(11) Benefit Package – The "package" of covered health care services for which the Medicaid-eligible student is eligible. (See General Rules OAR 410-120-1210 Medical Assistance Benefit Packages and Delivery System)

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(12) Billing agent or billing service – Third party or organization that contracts with a provider to perform designated services in order to facilitate an Electronic Data Interchange (EDI) transaction on behalf of the provider. Also see definition for Electronic Data Interchange (EDI) Submitter

(13) Billing Provider (BP) – A person, agent, business, corporation, clinic, group, institution, or other entity who submits claims to and/or receives payment from the Division of Medical Assistance Programs (Division) on behalf of a performing provider and has been delegated the authority to obligate or act on behalf of the performing provider. (See the Department-wide Support Services (DWSS) administrative rules in, chapter 407, division 120 Provider Rules, and the Division's General Rules OAR 410-120-1260 and SBHS OAR 410-133-0140.)

(14) Billing time limit – Refers to the rules concerning the period of time allowed to bill services to the Division of Medical Assistance Programs (Division) see General Rules OAR 410-120-1300, Timely Submission of Claims. In general, those rules require initial submission within 12 months of the date of service or 18 months for resubmission.

(15) Centers for Medicare and Medicaid Services (CMS) – The federal regulatory agency for Medicaid programs.

(16) CMS-1500 – The standard federal billing form used to bill medical services.

(17) Certification – See “licensure.”

(18) Children's Health Insurance Program (CHIP) – A federal and state funded portion of the Oregon Health Plan (OHP) established by Title XXI of the Social Security Act and administered in Oregon by the Oregon Health Authority (Authority) Division of Medical Assistance Programs (Division).

(19) Clinical Social Work Associate (CSWA) – A person working toward Licensed Clinical Social Worker (LCSW) licensure in compliance with Division 20, Procedure for Certification and Licensing, OAR 877-20-0000 through OAR 877-20-0060.

(20) Coordinated care – Services directly related to covered school-based health services (SBHS) specified in the individualized education program (IEP) or individualized family service plan (IFSP), performed by medically qualified staff, and allowed under OAR 410-133-0080, Coverage, to manage integration of those health services in an education setting. Coordinated care includes the following activities:

(a) Conference – The portion of a conference in a scheduled meeting, between medically qualified staff and interested parties, to develop, review, or revise components of school-based health services provided to a Medicaid-eligible student for the purpose to establish, re-establish or terminate a Medicaid covered health service on a Medicaid-eligible student's Individualized Education Program (IEP) or Individualized Family Service Plan (IFSP); or to develop, review, or revise components of a health service currently provided to a Medicaid-eligible student to determine whether or not those covered health services continue to meet the student's needs as specified on the student's IEP or IFSP.

(b) Consultation – performed by medically qualified staff within the scope of practice providing technical assistance to or conferring with, special education providers, physicians, and families to assist them in providing a covered health service for Medicaid-eligible students related to a specific health service and health service goals and objectives in the individualized education program (IEP) or individualized family service plan (IFSP).

(c) Physician coordinated care – Meeting or communication with a physician in reference to oversight of care and treatment provided for a health service specified on a Medicaid-eligible student's individualized education program (IEP) or individualized family service plan (IFSP).

(21) Cost Determination – The process of establishing an annual discipline fee (cost rate), based on the prior-year actual audited costs, used by an EA for the purpose of billing for covered school-based health services (see 410-133-0245 Cost Determination and Payment in these rules).

(22) Covered entity – means a health plan, health care clearing house, health care provider, or allied agency that transmits any health information in electronic form in connection with a transaction, including direct data entry (DDE), and who must comply with the National Provider Identifier (NPI) requirements of 45 CFR 162.402 through 162.414. When a school provides covered SBHS services in the normal course of business and bills Medicaid for reimbursed covered transactions electronically in connection with that health care such as electronic claims, it is then a covered entity and must comply with the HIPAA Administrative Simplification Rules for Transactions and Code sets and Identifiers with respect to its transactions.

(23) Current Procedural Terminology (CPT) – The American Medical Association's CPT is a listing of descriptive terms and identifying codes for

reporting medical services and procedures performed by physicians and other health care providers. See the Division of Medical Assistance Programs' General Rules Program (OAR 410-120-0000 Definitions).

(24) Data transmission – means the transfer or exchange of data between the Department and a web portal or electronic data interchange (EDI) submitter by means of an information system which is compatible for that purpose and includes without limitation, web portal, EDI, electronic remittance advice (ERA), or electronic media claims (EMC) transmissions.

(25) Delegated Health Care Aide – A non-licensed person trained and supervised by a licensed registered nurse (RN) or nurse practitioner (NP) to perform selected tasks of nursing care specific to the Medicaid-eligible student identified in the nursing plan of care pursuant to the Individualized Education Program/Individualized Family Service Plan (IEP/IFSP).

(26) Delegation of nursing task – A selected nursing task that is performed by an unlicensed person, trained and monitored by a licensed RN. Delegation and supervision of selected nursing tasks must comply with Oregon Administrative Rules (OARs), Board of Nursing, chapter 851, division(s) 45 and 47. A school medical (SM) provider must maintain documentation of the actual delegation, training, supervision and provision of the nursing service billed to Medicaid.

(27) “Department” means the Department of Human Services established in OAR chapter 407, including any divisions, programs and offices as may be established therein.

(28) Diagnosis code – As identified in the International Classification of Diseases 9th Revision, Clinical Modification (ICD-9-CM), the primary Diagnosis Code is shown in all billing claims, unless specifically excluded in individual Division provider rule(s). Where they exist, diagnosis codes shall be shown to the degree of specificity outlined in OAR 410-120-1280, Billing.

(29) Direct services – Face-to-face delivery of health services between the medically qualified staff who is the service provider and a Medicaid-eligible student.

(30) Division of Medical Assistance Programs (Division) – A Division within the Oregon Health Authority (Authority); the Division is responsible for coordinating the medical assistance programs within the State of Oregon including the Oregon Health Plan (OHP) Medicaid demonstration, the State Children's Health Insurance Program (SCHIP- Title XXI), and several other programs.

(31) Early Intervention/Early Childhood Special Education (EI/ECSE) – EI is a program designed to address the unique needs of a child age 0-3 years and ECSE is a program for preschool children with a disability ages 3-5 years or eligible for Kindergarten.

(32) Educational Agency (EA) – For purposes of these rules, any public school, school district, Education Service District (ESD), state institution, or youth care center providing educational services to students, birth to age 21 through grade 12, that receives federal or state funds either directly or by contract or subcontract with the Oregon Department of Education (ODE).

(33) Education records – Those records, files, documents and other materials which contain information directly related to a student and maintained by an Education Agency (EA) or by a person acting for such EA as set forth in OAR 581-021-0220. (A school-based health services (SBHS) provider is required to keep and maintain supporting documentation for Medicaid reimbursed school-based health services for a period of seven (7) years; this documentation is part of the student's education record but may be filed and kept separately by school health professionals.) See 410-133-0320 Documentation and Recordkeeping Requirements in these rules.

(34) Education Service District (ESD) – An education agency established to offer a resource pool of cost-effective, education-related, physical or mental health-related, state-mandated services to multiple local school districts within a geographic area described in ORS 334.010

(35) Electronic Data Interchange (EDI) – The exchange of business documents from application to application in a federally mandated format or, if no federal standard has been promulgated, using bulk transmission processes and other formats as the Department designates for EDI transactions. For purposes of these rules (OAR 407-120-0100 through 407-120-0200), EDI does not include electronic transmission by web portal.

(36) EDI submitter – An Individual or an entity authorized to establish an electronic media connection with the Department to conduct an EDI transaction. An EDI submitter may be a trading partner or an agent of a trading partner. Also see definition for billing agent in these rules.

(37) Electronic Verification System (EVS) – Eligibility information that have met the legal and technical specifications of the Division of Medical Assistance Programs (Division) in order to offer eligibility information to enrolled Division providers.

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(38) Eligibility for special education services – A determination by a designated education agency (EA), through a team, that a child meets the eligibility criteria for early intervention (EI), early childhood special education (ECSE) or special education as defined in ORS 343 and OAR chapter 581, division 15.

(39) Evaluation – Evaluations are procedures performed by medically qualified staff to determine whether a Medicaid-eligible student is disabled and the nature and extent of the health services the student needs under the Individuals with Disabilities Education Act (IDEA) and in accordance with Oregon Department of Education OAR chapter 581 division 15. The Authority can only reimburse evaluations that establish, re-establish or terminate a school-based health services (SBHS) covered health service on a Medicaid-eligible student's Individualized Education Program (IEP) or Individualized Family Service Plan (IFSP) under the Individuals with Disabilities Education Act (IDEA).

(40) Federal Medical Assistance Percentage (FMAP) – The percentage of federal matching dollars for qualified state medical assistance program expenditures.

(41) Healthcare Common Procedure Coding System (HCPCS) – A method for reporting health care professional services, procedures, and supplies. HCPCS consists of the Level I -American Medical Association's Physician's Current Procedural Terminology (CPT), Level II – National codes, and Level III – Local codes. DMAP uses HCPCS codes. See General Rules (OAR 410-120-1280 Billing).

(42) Health assessment plan (nursing) – Systematic collection of data for the purpose of assessing a Medicaid-eligible student's health or illness status and actual or potential health care needs in the educational setting. Includes taking a nursing history, and an appraisal of the student's health status through interview, information from the family and information from the student's past health or medical record. A SBHS provider is required to keep and maintain the health assessment plan and supporting documentation for Medicaid reimbursed health services described in a Medicaid-eligible student's individualized education program (IEP) or individualized family service plan (IFSP) for a period of seven (7) years, as part of the student's education record, which may be filed and kept separately by school health professionals. (See 410-133-0320 Documentation and Recordkeeping Requirements.)

(43) Health care practitioner – A person licensed pursuant to state law to engage in the provision of health care services within the scope of the health care practitioner's license and/or certification standards established by their health licensing agency. Medical provider and health care practitioner are interchangeable terms. See Definition for medical provider in these rules.

(44) Health services – Medical evaluation services provided by a physician for diagnostic and evaluation purposes for a Medicaid-eligible student that is found eligible under the Individuals with Disabilities Education Act (IDEA) and leads to an established Individualized Education Program (IEP) or Individualized Family service Plan (IFSP), physical or mental health evaluations, and assessment or treatment performed by medically qualified staff to achieve the goals set forth in a Medicaid-eligible student's IEP or IFSP. A covered health service is one that is covered by the medical assistance program and is provided to enable the Medicaid-eligible student to benefit from a special education program (age 3-21) or to achieve developmental milestones in an early intervention program (age 0-3). "Health services" are synonymous with "medical services" in these rules. To determine whether a health service specified on an Individualized Education Program (IEP) or Individualized Family Service Plan (IFSP) is a covered School-Based Health Service (SBHS) (See 410-133-0080 Coverage and 410-133-0200 Not Covered Services).

(45) Health Services Commission (HSC) – An eleven member commission that is charged with reporting to the Governor the ranking of health benefits from most to least important, and representing the comparable benefits of each service to the entire population to be serviced.

(46) ID number – A number issued by the Authority used to identify Medicaid-eligible students. This number may also be referred to as recipient identification number; prime number; client medical ID Number or medical assistance program ID number.

(47) Individuals with Disabilities Education Act (IDEA) – The federal law ensuring the rights of children with disabilities to a "free and appropriate education" (FAPE).

(48) Individualized Education Plan (IEP) – A written statement of an educational program for a child with a disability which is developed, reviewed, or revised in a meeting in accordance with Oregon Department of Education OAR chapter 581, division 15. When an IEP is used as a prescription for Medicaid reimbursement for covered School-Based Health

Services (SBHS), it must include: type of health service, amount, duration and frequency for the service provided. In order to bill Medicaid for covered health services they must be delivered by or under the supervision of medically qualified staff and must be recommended by a physician or appropriate health care practitioner acting within the scope of practice. See definition medically qualified staff.

(49) Individualized Family Service Plan (IFSP) – A written plan of early childhood special education (ECSE) services, early intervention (EI) services, and other services developed in accordance with criteria established by the Oregon Department of Education (ODE) for each child (age's birth to 5 years) eligible for IFSP services. The plan is developed to meet the needs of a child with disabilities in accordance with requirements and definitions in OAR chapter 581, division 15. When an IFSP is used as a prescription for Medicaid reimbursement for SBHS covered services, it must include: type of health service, amount, duration and frequency for the service provided. In order to bill Medicaid for covered health services they must be delivered by or under the supervision of medically qualified staff and must be recommended by a physician or appropriate health care practitioner acting within their scope of practice. See definition medically qualified staff.

(50) Individualized Education Plan/Individualized Family Service Plan (IEP/IFSP) Team – A group of teachers, specialists, and parents responsible for determining eligibility, developing, reviewing, and revising an IEP or IFSP in compliance with the Oregon Department of Education (ODE) OAR chapter 581, division 15.

(51) Licensed Clinical Social Worker (LCSW) – A person licensed to practice clinical social work pursuant to State law.

(52) Licensed Physical Therapist Assistant (LPTA) – A person licensed to assist in the administration of physical therapy, solely under the supervision and direction of a physical therapist.

(53) Licensed Practical Nurse (LPN) – A person licensed to practice under the direction of a licensed professional within the scope of practice as defined by State law.

(54) Licensure – Documentation from state agencies demonstrating that licensed or certified individuals are qualified to perform specific duties and a scope of services within a legal standard recognized by the licensing agency. In the context of health services, licensure refers to the standards applicable to health service providers by health licensing authorities. For health services provided in the state of Oregon, licensure refers to the standards established by the appropriate State of Oregon licensing agency.

(55) Medicaid-eligible student – The child or student who has been determined to be eligible for Medicaid health services by the Authority. For purposes of this rule, Medicaid-eligible student is synonymous with "recipient" or "Oregon Health Plan (OHP) client". For convenience, the term student used in these rules applies to both students covered by an Individualized Education Program (IEP) and children covered by an Individualized Family Service Plan (IFSP). Also for purposes of this rule, students or children whose eligibility is based on the Children's Health Insurance Program (CHIP) shall be referred to as Medicaid-eligible students.

(56) Medical Assistance Program – A program for payment of health services provided to eligible Oregonians. Oregon's medical assistance program includes Medicaid services including the Oregon Health Plan (OHP) Medicaid Demonstration, and the Children's Health Insurance Program (CHIP). The Medical Assistance Program is administered by the Division of Medical Assistance Programs (Division), of the Oregon Health Authority.

(57) Medical Management Information System (MMIS) – A data collection system for processing paper and electronic claims for payment of health services provided to Medicaid-eligible recipients.

(58) Medical provider – An individual licensed by the State to provide health services within their governing body's definitions and respective scope of practice. Medical provider and health care practitioner are interchangeable terms.

(59) Medical services – The care and treatment provided by a licensed health care practitioner to prevent, diagnose, treat, correct or address a medical problem; whether physical, mental or emotional. For the purposes of these rules, this term shall be synonymous with health services or health-related services listed on an Individualized Education Program (IEP) or Individualized Family Service Plan (IFSP), as defined in OAR chapter 581, division 15. Not all health-related services listed on an IEP or IFSP are covered as SBHS. See 410-133-0080 Coverage and 410-133-0200 Not Covered Services.



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(60) Medical transportation – Specialized transportation in a vehicle adapted to meet the needs of passengers with disabilities transported to and from a SBHS covered service.

(61) Medically qualified staff:

(a) Staff employed by and/or through contract with an EA; and

(b) Licensed by the State to provide health services in compliance with State law defining and governing the scope of practice, described further in OAR 410-133-0120.

(62) Medication management – A task performed only by medically qualified staff, pursuant to a student's Individualized Education Program/Individualized Family Service Plan (IEP/IFSP), which involves administering medications, observing for side effects, and monitoring signs and symptoms for medication administration.

(63) National Provider Identification (NPI) – Federally directed Provider number mandated for use on Health Insurance Portability and Accountability Act (HIPAA) covered transactions; individuals, provider organizations, and subparts of provider organizations that meet the definition of health care provider (45 CFR 160.103) and who conduct HIPAA covered transactions electronically are eligible to apply for an NPI; Medicare covered entities are required to apply for an NPI.

(64) "Necessary and appropriate" health services – Those health services described in a Medicaid-eligible student's IEP or IFSP which are:

(a) Consistent with the symptoms of a health condition or treatment of a health condition;

(b) Appropriate with regard to standards of good health practice and generally recognized by the relevant scientific community and professional standards of care as effective;

(c) Not solely for the convenience of the Medicaid-eligible student or provider of the service; and

(d) The most cost-effective of the alternative levels of health services, which can safely be provided to a Medicaid-eligible student.

(65) Nursing Diagnosis and Management Plan – A written plan that describes a Medicaid-eligible student's actual and anticipated health conditions that are amenable to resolution by nursing intervention.

(66) Nursing Plan of Care – Written guidelines that are made a part of, and attached to the Individualized Education Program (IEP) or individualized Family Service Plan (IFSP) that identify specific health conditions of the Medicaid-eligible student, and the nursing regimen that is "necessary and appropriate" for the student. Development and maintenance of this plan includes establishing student and nursing goals, and identifying nursing interventions (including location, frequency, duration and delegation of care) to meet the medical care objective identified in their IEP or IFSP, see Oregon State Board of Nursing Practice Act, Division 47. The SBHS provider is responsible for developing the nursing plan of care and is required to keep and maintain a copy of the nursing plan of care as supporting documentation for Medicaid reimbursed health services. (See definition "Education records".)

(67) Nurse practitioner – A person licensed as a registered nurse and certified by the Board of Nursing to practice as a nurse practitioner pursuant to State law.

(68) Nursing services – Services provided by a nurse practitioner (NP), registered professional nurse (RN), a licensed practical nurse (LPN) or delegated health care aide, within the scope of practice as defined by State law. Nursing services include preparation and maintenance of the health assessment plan, nursing diagnosis and management plan, nursing plan of care, consultation, and coordination and integration of health service activities, as well as direct patient care and supervision.

(69) Observation – Surveillance or visual monitoring performed by medically qualified staff as part of an evaluation, assessment, direct service, or care coordination for a necessary and appropriate Medicaid covered health service specified on a Medicaid-eligible student's Individualized Education Program (IEP) or Individualized Family Service Plan (IFSP) to better understand the child's medical needs and progress in their natural environment. An observation by itself is not billable.

(70) Occupational therapist (OT) – A person licensed by the State's Occupational Therapy Licensing Board.

(71) Occupational Therapist Assistant – A person who is licensed as an occupational therapy assistant assisting in the practice of occupational therapy under the supervision of a licensed occupational therapist.

(72) Occupational therapy – Assessing, improving, developing, or restoring functions impaired or lost through illness, injury or deprivation, to improve the ability to perform tasks for independent functioning when functions are lost or impaired, preventing through early intervention, initial or further impairment or loss of function. Obtaining and interpreting infor-

mation, coordinating care, and integrating necessary and appropriate occupational therapy services relative to the Medicaid-eligible student.

(73) Oregon Department of Education (ODE) – The state agency that provides oversight to public educational agencies for ensuring compliance with Federal and State laws relating to the provision of services required by the individuals with disabilities education act (IDEA).

(74) Orientation and mobility training – Services provided to blind or visually impaired students by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community. These services are not covered under School-Based Health Services (SBHS) (See OAR 410-133-0200 Not Covered Services).

(75) Performing provider – A person, agent, business, corporation, clinic, group, institution, or other entity that is the provider of a service or item with the authority to delegate fiduciary responsibilities to a billing provider, also termed billing agent, to obligate or act on the behalf of the performing provider regarding claim submissions, receivables, and payments relative to the Medical Assistance Program. For the purposes of these SBHS rules, the school medical (SM) provider is the performing provider.

(76) Physical Therapist – A person licensed by the relevant State licensing authority to practice physical therapy (See OAR chapter 848, division 10 Licensed Physical Therapists and Licensed Physical therapist Assistants; chapter 848 division, 040 Minimum Standards For Physical therapy Practice and Records

(77) Physical Therapy – Assessing, preventing or alleviating movement dysfunction and related functional problems. Obtaining and interpreting information: coordinating care and integrating necessary and appropriate physical therapy services relative to the student receiving treatments.

(78) Prime Number – See definition of ID Number.

(79) Prioritized List of Health Services – Also referred to as the Prioritized List, the Oregon Health Services Commission's (HSC) listing of health services with "expanded definitions" of ancillary services and preventative services and the HSC practice guidelines, as presented to the Oregon Legislative Assembly. The Prioritized List is generated and maintained by the HSC. The Prioritized List governs medical assistance programs' health services and Benefit Packages pursuant to the Division of Medical Assistance Programs' General Rules OAR 410-120-0000 et seq., and OAR 410-141-0480 through 410-141-0520 (for the listing of condition and treatment pairs).

(80) Procedure code – See definition of HCPC healthcare common procedure code.

(81) Provider – An individual, facility, institution, corporate entity, or other organization which supplies health care services or items, also termed a performing provider, or bills, obligates and receives reimbursement on behalf of a performing provider of services, also termed a billing provider (BP). The term "Provider" refers to both performing providers and billing providers unless otherwise specified. Payment can only be made to DMAP-enrolled providers who have by signature on the provider enrollment forms and attachments, agreed to provide services and to bill in accordance with General Rules OAR 410-120-1260, and the SBHS OAR 410-133-0140. If a provider submits claims electronically, the provider must become a trading partner with the Authority and comply with the requirements of the Electronic Data Interchange (EDI) rules pursuant to OAR 407-120-0100 through 407-120-0200.

(82) Provider enrollment agreement – An agreement between the provider and the Oregon Health Authority (Authority) that sets forth the conditions for being enrolled as a provider with the Authority and to receive a provider number in order to submit claims for reimbursement for covered SBHS provided to Medicaid-eligible students. Payment can only be made to Division of Medical Assistance Programs' (Division)-enrolled providers who have by signature on the provider enrollment forms and program applicable attachments agree to provide services and to bill in accordance with Provider Rules chapter 407, division 120 and the Division's General Rules chapter 410, division 120, and these SBHS rules. Also see definitions for Trading Partner and Trading Partner Agreement in these rules.

(83) Psychiatrist – A person licensed to practice medicine and surgery in the state of Oregon and possesses a valid license from the Oregon Licensing Board for the Healing Arts.

(84) Psychologist – A person with a doctoral degree in psychology and licensed by the State Board of Psychologist Examiners See 858-010-0010.

(85) Psychologist Associate – A person who does not possess a doctoral degree that is licensed by the Board of Psychologists Examiners, to perform certain functions within the practice of psychology under the supervision of a psychologist. See 858-010-0037 through 858-010-

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0038. An exception would be psychologist associate with the authority to function without immediate supervision, see OAR 858-010-0039.

(86) Recordkeeping requirements – A SBHS SM provider is required to keep and maintain the supporting documentation for Medicaid reimbursed health services described in a Medicaid-eligible student's Individualized Education Program (IEP) or Individualized Family Service Plan (IFSP) for a period of seven (7) years, as part of the student's education record, which may be filed and kept separately by school health professionals (See OAR 410-133-0320).

(87) Re-evaluation – Procedures used to measure a Medicaid-eligible student's health status compared to an initial or previous evaluation, are focused on evaluation of progress toward current goals, modifying goals or treatment, or making a professional judgment to determine whether or not the student will continue to receive continued care for a covered service pursuant to an IEP or IFSP under the Individuals with Disabilities Education Act (IDEA). Continuous assessment of the student's progress as a component of ongoing therapy services is not billable as a re-evaluation.

(88) Regional program – Regional program services are provided on a multi-county basis, under contract from the Oregon Department of Education (ODE) to eligible children (birth to 21) visually impaired, hearing impaired, deaf-blind, autistic, and/or severely orthopedically impaired. A regional program may be reimbursed for covered health services it provides to Medicaid-eligible students through the school medical (SM) provider (e.g., public school district or ESD) that administers the program.

(89) Registered Nurse (RN) – A person licensed and certified by the Oregon Board of Nursing to practice as a registered nurse pursuant to State law.

(90) Rehabilitative services – For purposes of the School-Based Health Services (SBHS) program, any health service that is covered by the Medical Assistance Program and that is a medical, psychological or remedial health service recommended by a physician or other licensed health care practitioner within the scope of practice under State law, and provided to a Medicaid-eligible student pursuant to an Individualized Education Program/Individualized Family Service Plan (IEP/IFSP) under the Individuals with Disabilities Education Act (IDEA), for reduction, correction, stabilization or functioning improvement of physical or mental disability of a Medicaid-eligible student (See 410-133-0060).

(91) Related services – For purposes of this rule, related services as listed on an Individualized Education Program (IEP) or Individualized Family Service Plan (IFSP) may include: transportation and such developmental, corrective and other supportive services (e.g., speech language, audiology services, psychological services, physical therapy, occupational therapy, social work services in schools, and nursing services) as are required to assist a child or student with a disability to benefit from special education; and includes early identification and assessment of disabling conditions in children. NOTE: Not all "related services" are covered for payment by Medicaid. To determine whether a particular related service is a covered health service for a Medicaid-eligible student (see OAR 410-133-0080, Coverage and OAR 410-133-0200, Not Covered Services).

(92) School-Based Health Services (SBHS) – Health services provided in the educational setting, meeting the requirements of these rules, and applicable federal and state laws and rules.

(93) School medical (SM) provider – An enrolled provider type established by the Division to designate the provider of school-based health services eligible to receive reimbursement from the Division. See the Authority's general rules chapter 943 division 120, the Division's General Rules OAR 410-120-1260, and School-Based Health Services Program OAR 410-133-0140 (School Medical (SM) Provider Enrollment Provisions).

(94) Screening – A limited examination to determine a Medicaid-eligible student's need for a diagnostic medical evaluation. See OAR 410-133-0200 (Not Covered Services).

(95) Special Education Services – Specially designed instruction to meet the unique needs of a child with a disability, including regular classroom instruction, instruction in physical education, home instruction, and instruction in hospitals, institutions, special schools, and other settings.

(96) Speech Language Pathology Assistant (SLPA) – A person who is licensed by the Oregon State Board of Examiners for Speech Pathology and Audiology and provides speech-language pathology services under the direction and supervision of a speech-language pathologist licensed under ORS 681.250.

(97) Speech-Language Pathologist – A person licensed by the Oregon Board of Examiners for Speech Pathology and Audiology or holds a Certificate of Clinical Competency (CCC) from the American Speech and

Hearing Association (ASHA) (See Medically Qualified Staff 410-133-0120).

(98) Speech-language pathology services – Assessment of children with speech/language disorders, diagnosis and appraisal of specific speech/language disorders, referral for medical and other professional attention necessary for the rehabilitation of speech/language disorders and provision of speech/language services for the prevention of communicative disorders. Obtaining and interpreting information, coordinating care, and integrating necessary and appropriate speech-language pathology services relative to the student receiving services.

(99) State Education Agency (SEA) – See "Oregon Department of Education (ODE)".

(100) State-operated school – The Oregon School for the Deaf. See "Educational Agency."

(101) Student health/medical/nursing records – Education records that document, for Medical Assistance Program purposes, the Medicaid-eligible student's diagnosis or the results of tests, screens or treatments, treatment plan, the Individualized Education Program (IEP) or Individualized Family Service Plan (IFSP), and the record of treatments or health services provided to the child or student.

(102) Teachers' Standards and Practices Commission (TSPC) – The Commission that governs licensing of teachers, personnel, service specialists, and administrators as set forth in OAR chapter 584. In order for schools or school providers to participate in the Medicaid program and receive Medicaid reimbursement, they must meet the Medicaid provider qualifications. It is not sufficient for a state to use Department of Education provider qualifications for reimbursement of Medicaid-covered health services provided in an education setting.

(103) Testing – See "Assessment".

(104) Testing Technician – A person/technician adequately trained to administer and score specific tests, as delegated under the direction and supervision of a licensee, and maintains standards for the testing environment and testing administration as set forth in the American Psychological Association Standards for Educational and Psychological Tests (1999) and Ethical Principles for Psychologists (2002). See ORS 675.010(4), OAR 858-010-0001, and 858-010-0002.

(105) Third-party billing – A process of sending a bill to a public or private insurance company for a medical or health service given to someone who is insured.

(106) Trading partner – means a provider, prepaid health plan (PHP), clinic, or allied agency that has entered into a trading partner agreement with the Department in order to satisfy all or part of its obligations under a contract by means of electronic data interchange (EDI), electronic remittance advice (ERA), or electronic media claims (EMC), or any other mutually agreed means of electronic exchange or transfer of data. EDI transactions must comply with the requirements of the EDI rules OAR 407-120-0100 through 407-120-0200 for the purposes of these rules EDI does not include electronic transmission by web portal.

(107) Trading partner agreement (TPA) – means a specific request by a provider, PHP, clinic, or allied agency to conduct EDI transactions that governs the terms and conditions for EDI transactions in the performance of obligations under a contract. A provider, PHP, clinic, or allied agency that has executed a TPA will be referred to as a trading partner in relation to those functions.

(108) Transportation Aide – An individual trained for health and safety issues to accompany a Medicaid-eligible student transported to and from a covered Health Service as specified in the Individualized Education Program/individualized Family Service Plan (IEP/IFSP). The School Medical (SM) Provider must maintain documentation of the training, supervision and provision of the services billed to Medicaid. For the purposes of these rules, individual transportation aides are included in the cost calculation for transportation costs and will not be billed separately. This computation will not include delegated health care aides for whom costs are direct costs.

(109) Transportation as a related service – Specialized transportation adapted to serve the needs of a Medicaid-eligible student to and from a covered health service that is necessary and appropriate, and described in the Individualized Education Program/individualized Family Service Plan (IEP/IFSP) as outlined in OAR 410-133-0080 (Coverage).

(110) Transportation vehicle trip log – A record or log kept specifically for tracking each transportation trip a Medicaid-eligible student receives transportation to or from a covered health service. (See OAR 410-136-0280 Medical Transportation rules – Required Documentation and SBHS OAR 410-133-0245, Cost Determination and Payment).

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(111) Treatment Plan – A written plan of care services, including treatment with proposed location, frequency and duration of treatment as required by the health care practitioner’s health licensing agency.

(112) Unit – Is a service measurement of time for billing and reimbursement efficiency. One (1) unit equals 15 minutes unless otherwise stated.

(113) Web Portal submitter – means an individual or entity authorized to establish an electronic media connection with the Department of Human Services to conduct a direct data entry transaction. A web portal submitter may be a provider or a provider’s agent.

Stat. Auth.: ORS 413.042

Stats. Implemented: 413.042, 414.065

Hist.: HR 39-1991, f. & cert. ef. 9-16-91; HR 29-1993, f. & cert. ef. 10-1-93; HR 21-1995, f. & cert. ef. 12-1-95; OMAP 31-1998, f. & cert. ef. 9-1-98; OMAP 38-1999, f. & cert. ef. 10-1-99; OMAP 15-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 31-2003, f. & cert. ef. 4-1-03; OMAP 53-2003, f. 8-13-03 cert. ef. 9-1-03; OMAP 24-2005(Temp), f. & cert. ef. 4-5-05 thru 10-1-05; OMAP 53-2005, f. 9-30-05, cert. ef. 10-1-05; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08; DMAP 19-2009, f. 6-12-09, cert. ef. 7-1-09; DMAP 15-2011, f. 6-29-11, cert. ef. 7-1-11

## 410-133-0080

### Coverage

The Oregon Health Authority (Authority) may reimburse school medical (SM) providers for covered health services that meet all of the following criteria:

(1) The health service(s) must be “necessary and appropriate” and covered under the Oregon Health Plan (OHP) as a service that is above the funding line of the Prioritized List of health services and the health services must not be excluded under OAR 410-133-0200 (Not Covered Services).

(2) The health service(s) must be required by a Medicaid-eligible student’s physical or mental condition(s) as specified on the Individualized Education Program (IEP) or Individualized Family Service Plan (IFSP) and further described in the treatment plan and the evaluation of the student.

(3) The health service, individual or group, may include corrective health services treatments and Medicaid-covered related services as described in a student’s IEP or IFSP.

(a) The payment rate for health services includes case management and necessary supplies for these services. Additional reimbursement for such services, are not paid separately from the health service.

(b) These services must be provided by medically qualified staff that meet the standards of licensing or certification for the health service being provided as described in OAR 410-133-0120 and comply with the respective medical provider’s governing definitions, scope of practice, documentation requirements, and licensure or certification.

(4) Evaluation and assessment for SBHS are reimbursed for the part of the evaluation or assessment regarding a Medicaid-eligible student’s “necessary and appropriate” SBHS needs for the purpose of establishing, re-establishing, or terminating a Medicaid covered service on a Medicaid-eligible student’s IEP or IFSP; or to develop, review, or revise components of a covered health service currently provided to a Medicaid-eligible student for continuation of those covered services pursuant to an IEP or IFSP under the Individuals with Disabilities Education Act (IDEA).

(a) Evaluation services are procedures used to determine a SBHS covered health-related need, diagnosis, or eligibility under IDEA.

(b) Re-evaluation services are procedures used to measure a Medicaid-eligible student’s health status compared to an initial or previous evaluation and is focused on evaluation of progress toward current goals, modifying goals or treatment or making a professional judgment to determine whether or not a Medicaid-eligible student will continue to receive continued care for a SBHS covered service pursuant to the IEP or IFSP under IDEA. Continuous assessment of the student’s progress as a component of ongoing therapy services is not billable as a re-evaluation.

(5) Assistive technology services directly assist a Medicaid-eligible student with a disability, eligible under IDEA, to receive assistive technology covered SBHS as specified on the IEP or IFSP, in the selection, acquisition, or use of an assistive technology device, including:

(a) The assistive technology assessment with one-to-one student contact time by medically qualified staff within the scope of practice performing the assessment of the need, suitability, and benefits of the use of an assistive technology device or adaptive equipment that will help restore, augment, or compensate for existing functional ability in the Medicaid-eligible student or that will optimize functional tasks and/or maximize the Medicaid-eligible student’s environmental accessibility. This requires and includes the preparation of a written report;

(b) Care coordination with the Medicaid-eligible student’s physician, parent/guardian, and the Division of Medical Assistance Programs (Division) for the parent/guardian’s acquisition of a personal assistive technology device for their Medicaid-eligible student through the student’s

Medicaid plan for the benefit of the Medicaid-eligible student to maximize his/her functional ability and environmental accessibility; and

(c) Training or technical assistance provided to or demonstrated with the Medicaid-eligible student by medically qualified staff, instructing the use of an assistive technology device or adaptive equipment in the educational setting with professionals (including individuals providing education and rehabilitation services) or where appropriate the family members, guardians, advocates, or authorized representative of the Medicaid-eligible student. In order to bill Medicaid for this service, the student must be present.

(6) The Authority may reimburse physical therapy services provided by:

(a) A physical therapist authorized to administer physical therapy to an individual, when the individual is a Medicaid-eligible student eligible for special education, as defined by state or federal law, and is being seen pursuant to the Medicaid-eligible student’s individual education plan or individual family service plan (see Oregon administrative rules chapter 848, division 010, Licensed Physical therapist and Licensed Physical Therapist Assistants; Division 015 Physical Therapist Assistants; and Division 040 Minimum Standards For Physical therapy Practice and Records);

(b) A physical therapist assistant providing treatment under the supervision of a physical therapist that is available and readily accessible for consultation with the assistant, at all times, either in person or by means of telecommunications (see OAR chapter 848, division 015, Physical Therapist Assistants). Physical therapy services must be provided by medically qualified staff that meet the standards of licensing or certification for the health service being provided as described in OAR 410-133-0120.

(c) Reimbursement time may include:

(A) Preparation of the written initial evaluation or initial assessment report to establish necessary and appropriate physical therapy services on a Medicaid-eligible student’s IEP or IFSP.

(B) Obtaining and interpreting medical information for the part of an evaluation or assessment performed by the physical therapist to establish necessary and appropriate physical therapy services on a Medicaid-eligible student’s IEP or IFSP; or to determine whether or not necessary and appropriate physical therapy services will continue to be specified on the Medicaid-eligible student’s IEP or IFSP under IDEA (cannot be delegated).

(C) Care coordination and integrating services, within the scope of practice, for providing necessary and appropriate physical therapy services relative to the Medicaid-eligible student pursuant to an IEP or IFSP.

(D) Direct treatment and supervision of services provided to a Medicaid-eligible student by the physical therapist and defined in the individual plan; when

(E) Documentation by the supervising physical therapist supporting the appropriate supervision of the assistant is maintained and kept by the School Medical Provider for a period of seven years (See OAR chapter 848, division 40, Minimum Standards for Physical Therapy Practice and Records).

(F) Individual or group physical therapy services provided to a Medicaid-eligible student by or under the supervision and direction of a Licensed physical therapist pursuant to the Medicaid-eligible student’s IEP or IFSP; when the documentation describing physical therapy services provided are signed by the therapist providing the service in accordance with their board licensing requirements and documentation for supervision of services performed by or under the supervision and direction of the supervising physical therapist supporting the services provided is maintained and kept by the school medical provider for seven (7) years (See Minimum Standards for Physical Therapy Practice and Records OARs 848-040-0100 through 848-040-0170).

(G) Other covered physical therapy services within the scope of practice and subsections (1) and (2) of this rule.

(7) The Authority may reimburse occupational therapy services provided by:

(a) A licensed Occupational Therapist (OT) authorized to administer occupational therapy to an individual, when the individual is a Medicaid-eligible student eligible for special education, as defined by state or federal law, and is being seen pursuant to the Medicaid-eligible student’s individual education plan or individual family service plan; and

(b) A licensed occupational therapy assistant assisting in the practice of occupational therapy under the general supervision of a licensed occupational therapist. (General supervision requires the supervisor to have at least monthly direct contact in person with the supervisee at the work site with supervision available as needed by other methods); and

(c) Before an occupational therapy assistant assists in the practice of occupational therapy, he/she must file with the Board a signed, current



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statement of supervision of the licensed occupational therapist that will supervise the occupational therapy assistant (See OAR 339-010-0035 Statement of Supervision for Occupational Therapy Assistant). Occupational therapy services must be provided by medically qualified staff that meet the standards of licensing or certification for the health service being provided as described in OAR 410-133-0120.

(d) Reimbursement time may include:

(A) Preparation of the written initial evaluation or initial assessment reports that establish necessary and appropriate occupational therapy services on a Medicaid eligible student's IEP or IFSP.

(B) Obtaining and interpreting medical information for the part of the evaluation or assessment performed by the occupational therapist to establish necessary and appropriate occupational therapy services on a Medicaid-eligible student's IEP or IFSP; or to determine whether or not necessary and appropriate occupational therapy services will continue to be specified on the Medicaid eligible student's IEP or IFSP under IDEA (cannot be delegated).

(C) Development of the initial occupational therapy treatment plan by the OT (cannot be delegated).

(D) Coordinating care and integrating services, within the scope of practice, relative to the Medicaid-eligible student receiving necessary and appropriate occupational therapy services as specified on the IEP or IFSP.

(E) Individual or group occupational therapy services provided to a Medicaid-eligible student by or under the supervision and direction of a licensed occupational therapist as specified on Medicaid-eligible student's IEP or IFSP.

(F) Direct treatment and supervision of services provided to a Medicaid-eligible student by the occupational therapist and defined in the individual plan; when documentation supporting the appropriate supervision of the assistant is kept and maintained by the school medical provider for a period of seven years;

(G) The occupational therapy services provided are consistent with OAR 339-010-0050 Occupational Therapy Services for Children and Youth in Education and Early childhood Programs regulated by federal laws; and

(H) Documentation describing occupational therapy treatment provided must be signed including credentials by the occupational therapist providing the service. Where appropriate, services provided by an occupational therapist assistant shall be reviewed and co signed by the supervising occupational therapist. All documentation describing treatment provided by an occupational therapy assistant must name the assistant therapist and the supervising therapist including credentials as reflected on the current statement of supervision filed with the Occupational Therapist Licensing Board. Supervision and documentation of supervision by the supervising therapist for therapy provided by the occupational therapy assistant must meet general supervision requirements or closer supervision where professionally appropriate. See OAR 339-010-0005, 339-010-0035, and 339-010-0050. Also, see 410-133-0320, Documentation and Recordkeeping Requirements in these rules.

(I) Other covered occupational therapy services within the scope of practice and subsections (1) and (2) of this rule.

(8) The Authority may reimburse speech therapy services provided by:

(a) A licensed speech pathologist licensed by the Oregon Board of Examiners for Speech Pathology and Audiology or holds a Certificate of Clinical Competency (CCC) from the American Speech and Hearing Association (ASHA), authorized to administer speech therapy to an individual, when the individual is a Medicaid-eligible student eligible for special education, as defined by state or federal law, receiving speech therapy services pursuant to an individual education plan or individual family service plan; or

(b) A graduate speech pathologist in their Clinical Fellowship Year (CFY) practicing under the supervision of an ASHA licensed speech pathologist with CCC meeting the standards of licensing or certification for the health service provided as described in OAR 410-133-0120 medically qualified staff; and when

(A) A standardized system for reviewing the clinical work of the clinical fellow is performed at regularly scheduled intervals, using the Skills Inventory Rating (CFSI) form addressing the fellow's attainment of skills for independent practice;

(B) The clinical fellow supervisor maintains and documents the supervision of the clinical fellow to be kept by the school medical provider for a period of seven years.

(C) Documentation describing the treatment provided are signed and initialed by the clinical fellow for review and co-signature by the supervising clinical fellow.

(c) Speech-language pathology assistants (SLPA), licensed by the Oregon State Board of Examiners for Speech Pathology and Audiology, under the supervision of a supervising speech-language pathologist and who meet the standards of licensing or certification for the health service provided as described in OAR 410-133-0120 Medically Qualified Staff, when the following conditions are met:

(A) The supervising speech-language pathologist must have at least two years of full-time professional speech-language pathology experience (see OAR 335-095-0040 and 335-095-0050, Requirements for Supervising Licensed Speech-Language Pathology Assistants);

(B) The supervising speech therapist does not supervise more than the equivalent of two full-time speech-language pathology assistants;

(C) The supervising speech-language pathologist maintains documentation supporting the appropriate supervision of the assistant(s) to be kept by the school medical provider for a period of seven (7) years;

(D) The caseload of the supervising clinician allows for administration, including assistant supervision, evaluation of students and meeting times. (All students assigned to an assistant are considered part of the caseload of the supervising clinician);

(E) The supervising speech-language pathologist must be able to be reached at all times (A temporary supervisor may be designated as necessary);

(F) The services provided by the assistants are consistent with the Scope of Duties for the Speech-Language Pathology Assistant (SLPA) pursuant to OAR 335-095-0060;

(G) Documentation describing the treatment provided are signed and initialed by the SLPA for review and co-signature by the supervising speech-language pathologist to be kept by the school medical provider for a period of seven (7) years.

(d) Reimbursement time may include:

(A) Preparation of the written initial evaluation or initial assessment report, including obtaining and interpreting medical information for the part of the evaluation or assessment performed by the speech pathologist to establish necessary and appropriate speech therapy services on a Medicaid-eligible student's IEP or IFSP; or determine whether or not necessary and appropriate speech therapy services will continue to be specified on the Medicaid-eligible student's IEP or IFSP under IDEA (cannot be delegated);

(B) Development of the initial speech therapy treatment plan by the speech pathologist (cannot be delegated);

(C) Care coordination and integrating services, within the scope of practice, relative to the Medicaid-eligible student receiving necessary and appropriate speech therapy services specified on the IEP or IFSP;

(D) Direct individual or group speech therapy services provided to a Medicaid-eligible student for speech services specified on the IEP or IFSP delivered by or under the supervision and direction of a speech pathologist who is medically qualified to deliver the service see 410-133-0120 Medically Qualified Staff;

(E) Direct training and supervision of services provided to a Medicaid-eligible student by the medically qualified supervising speech pathologist to be kept by the school medical provider for a period of seven (7) years; and

(F) Other covered speech therapy services within the scope of practice and subsections (1) and (2) of this rule.

(9) The Authority may reimburse audiology services provided by:

(a) A licensed audiologist within the scope of practice as defined by state or federal law who meet the standards of licensing or certification for the health service provided as described in OAR 410-133-0120, Medically Qualified Staff

(b) Reimbursement time may include:

(A) Preparation of the written initial evaluation or initial assessment report, including obtaining and interpreting medical information for the part of the evaluation or assessment performed by the audiologist within the scope of practice, to establish necessary and appropriate hearing services on a Medicaid-eligible student's IEP or IFSP; or determine whether or not necessary and appropriate hearing impairment services will continue to be specified on the Medicaid-eligible student's IEP or IFSP under IDEA.

(B) Periodic hearing evaluations and assessments of a Medicaid-eligible student with hearing loss found eligible under IDEA pursuant to services as specified on the IEP or IFSP, for determination of the range, nature and degree of hearing loss.

(C) Care coordination and integration of services for medical or other professional attention relative to Medicaid-eligible student receiving services for restoration or rehabilitation due to hearing and communication disorders as specified on the IEP or IFSP.

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(D) Provision of rehabilitative activities, such as language restoration or rehabilitation, auditory training, hearing evaluation and speech conversation, and determination of the Medicaid-eligible-student's need for individual amplification in accordance with the student's IEP or IFSP.

(10) The Authority may reimburse nurse services provided by:

(a) A Nurse practitioner (NP), registered nurse (RN), licensed practical nurse (LPN) or delegated health care aid under the supervision of an RN or NP who meet the standards of licensing or certification for the health service provided as described in OAR 410-133-0120 Medically Qualified Staff

(b) Nursing services under this program are not intended to reimburse nursing activities of a private duty RN or LPN that is otherwise billing Medicaid directly for those services.

(c) Reimbursement time may include:

(A) Preparation of the written initial evaluation or initial assessment report to establish nursing services including obtaining and interpreting medical information for the part of the evaluation or assessment performed to establish Necessary and Appropriate nursing services on the Medicaid-Eligible student's IEP or IFSP; or determine whether or not necessary and appropriate nursing services will continue to be specified on the Medicaid-eligible students IEP or IFSP under IDEA.

(B) Coordinated care for other specified care management for a chronic medical condition that is not addressed on the current IEP or IFSP that will result in amending nursing services specified in the IEP or IFSP and requires an updated nursing plan of care. This may result in an increase in supervision, monitoring and training of DHC staff to provide new nursing tasks related to the change in condition. For example: a child with seizure disorder that develops diabetes.

(C) Care coordination and integration of necessary and appropriate nursing services relative to the Medicaid-eligible student's covered health service specified on the IEP or IFSP.

(D) Nurse to student interactive services that are covered health services provided to a Medicaid-eligible student with a chronic medical condition receiving nursing services pursuant to an IEP or IFSP.

(E) Oversight of delegated health care aides performing delegated nursing services directly with the student as specified on the IEP or IFSP.

(F) Student observation by medically qualified staff for medical reasons of a Medicaid-eligible student with a chronic medical condition as part of an evaluation, assessment, or care coordination. An observation by itself is not a billable activity.

(G) Other covered nursing care services within the scope of practice and subsections (1) and (2) of this rule.

(11) The Authority may reimburse mental health services provided by:

(a) A Psychiatrist who meets the standards of licensing or certification for the health service being provided as described in OAR 410-133-0120(2)(f)(A), or a psychologist who meets the standards of licensing or certification for the health service being provided as described in OAR 410-133-0120(2)(f)(B), or a mental health nurse practitioner who meets the standards of licensing or certification for the health service being provided as described in OAR 410-133-0120(2)(e)(A); or

(b) A Psychologist Associate with authority to function without immediate supervision, performing functions that may include but are not restricted to administering tests of mental abilities, conducting personality assessments and counseling (see OAR 858-010-0039 Application for Independent Status). These services must be provided by medically qualified staff who meet the standards of licensing or certification for the health service being provided as described in OAR 410-133-0120(2)(f)(C); or

(c) A Psychologist Associate under the supervision of a psychologist as specified by the Board of Psychologists Examiners, OAR chapter 858, division 010. These services must be provided by medically qualified staff who meet the standards of licensing or certification for the health service being provided as described in OAR 410-133-0120(2) (f) (D); or

(d) A technician under the supervision of a psychologist as specified by the Board of Psychologists Examiners, chapter 858, division 010, OAR 858-010-0002, Guidelines for Supervising Technicians, and who meet the standards of licensing or certification for the health service being provided as described in OAR 410-133-0120 (f) (E); or

(e) A Licensed (LCSW) qualified and licensed to deliver the service, or a Clinical Social Work Associate (CSWA) under the supervision of an LCSW specified by the Board of Clinical Social Workers, chapter 877, division 020, OAR 877-020-0000 through 877-020-0060 and who meet the standards of licensing or certification for the health service being provided as described in OAR 410-133-0120 (f) (F).

(f) Reimbursable time may include:

(A) Preparation of the written initial evaluation or initial assessment report for a suspected disability per the referral process for determining IDEA eligibility, including obtaining and interpreting medical information for the part of the evaluation or assessment performed by the mental health care practitioner within the scope of practice, to establish necessary and appropriate mental health services on the Medicaid-eligible student's IEP or IFSP; or to determine whether or not necessary and appropriate mental health services will continue to be specified on the Medicaid-eligible student's IEP or IFSP under IDEA.

(B) Care coordination and integrating services, within the scope of practice, relative to the Medicaid-eligible student receiving mental health services as specified on the IEP or IFSP;

(C) Direct individual therapy services provided within the scope of practice under state law and covered under subsections (1) and (2) of this rule to a Medicaid-eligible student by or under the supervision and direction of a psychologist, a psychiatrist, or mental health nurse practitioner, or a Licensed Clinical Social Worker qualified and licensed to deliver the service pursuant to the Medicaid-eligible student's IEP or IFSP.

(12) Medicaid reimbursed transportation:

(a) Transportation to a covered health service as documented in the child's IEP/IFSP and defined in these rules (see 410-133-0245, Cost Determination and Payment).

(b) Ongoing transportation specified, as a related service, on the Medicaid-eligible student's IEP or IFSP may be claimed as a Medicaid service on the days a Medicaid-eligible student receives a covered health service that is also specified on the IEP or IFSP,

(c) The Authority may only reimburse for transportation as a related service to and from a Medicaid-covered service for a Medicaid-eligible student when the student receives a Medicaid covered health service other than transportation on that day when either of the following situations exist:

(A) The Medicaid-eligible student requires specialized transportation adapted to serve the needs of the disabled student, there is documentation to support specialized transportation is "necessary and appropriate", and transportation is listed as a related service on the student's IEP or IFSP; or

(B) The Medicaid-eligible student has a medical need for transportation that is documented in the IEP or IFSP, and resides in an area that does not have regular school bus transportation such as those areas in close proximity to a school.

(d) If a Medicaid-eligible student is able to ride on a regular school bus, but requires the assistance of a delegated health care aide, trained by an RN to provide a delegated nursing task specific to the student, who cannot be transported safely without the delegated health care aide, the service provided by the delegated healthcare aide is reimbursed under the delegated healthcare code. See the standards for delegation of a Nursing Care Task as outlined in the Nurse Practice Act, OAR 851-047-0000 through 851-047-0040.

(e) If a Medicaid-eligible student requires the assistance of a delegated health care aide and transportation adapted to serve the needs of the disabled student, both the necessary and appropriate transportation and the service provided by the delegated healthcare aide may be reimbursed when both are specified on the Medicaid-eligible student's current IEP or IFSP.

(f) If an education agency provides special transportation to a Medicaid-eligible student to a covered service outside the district or the Medicaid-eligible student's resident school and the student cannot be transported safely without a transportation aide as specified on the IEP or IFSP, the transportation is billable. However, a transportation aide who is not a delegated healthcare aide trained by an RN cannot be billed as a separate cost because the cost of the transportation aide is included in the cost of the transportation.

(g) Transportation is not reimbursable by the Division when provided by the parent or relative of the child.

(h) Transportation to an "evaluation" service is covered as long as:

(A) Medically necessary transportation is listed and included in the Medicaid-eligible student's current IEP or IFSP and the evaluation is to establish, re-establish, or terminate a SBHS covered service under IDEA;

(B) The evaluation is a SBHS covered health service;

(C) The medical provider conducting the evaluation, if not employed or contracted by the school medical provider, is an enrolled provider with the Division and meets applicable medical licensing standards necessary to conduct the evaluation.

(13) Medicaid may reimburse for contracted consultation health services for furnishing consultations regarding a Medicaid-eligible student's covered health service(s) specified on the IEP or IFSP for an evaluation or assessment to establish, re-establish, or terminate a covered SBHS on an

## ADMINISTRATIVE RULES

IEP or IFSP. Contracted consultation services must be provided by a licensed medical professional other than school medical provider staff.

(a) This service may be on a contracted basis for a number of students;

(b) Allowable services must be furnished through a personal service contract between the school medical provider and the licensed health care practitioner;

(c) This service would only be a SBHS covered health service by the school medical provider when the licensed health care practitioner did not bill Medicaid directly under other programs for the same services.

(14) Reimbursed coordinated care, performed by medically qualified staff as described in OAR 410-133-0120 directly related to health services required by a Medicaid-eligible student's physical or mental condition as described in the IEP or IFSP; and must be one of the following:

(a) Managing integration of those Medicaid covered health services for treatment provided in the education setting;

(b) The portion of a conference between interested parties and medically qualified staff for developing, reviewing, or revising a Medicaid covered health service, or therapy treatment plan, for services provided pursuant to a Medicaid-eligible student's IEP or IFSP, or to establish, re-establish, or terminate a covered health service under IDEA for eligibility purposes;

(c) Consultation from medically qualified staff providing technical assistance to or conferring with special education providers, physician, or families to assist them in providing covered health services to Medicaid-eligible students for treatment provided in the educational setting related to specific health services, and the goals and objectives in the student's IEP or IFSP. Consultation services must be completed by a licensed health care practitioner within the scope of practice under their licensure;

Stat. Auth.: ORS 413.042, 414.065

Stats. Implemented: ORS 413.042, 414.065

Hist.: HR 39-1991, f. & cert. ef. 9-16-91; HR 21-1995, f. & cert. ef. 12-1-95; OMAP 31-1998, f. & cert. ef. 9-1-98; OMAP 31-2003, f. & cert. ef. 4-1-03; OMAP 53-2003, f. 8-13-03 cert. ef. 9-1-03; OMAP 24-2005(Temp), f. & cert. ef. 4-5-05 thru 10-1-05; OMAP 53-2005, f. 9-30-05, cert. ef. 10-1-05; DMAP 19-2009, f. 6-12-09, cert. ef. 7-1-09; DMAP 15-2011, f. 6-29-11, cert. ef. 7-1-11

### 410-133-0120

#### Medically Qualified Staff

(1) The school medical (SM) provider shall furnish covered health services through the medically qualified staff who provide health services within the scope of their licensure. The SM provider shall document the credentials and qualifications, updated periodically, of all medically qualified staff. The SM provider credential file shall document the manner in which the provider checked, and periodically re-checked, the Medicaid provider exclusion list to confirm that the medically qualified staff is eligible to provide health services to Medicaid-eligible students. Special education teachers are not recognized as medically qualified staff for these services. See <http://oig.hhs.gov/fraud/exclusions.asp>

(2) School-based health services are delivered by providers who meet the federal requirements listed below and who operate within the scope of their health care practitioner's license or certification pursuant to state law as follows:

(a) Evaluation and physical therapy treatments shall be provided by licensed physical therapists, that meet the federal requirements of 42 CFR 440.110, and are licensed by the State Physical Therapist Licensing Board. Licensed physical therapists assistants who's function is to assist the physical therapist in patient-related activities and to perform delegated procedures that are commensurate with the licensed therapist assistant's education and training may provide therapy treatments under the supervision and direction of a State licensed physical therapist within the scope of the health care practitioner's license and accreditation pursuant to State law;

(b) Occupational therapy evaluation and treatments shall be provided by licensed occupational therapists that meet the federal requirements of 42 CFR 440.110, and are licensed by the State Occupational Therapy Licensing Board. Licensed occupational therapist assistants who's function is to assist the occupational therapist in patient-related activities and to perform delegated procedures that are commensurate with the licensed therapist assistant's education and training may provide therapy treatments under the supervision and direction of a State licensed occupational therapist within the scope of the health care practitioner's license and accreditation pursuant to State law;

(c) Speech therapy evaluation and treatments shall be provided by speech pathologists that meet the federal requirements at 42 CFR 440.110, and are licensed by the State Board of Examiners for Speech Pathology and Audiology or hold a Certificate of Clinical Competency from the American Speech and Hearing Association;

(A) Speech therapy services may be provided by a graduate speech pathologist being supervised in the Clinical Fellowship Year (CFY) under the supervision of an ASHA licensed speech-language pathologist; or

(B) A Certified Speech-language Pathology Assistant (SLPA) performing within the scope of practice may provide therapy under the supervision of a State licensed speech-language pathologist within the scope of the health care practitioner's license and accreditation pursuant to State law. Excludes services described in OAR 335-095-0055, Permit for Supervisors of Speech-language Pathology Assistants in Schools; see OAR 410-133-0200, Not Covered Services;

(d) Audiology evaluation and services shall be provided by audiologists that meet the federal requirements at 42 CFR 440.110;

(e) Nurse evaluation and treatments shall be provided by or under the direction of registered nurses (RN) licensed to practice in Oregon by the Oregon State Board of Nursing; or nurse practitioners that meet the federal requirements at 42 CFR 440.166, and are licensed by the Oregon State Board of Nursing to practice in Oregon as a Nurse Practitioner (See Oregon State Board of Nursing Nurse Practice Act, OAR 851-047-0000 through 851-047-0040 and Nurse Practitioners, OAR 851-050-0000 through 851-050-0142;

(A) Licensed practical nurses (LPN) may participate in the implementation of the plan of care for providing care to clients under the supervision of a licensed registered nurse, nurse practitioner, or physician pursuant to the Oregon State Board of Nursing Practice Act, OAR divisions 045 and 047;

(B) Treatment may also be provided by a delegated health care aide that is a non-licensed person trained and supervised by a licensed registered nurse (RN) or nurse practitioner (NP) to perform selected tasks of nursing care pursuant to The Oregon State Board of Nursing administrative rules, division 047 of the Nurse Practice Act;

(f) Psychological/mental health evaluations, testing, psychological services and treatments shall be provided by individuals who meet the relevant requirements of their respective professional state licensure as follows:

(A) Psychiatrists must be licensed to practice medicine and surgery in the State of Oregon; and possess a valid license from the Oregon Licensing Board for the Healing Arts;

(B) Psychologists must have one of the following: a doctoral degree in psychology obtained from an approved doctoral program in psychology accredited by the American Psychological Association (APA); or a doctoral degree in psychology from a program at a college or university that is regionally accredited at the doctoral level that meet the requirements approved by the State Board of Psychologist Examiners (Board) by rule (see OAR Chapter 858 Division010); and have two years of supervised employment under the direction of a psychologist licensed in Oregon or under the direction of a person considered by the board to have equivalent supervisory competence;

(C) Psychologists Associates granted independent status by the Board for authority to function without immediate and direct supervision in compliance with OAR 858-010-0039. Until the psychologist associate successfully obtains independent status, the "psychologist associate resident" must not practice without immediate supervision, but must at all times be under the periodic direct supervision of a licensed psychologist or under the direction of a person considered by the board to have equivalent supervisory competency who shall continue to be responsible for the practice of the associate see OAR 858-010-0037and 858-010-0038;

(D) Psychologists Associates who do not possess a doctoral degree, and are deemed competent to perform certain functions within the practice of psychology under the periodic direct supervision of a psychologist licensed by the Board:

(i) Has complied with all the applicable provisions of ORS 675.010 to 675.150;

(ii) Has received a master's degree in psychology from a psychology program approved by the Board by rule;

(iii) Has completed an internship in an approved educational institution or one year of other training experience acceptable to the Board, such as supervised professional experience under the direction of a psychologist licensed in Oregon, or under the direction of a person considered by the Board to have equivalent supervisory competence; and

(iv) Furnishes proof acceptable to the Board of at least 36 months, exclusive of internship, of full-time experience satisfactory to the board under the direct supervision of a licensed psychologist in Oregon, or under the direct supervision of a person considered by the Board to have equivalent supervisory competence.



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(E) Testing Technicians under the supervision of a licensed psychologist. A licensee may delegate administration and scoring of tests to technicians as provided in ORS 675.010(4) and OAR 858-010-0001, if the licensee ensures the technicians are adequately trained to administer and score the specific test being used; and ensures that the technicians maintain standards for the testing environment and testing administration as set forth in the American Psychological Association Standards for Educational and Psychological Tests (1999) and Ethical Principles for Psychologists (2002). See OAR 858-010-0002, Guidelines for Supervising Technicians;

(F) Services provided by Clinical Social Work Associate (CSWA) or Licensed Clinical Social Worker (LCSW): must possess a master's degree from an accredited college or university accredited by the Council on Social Work Education and have completed the equivalent of two years of full-time experience in the field of clinical social work in accordance with rules of the Oregon State Board of Clinical Social Workers for a LCSW or whose plan of practice and supervision has been approved by the board, for a CSWA working toward LCSW licensure under the supervision of a LCSW for two years of post masters clinical experience and is licensed by the State Board of Clinical Social Workers to practice in Oregon. See Board of Clinical Social Workers, Chapter 877, Division 20, Procedure for Certification and Licensing.

Stat. Auth.: ORS 413.042, 414.065

Stats. Implemented: ORS 413.042, 414.065

Hist.: HR 39-1991, f. & cert. ef. 9-16-91; HR 49-1991(Temp), f. & cert. ef. 10-24-91; HR 3-1992, f. & cert. ef. 1-2-92; HR 29-1993, f. & cert. ef. 10-1-93; HR 19-1994, f. & cert. ef. 4-1-94; HR 21-1995, f. & cert. ef. 12-1-95; OMAP 38-1999, f. & cert. ef. 10-1-99; OMAP 31-2003, f. & cert. ef. 4-1-03 ; OMAP 53-2003, f. 8-13-03 cert. ef. 9-1-03; OMAP 24-2005(Temp), f. & cert. ef. 4-5-05 thru 10-1-05; OMAP 53-2005, f. 9-30-05, cert. ef. 10-1-05; DMAP 19-2009, f. 6-12-09, cert. ef. 7-1-09; DMAP 15-2011, f. 6-29-11, cert. ef. 7-1-11

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**Rule Caption:** Hospital Provider Tax Rate Increase.

**Adm. Order No.:** DMAP 16-2011(Temp)

**Filed with Sec. of State:** 7-1-2011

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

**Notice Publication Date:**

**Rules Amended:** 410-050-0861

**Subject:** The rule is being amended to implement an increase in the hospital provider tax rate from 2.32% to 5.25% effective July 1, 2011 through a temporary rule.

This temporary rule is 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

## 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 and ending June 30, 2011 is 2.32 percent.

(8) The tax rate for the period beginning July 1, 2011 is 5.25 percent.

Stat. Auth.: ORS 413.042

Stats. Implemented: 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; DMAP 16-2011(Temp), f. & cert. ef. 7-1-11 thru 11-1-11

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**Rule Caption:** July 2011 – stainless steel crowns, pulpal regeneration, prefabricated post and core services, other clarifications.

**Adm. Order No.:** DMAP 17-2011

**Filed with Sec. of State:** 7-12-2011

**Certified to be Effective:** 7-12-11

**Notice Publication Date:** 5-1-2011

**Rules Amended:** 410-123-1220, 410-123-1260

**Subject:** The Dental Services Program administrative rules govern Division payment for services to certain clients. The Division amended rules 410-123-1220 and 410-123-1260 as follows:

- To cover stainless steel crowns on anterior primary teeth in addition to posterior primary and permanent teeth for clients under age 21 or who are pregnant; to list coverage of a newly created dental code for pulpal regeneration that is limited to clients under age 21 or who are pregnant; to clarify that prefabricated post and core services are covered only for clients under 21 or pregnant; to reference the updated “Covered and Non-Covered Services document” and other minor clarifications.

- To clarify current policies and procedures to ensure these rules are not open to interpretation by the provider or outside parties and to help eliminate confusion possibly resulting in non-compliance and help facilitate provider compliance with eligibility, service coverage and limitations, and billing requirements.

- To reflect the Oregon Health Authority name change and updated statutory reference.

- Other text may be revised to improve readability and to take care of necessary “housekeeping” corrections.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-123-1220

### Coverage According to the Prioritized List of Health Services

(1) This rule incorporates by reference the “Covered and Non-Covered Dental Services” document, dated July 1, 2011, and located on the Division of Medical Assistance Programs (Division) Website at: [www.dhs.state.or.us/policy/healthplan/guides/dental/main.html](http://www.dhs.state.or.us/policy/healthplan/guides/dental/main.html).

(a) The “Covered and Non-Covered Dental Services” document lists coverage of Current Dental Terminology (CDT) procedure codes according to the Oregon Health Services Commission (HSC) Prioritized List of Health Services (HSC Prioritized List) and the client’s specific Oregon Health Plan benefit package;

(b) This document is subject to change if there are funding changes to the HSC Prioritized List.

(2) Changes to services funded on the HSC Prioritized List are effective on the date of the HSC Prioritized List change:

(a) The Division administrative rules (chapter 410, division 123) will not reflect the most current HSC Prioritized List changes until they have gone through the Division rule filing process;

(b) For the most current HSC Prioritized List, refer to the HSC Web site at [www.oregon.gov/OHPPR/HSC/current\\_prior.shtml](http://www.oregon.gov/OHPPR/HSC/current_prior.shtml);

(c) In the event of an alleged variation between a Division-listed code and a national code, the Division shall apply the national code in effect on the date of request or date of service.

(3) Refer to OAR 410-123-1260 for information about limitations on procedures funded according to the HSC Prioritized List. Examples of limitations include frequency and client’s age.

(4) The HSC Prioritized List does not include or fund the following general categories of dental services and the Division does not cover them for any client. Several of these services are considered elective or “cosmetic” in nature (i.e., done for the sake of appearance):

(a) Desensitization;

(b) Implant and implant services;

(c) Mastique or veneer procedure;

(d) Orthodontia (except when it is treatment for cleft palate);

(e) Overhang removal;

(f) Procedures, appliances or restorations solely for aesthetic/ cosmetic purposes;

(g) Temporomandibular joint dysfunction treatment; and

(h) Tooth bleaching.

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 3-1994, f. & cert. ef. 2-1-94; HR 21-1994(Temp), f. 4-29-94, cert. ef. 5-1-94; HR 32-1994, f. & cert. ef. 11-1-94; HR 20-1995, f. 9-29-95, cert. ef. 10-1-95; HR 9-1996, f. 5-31-96, cert. ef. 6-1-96; OMAP 13-1998(Temp), f. & cert. ef. 5-1-98 thru 9-1-98; OMAP 28-1998, f. & cert. ef. 9-1-98; OMAP 23-1999, f. & cert. ef. 4-30-99; OMAP 8-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 17-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 48-2002, f. & cert. ef. 10-1-02; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 65-2003, f. 9-10-03 cert. ef. 10-1-03; DMAP 25-2007, f. 12-11-07, cert. ef. 1-1-08; DMAP 38-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 16-2009 f. 6-12-09, cert. ef. 7-1-09; DMAP 41-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 14-2010, f. 6-10-10, cert. ef. 7-1-10; DMAP 31-2010, f. 12-15-10, cert. ef. 1-1-11; DMAP 17-2011, f. & cert. ef. 7-12-11

# ADMINISTRATIVE RULES

## 410-123-1260

### OHP Plus Dental Benefits

#### (1) GENERAL:

##### (a) Early and Periodic Screening, Diagnosis and Treatment (EPSDT):

(A) Refer to Code of Federal Regulations (42 CFR 441, Subpart B) and OAR chapter 410, division 120 for definitions of the EPSDT program, eligible clients, and related services. EPSDT dental services includes, but are not limited to:

##### (i) Dental screening services for eligible EPSDT individuals; and

(ii) Dental diagnosis and treatment which is indicated by screening, at as early an age as necessary, needed for relief of pain and infections, restoration of teeth and maintenance of dental health;

(B) Providers must provide EPSDT services for eligible Division of Medical Assistance Programs (Division) clients according to the following documents:

(i) The Dental Services Program administrative rules (OAR chapter 410, division 123), for dentally appropriate services funded on the Oregon Health Services Commission Prioritized List of Health Services (HSC Prioritized List); and

(ii) The "Oregon Health Plan (OHP) – Recommended Dental Periodicity Schedule," dated January 1, 2010, incorporated by reference and posted on the Division Web site in the Dental Services Supplemental Information document at [www.dhs.state.or.us/policy/healthplan/guides/dental/main.html](http://www.dhs.state.or.us/policy/healthplan/guides/dental/main.html);

##### (b) Restorative, periodontal and prosthetic treatments:

(A) Such treatments must be consistent with the prevailing standard of care, documentation must be included in the client's charts to support the treatment, and may be limited as follows:

##### (i) When prognosis is unfavorable;

##### (ii) When treatment is impractical;

##### (iii) A lesser-cost procedure would achieve the same ultimate result;

or

##### (iv) The treatment has specific limitations outlined in this rule;

(B) Prosthetic treatment (including porcelain fused to metal crowns) are limited until rampant progression of caries is arrested and a period of adequate oral hygiene and periodontal stability is demonstrated; periodontal health needs to be stable and supportive of a prosthetic.

#### (2) DIAGNOSTIC SERVICES:

##### (a) Exams:

##### (A) For children (under 19 years of age):

(i) The Division shall reimburse exams (billed as D0120, D0145, D0150, or D0180) a maximum of twice every 12 months with the following limitations:

(I) D0150: once every 12 months when performed by the same practitioner;

(II) D0150: twice every 12 months only when performed by different practitioners;

##### (III) D0180: once every 12 months;

(ii) The Division shall reimburse D0160 only once every 12 months when performed by the same practitioner;

(B) For adults (19 years of age and older) – The Division shall reimburse exams (billed as D0120, D0150, D0160, or D0180) by the same practitioner once every 12 months;

(C) For each emergent episode, use D0140 for the initial exam. Use D0170 for related dental follow-up exams;

(D) The Division only covers oral exams by medical practitioners when the medical practitioner is an oral surgeon;

(E) As the American Dental Association's Current Dental Terminology (CDT) codebook specifies the evaluation, diagnosis and treatment planning components of the exam are the responsibility of the dentist, the Division does not reimburse dental exams when furnished by a dental hygienist (with or without a limited access permit);

##### (b) Radiographs:

(A) The Division shall reimburse for routine radiographs once every 12 months;

(B) The Division shall reimburse bitewing radiographs for routine screening once every 12 months;

(C) The Division shall reimburse a maximum of six radiographs for any one emergency;

(D) For clients under age six, radiographs may be billed separately every 12 months as follows:

##### (i) D0220 – once;

##### (ii) D0230 – a maximum of five times;

##### (iii) D0270 – a maximum of twice, or D0272 once;

(E) The Division shall reimburse for panoramic (D0330) or intra-oral complete series (D0210) once every five years, but both cannot be done within the five-year period;

(F) Clients must be a minimum of six years old for billing intra-oral complete series (D0210). The minimum standards for reimbursement of intra-oral complete series are:

(i) For clients age six through 11 – a minimum of 10 periapicals and two bitewings for a total of 12 films;

(ii) For clients ages 12 and older – a minimum of 10 periapicals and four bitewings for a total of 14 films;

(G) If fees for multiple single radiographs exceed the allowable reimbursement for a full mouth complete series (D0210), the Division shall reimburse for the complete series;

(H) Additional films may be covered if dentally or medically appropriate, e.g., fractures (Refer to OAR 410-123-1060 and 410-120-0000);

(I) If the Division determines the number of radiographs to be excessive, payment for some or all radiographs of the same tooth or area may be denied;

(J) The exception to these limitations is if the client is new to the office or clinic and the office or clinic was unsuccessful in obtaining radiographs from the previous dental office or clinic. Supporting documentation outlining the provider's attempts to receive previous records must be included in the client's records;

(K) Digital radiographs, if printed, should be on photo paper to assure sufficient quality of images.

#### (3) PREVENTIVE SERVICES:

##### (a) Prophylaxis:

(A) For children (under 19 years of age) – Limited to twice per 12 months;

(B) For adults (19 years of age and older) – Limited to once per 12 months;

(C) Additional prophylaxis benefit provisions may be available for persons with high risk oral conditions due to disease process, pregnancy, medications or other medical treatments or conditions, severe periodontal disease, rampant caries and/or for persons with disabilities who cannot perform adequate daily oral health care;

(D) Are coded using the appropriate Current Dental Terminology (CDT) coding:

(i) D1110 (Prophylaxis – Adult) – Use for clients 14 years of age and older; and

(ii) D1120 (Prophylaxis – Child) – Use for clients under 14 years of age;

##### (b) Topical fluoride treatment:

(A) For adults (19 years of age and older) – Limited to once every 12 months;

(B) For children (under 19 years of age) – Limited to twice every 12 months;

(C) For children under 7 years of age who have limited access to a dental practitioner, topical fluoride varnish may be applied by a medical practitioner during a medical visit:

(i) Bill the Division directly regardless of whether the client is fee-for-service (FFS) or enrolled in a Fully Capitated Health Plan (FCHP) or Physician Care Organization (PCO);

(ii) Bill using a professional claim format with the appropriate CDT code (D1206 – Topical Fluoride Varnish);

(iii) An oral screening by a medical practitioner is not a separate billable service and is included in the office visit;

(D) Additional topical fluoride treatments may be available, up to a total of 4 treatments per client within a 12-month period, when high-risk conditions or oral health factors are clearly documented in chart notes for the following clients who:

(i) Have high-risk oral conditions due to disease process, medications, other medical treatments or conditions, or rampant caries;

##### (ii) Are pregnant;

(iii) Have physical disabilities and cannot perform adequate, daily oral health care;

(iv) Have a developmental disability or other severe cognitive impairment that cannot perform adequate, daily oral health care; or

(v) Are under seven year old with high-risk oral health factors, such as poor oral hygiene, deep pits and fissures (grooves) in teeth, severely crowded teeth, poor diet, etc;

##### (c) Sealants:

(A) Are covered only for children under 16 years of age;

(B) The Division limits coverage to:

(i) Permanent molars; and

## ADMINISTRATIVE RULES

- (ii) Only one sealant treatment per molar every five years, except for visible evidence of clinical failure;
- (d) Tobacco cessation:
  - (A) For services provided during a dental visit, bill as a dental service using CDT code D1320 when the following brief counseling is provided:
    - (i) Ask patients about their tobacco-use status at each visit and record information in the chart;
    - (ii) Advise patients on their oral health conditions related to tobacco use and give direct advice to quit using tobacco and a strong personalized message to seek help; and
    - (iii) Refer patients who are ready to quit, utilizing internal and external resources to complete the remaining three A's (assess, assist, arrange) of the standard intervention protocol for tobacco;
  - (B) The Division allows a maximum of 10 services within a three-month period;
  - (C) For tobacco cessation services provided during a medical visit follow criteria outlined in OAR 410-130-0190;
- (e) Space management:
  - (A) The Division shall cover fixed and removable space maintainers (D1510, D1515, D1520, and D1525) only for clients under 19 years of age;
  - (B) The Division may not reimburse for replacement of lost or damaged removable space maintainers.
- (4) RESTORATIVE SERVICES:
  - (a) Restorations – amalgam and composite:
    - (A) Resin-based composite crowns on anterior teeth (D2390) are only covered for clients under 21 years of age or who are pregnant;
    - (B) The Division limits payment to the maximum restoration fee of four surfaces per tooth. Refer to the American Dental Association (ADA) CDT codebook for definitions of restorative procedures;
    - (C) Combine and bill one line per tooth using the appropriate code. For example, if tooth #30 has a buccal amalgam and a mesial-occlusal-distal (MOD) amalgam, then bill MOD, B, using code D2161 (four or more surfaces);
    - (D) The Division may not reimburse for an amalgam or composite restoration and a crown on the same tooth;
    - (E) The Division reimburses for a surface once in each treatment episode regardless of the number or combination of restorations;
    - (F) The restoration fee includes payment for occlusal adjustment and polishing of the restoration;
    - (G) The Division reimburses for posterior composite restorations at the same rate as amalgam restorations;
    - (H) The Division limits payment for replacement of posterior composite restorations to once every five years;
  - (b) Crowns and related services:
    - (A) General payment policies:
      - (i) The fee for the crown includes payment for preparation of the gingival tissue;
      - (ii) The Division shall cover crowns only when:
        - (I) There is significant loss of clinical crown and no other restoration will restore function; and
        - (II) The crown-to-root ratio is 50:50 or better and the tooth is restorable without other surgical procedures;
        - (iii) Reimbursement of retention pins (D2951) is per tooth, not per pin;
      - (B) The Division shall not cover the following services:
        - (i) Endodontic therapy alone (with or without a post);
        - (ii) Aesthetics (cosmetics);
        - (iii) Crowns in cases of advanced periodontal disease or when a poor crown/root ratio exists for any reason;
      - (C) The Division shall cover acrylic heat or light cured crowns (D2970 temporary crown, fractured tooth) – allowed only for anterior permanent teeth;
      - (D) The Division shall cover the following only for clients under 21 years of age or who are pregnant:
        - (i) Prefabricated plastic crowns (D2932) – allowed only for anterior teeth, permanent or primary;
        - (ii) Stainless steel crowns (D2930/D2931) – allowed only for anterior or primary teeth and posterior permanent or primary teeth;
        - (iii) Prefabricated stainless steel crowns with resin window (D2933) – allowed only for anterior teeth, permanent or primary;
        - (iv) Prefabricated post and core in addition to crowns (D2954/D2957);
        - (v) Permanent crowns (resin-based composite – D2710, and porcelain fused to metal (PFM) – D2751 and D2752) as follows:
          - (I) Limited to teeth numbers 6-11, 22 and 27 only, if dentally appropriate;
          - (II) Limited to four (4) in a seven-year period. This limitation includes any replacement crowns allowed according to (E)(i) of this rule;
          - (III) Only for clients at least 16 years of age ; and
          - (IV) Rampant caries are arrested and the client demonstrates a period of oral hygiene before prosthetics are proposed;
          - (v) PFM crowns (D2751 and D2752) must also meet the following additional criteria:
            - (I) The dental practitioner has attempted all other dentally appropriate restoration options, and documented failure of those options;
            - (II) Written documentation in the client's chart indicates that PFM is the only restoration option that will restore function;
            - (III) The dental practitioner submits radiographs to the Division for review; history, diagnosis, and treatment plan may be requested. See OAR 410-123-1100 (Services Reviewed by the Division of Medical Assistance Programs);
            - (IV) The client has documented stable periodontal status with pocket depths within 1 – 3 millimeters. If PFM crowns are placed with pocket depths of 4 millimeter and over, documentation must be maintained in the client's chart of the dentist's findings supporting stability and why the increased pocket depths will not adversely affect expected long term prognosis;
            - (V) The crown has a favorable long-term prognosis; and
            - (VI) If tooth to be crowned is clasp/abutment tooth in partial denture, both prognosis for crown itself and tooth's contribution to partial denture must have favorable expected long-term prognosis;
      - (E) Crown replacement:
        - (i) Permanent crown replacement limited to once every seven years;
        - (ii) All other crown replacement limited to once every five years; and
        - (iii) The Division may make exceptions to crown replacement limitations due to acute trauma, based on the following factors:
          - (I) Extent of crown damage;
          - (II) Extent of damage to other teeth or crowns;
          - (III) Extent of impaired mastication;
          - (IV) Tooth is restorable without other surgical procedures; and
          - (V) If loss of tooth would result in coverage of removable prosthetic.
    - (5) ENDODONTIC SERVICES:
      - (a) Pulp capping:
        - (A) The Division includes direct and indirect pulp caps in the restoration fee; no additional payment shall be made for clients with the OHP Plus benefit package;
        - (B) The Division covers direct pulp caps as a separate service for clients with the OHP Standard benefit package because restorations are not a covered benefit under this benefit package;
      - (b) Endodontic therapy:
        - (A) Endodontic therapy (D3230, D3240, D3330) is covered only for clients under 21 years of age or who are pregnant;
        - (B) The Division covers endodontics only if the crown-to-root ratio is 50:50 or better and the tooth is restorable without other surgical procedures;
        - (c) Endodontic retreatment and apicoectomy/periradicular surgery:
          - (A) The Division does not cover retreatment of a previous root canal or apicoectomy/periradicular surgery for bicuspid or molars;
          - (B) The Division limits either a retreatment or an apicoectomy (but not both procedures for the same tooth) to symptomatic anterior teeth when:
            - (i) Crown-to-root ratio is 50:50 or better;
            - (ii) The tooth is restorable without other surgical procedures; or
            - (iii) If loss of tooth would result in the need for removable prosthodontics;
          - (C) Retrograde filling (D3430) is covered only when done in conjunction with a covered apicoectomy of an anterior tooth;
          - (d) The Division does not allow separate reimbursement for open-and-drain as a palliative procedure when the root canal is completed on the same date of service, or if the same practitioner or dental practitioner in the same group practice completed the procedure;
          - (e) The Division does not cover root canal therapy for third molars;
          - (f) The Division covers endodontics if the tooth is restorable within the OHP benefit coverage package;
          - (g) Apexification/recalcification and pulpal regeneration procedures:
            - (A) The Division limits payment for apexification to a maximum of five treatments on permanent teeth only;
            - (B) Apexification/recalcification and pulpal regeneration procedures are covered only for clients under 21 years of age or who are pregnant;



## ADMINISTRATIVE RULES

(h) Canal preparation and fitting of preformed dowel or post (D3950) should not be reported in conjunction with D2952, D2953, D2954, or D2957 by the same practitioner.

### (6) PERIODONTIC SERVICES:

(a) Surgical periodontal services (includes six months routine postoperative care):

(A) D4210 and D4211 – limited to coverage for severe gingival hyperplasia where enlargement of gum tissue occurs that prevents access to oral hygiene procedures, e.g., Dilantin hyperplasia;

(B) The Division covers the following services only for clients under 21 years of age or who are pregnant:

(i) D4240, D4241, D4260 and D4261 – allowed once every three years unless there is a documented medical/dental indication;

(ii) D4245 and D4268;

(b) Non-surgical periodontal services:

(A) D4341 and D4342 – allowed once every two years. A maximum of two quadrants on one date of service is payable, except in extraordinary circumstances. Quadrants are not limited to physical area, but are further defined by the number of teeth with pockets 5 mm or greater;

(B) D4355 – allowed only once every 2 years;

(c) Other periodontal services – D4910 – limited to following periodontal therapy and allowed once every six months. For further consideration of more frequent periodontal maintenance benefits, office records must clearly reflect clinical indication, i.e., chart notes, pocket depths and radiographs;

(d) Records must clearly document the clinical indications for all periodontal procedures, including current pocket depth charting and/or radiographs;

(e) The Division may not reimburse for procedures identified by the following codes if performed on the same date of service:

(A) D1110 (Prophylaxis – adult);

(B) D1120 (Prophylaxis – child);

(C) D4210 (Gingivectomy or gingivoplasty – four or more contiguous teeth or bounded teeth spaces per quadrant);

(D) D4211 (Gingivectomy or gingivoplasty – one to three contiguous teeth or bounded teeth spaces per quadrant);

(E) D4260 (Osseous surgery, including flap entry and closure – four or more contiguous teeth or bounded teeth spaces per quadrant);

(F) D4261 (Osseous surgery, including flap entry and closure – one to three contiguous teeth or bounded teeth spaces per quadrant);

(G) D4341 (Periodontal scaling and root planning – four or more teeth per quadrant);

(H) D4342 (Periodontal scaling and root planning – one to three teeth per quadrant);

(I) D4355 (Full mouth debridement to enable comprehensive evaluation and diagnosis); and

(J) D4910 (Periodontal maintenance).

### (7) REMOVABLE PROSTHODONTIC SERVICES:

(a) Clients age 16 years and older are eligible for removable resin base partial dentures (D5211–D5212) and full dentures (complete or immediate, D5110–D5140);

(b) The Division limits full dentures for non-pregnant clients age 21 and older to only those clients who are recently edentulous:

(A) For the purposes of this rule:

(i) “Edentulous” means all teeth removed from the jaw for which the denture is being provided; and

(ii) “Recently edentulous” means the most recent extractions from that jaw occurred within six months of the delivery of the final denture (or, for fabricated prosthetics, the final impression) for that jaw;

(B) See OAR 410-123-1000 for detail regarding billing fabricated prosthetics;

(c) The fee for the partial and full dentures includes payment for adjustments during the six-month period following delivery to clients;

(d) Resin partial dentures (D5211–D5212):

(A) The Division may not approve resin partial dentures if stainless steel crowns are used as abutments;

(B) The client must have one or more anterior teeth missing or four or more missing posterior teeth per arch with resulting space equivalent to that loss demonstrating inability to masticate. Third molars are not a consideration when counting missing teeth;

(C) The dental practitioner must note the teeth to be replaced and teeth to be clasped when requesting prior authorization (PA);

(e) Replacement of removable partial or full dentures, when it cannot be made clinically serviceable by a less costly procedure (e.g., reline, rebase, repair, tooth replacement), is limited to the following:

(A) For clients at least 16 years and under 21 years of age or who are pregnant – the Division shall replace full or partial dentures once every ten years, only if dentally appropriate. This does not imply that replacement of dentures or partials must be done once every ten years, but only when dentally appropriate;

(B) For non-pregnant clients 21 years of age and older – the Division may not cover replacement of full dentures, but shall cover replacement of partial dentures once every 10 years only if dentally appropriate;

(C) The ten year limitations apply to the client regardless of the client’s OHP or Dental Care Organization (DCO) enrollment status at the time client’s last denture or partial was received. For example: a client receives a partial on February 1, 2002, and becomes a FFS OHP client in 2005. The client is not eligible for a replacement partial until February 1, 2012. The client gets a replacement partial on February 3, 2012 while FFS and a year later enrolls in a DCO. The client would not be eligible for another partial until February 3, 2022, regardless of DCO or FFS enrollment;

(D) Replacement of partial dentures with full dentures is payable ten years after the partial denture placement. Exceptions to this limitation may be made in cases of acute trauma or catastrophic illness that directly or indirectly affects the oral condition and results in additional tooth loss. This pertains to, but is not limited to, cancer and periodontal disease resulting from pharmacological, surgical and/or medical treatment for aforementioned conditions. Severe periodontal disease due to neglect of daily oral hygiene may not warrant replacement;

(f) The Division limits reimbursement of adjustments and repairs of dentures that are needed beyond six months after delivery of the denture as follows for non-pregnant clients 21 years of age and older:

(A) A maximum of 4 times per year for:

(i) Adjusting complete and partial dentures, per arch (D5410–D5422);

(ii) Replacing missing or broken teeth on a complete denture – each tooth (D5520);

(iii) Replacing broken tooth on a partial denture – each tooth (D5640);

(iv) Adding tooth to existing partial denture (D5650);

(B) A maximum of 2 times per year for:

(i) Repairing broken complete denture base (D5510);

(ii) Repairing partial resin denture base (D5610);

(iii) Repairing partial cast framework (D5620);

(iv) Repairing or replacing broken clasp (D5630);

(v) Adding clasp to existing partial denture (D5660);

(g) Denture rebase procedures:

(A) Rebase should only be done if a reline may not adequately solve the problem. The Division limits payment for rebase to once every three years;

(B) The Division may make exceptions to this limitation in cases of acute trauma or catastrophic illness that directly or indirectly affects the oral condition and results in additional tooth loss. This pertains to, but is not limited to, cancer and periodontal disease resulting from pharmacological, surgical and/or medical treatment for aforementioned conditions. Severe periodontal disease due to neglect of daily oral hygiene may not warrant rebasing;

(h) Denture reline procedures:

(A) The Division limits payment for reline of complete or partial dentures to once every three years;

(B) The Division may make exceptions to this limitation under the same conditions warranting replacement;

(C) Laboratory relines:

(i) Are not payable prior to six months after placement of an immediate denture; and

(ii) Are limited to once every three years;

(i) Interim partial dentures (D5820–D5821, also referred to as “flip-pers”):

(A) Are allowed if the client has one or more anterior teeth missing; and

(B) The Division shall reimburse for replacement of interim partial dentures once every 5 years, but only when dentally appropriate;

(j) Tissue conditioning:

(A) Is allowed once per denture unit in conjunction with immediate dentures; and

(B) Is allowed once prior to new prosthetic placement.

### (8) MAXILLOFACIAL PROSTHETIC SERVICES:

(a) Maxillofacial prosthetics are medical services. Refer to the “Covered and Non-Covered Dental Services” document and OAR 410-123-1220;

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(b) Bill for maxillofacial prosthetics using the professional (CMS-1500, DMAP 505 or 837P) claim format:

(A) For clients receiving services through an FCHP or PCO, bill maxillofacial prosthetics to the FCHP or PCO;

(B) For clients receiving medical services through FFS, bill the Division.

(9) Fixed Prosthodontics – The Division limits coverage of prefabricated post and core in addition to fixed partial denture retainer (D6972) only to clients under 21 years of age or who are pregnant.

(10) ORAL SURGERY SERVICES:

(a) Bill the following procedures in an accepted dental claim format using CDT codes:

(A) Procedures that are directly related to the teeth and supporting structures that are not due to a medical, including such procedures performed in an ambulatory surgical center (ASC) or an inpatient or outpatient hospital setting;

(B) Services performed in a dental office setting (including an oral surgeon's office):

(i) Such services include, but are not limited to, all dental procedures, local anesthesia, surgical postoperative care, radiographs and follow-up visits;

(ii) Refer to OAR 410-123-1160 for any PA requirements for specific procedures;

(b) Bill the following procedures using the professional claim format and the appropriate American Medical Association (AMA) CPT procedure and ICD-9 diagnosis codes:

(A) Procedures that are a result of a medical condition (i.e., fractures, cancer);

(B) Services requiring hospital dentistry that are the result of a medical condition/diagnosis (i.e., fracture, cancer);

(c) Refer to the "Covered and Non-Covered Dental Services" document to see a list of CDT procedure codes on the HSC Prioritized List that may also have CPT medical codes. See OAR 410-123-1220. The procedures listed as "medical" on the table may be covered as medical procedures, and the table may not be all-inclusive of every dental code that has a corresponding medical code;

(d) For clients enrolled in a DCO, the DCO is responsible for payment of those services in the dental plan package;

(e) Oral surgical services performed in an ASC or an inpatient or outpatient hospital setting:

(A) Require PA;

(B) For clients enrolled in a FCHP, the facility charge and anesthesia services are the responsibility of the FCHP. For clients enrolled in a PCO, the outpatient facility charge (including ASCs) and anesthesia are the responsibility of the PCO. Refer to the current Medical Surgical Services administrative rules in OAR chapter 410, division 130 for more information;

(C) If a client is enrolled in a FCHP or a PCO, it is the responsibility of the provider to contact the FCHP or the PCO for any required authorization before the service is rendered;

(f) All codes listed as "by report" require an operative report;

(g) The Division covers payment for tooth re-implantation only in cases of traumatic avulsion where there are good indications of success;

(h) Biopsies collected are reimbursed as a dental service. Laboratory services of biopsies are reimbursed as a medical service;

(i) The Division does not cover surgical excisions of soft tissue lesions (D7410–D7415);

(j) Extractions – Includes local anesthesia and routine postoperative care, including treatment of a dry socket if done by the provider of the extraction. Dry socket is not considered a separate service;

(k) Surgical extractions:

(A) Include local anesthesia and routine post-operative care;

(B) The Division limits payment for surgical removal of impacted teeth or removal of residual tooth roots to treatment for only those teeth that have acute infection or abscess, severe tooth pain, and/or unusual swelling of the face or gums;

(C) The Division does not cover alveoplasty in conjunction with extractions (D7310 and D7311) separately from the extraction;

(D) The Division covers alveoplasty not in conjunction with extractions (D7320) only for clients under 21 years of age or who are pregnant.

(11) ORTHODONTIA SERVICES:

(a) The Division limits orthodontia services and extractions to eligible clients:

(A) With the ICD-9-CM diagnosis of:

(i) Cleft palate; or

(ii) Cleft palate with cleft lip; and

(B) Whose orthodontia treatment began prior to 21 years of age; or

(C) Whose surgical corrections of cleft palate or cleft lip were not completed prior to age 21;

(b) PA is required for orthodontia exams and records. A referral letter from a physician or dentist indicating diagnosis of cleft palate/cleft lip must be included in the client's record and a copy sent with the PA request;

(c) Documentation in the client's record must include diagnosis, length and type of treatment;

(d) Payment for appliance therapy includes the appliance and all follow-up visits;

(e) Orthodontists evaluate orthodontia treatment for cleft palate/cleft lip as two phases. Stage one is generally the use of an activator (palatal expander) and stage two is generally the placement of fixed appliances (banding). The Division shall reimburse each phase individually (separately);

(f) The Division shall pay for orthodontia in one lump sum at the beginning of each phase of treatment. Payment for each phase is for all orthodontia-related services. If the client transfers to another orthodontist during treatment, or treatment is terminated for any reason, the orthodontist must refund to the Division any unused amount of payment, after applying the following formula: Total payment minus \$300.00 (for banding) multiplied by the percentage of treatment remaining;

(g) The Division shall use the length of the treatment plan from the original request for authorization to determine the number of treatment months remaining;

(h) As long as the orthodontist continues treatment, the Division may not require a refund even though the client may become ineligible for medical assistance sometime during the treatment period;

(i) Code:

(A) D8660 – PA required (reimbursement for required orthodontia records is included);

(B) Codes D8010–D8999 – PA required.

(12) ADJUNCTIVE GENERAL AND OTHER SERVICES:

(a) Fixed partial denture sectioning (D9120) is covered only when extracting a tooth connected to a fixed prosthesis and a portion of the fixed prosthesis is to remain intact and serviceable, preventing the need for more costly treatment;

(b) Anesthesia:

(A) Only use general anesthesia or IV sedation for those clients with concurrent needs: age, physical, medical or mental status, or degree of difficulty of the procedure (D9220, D9221, D9241 and D9242);

(B) The Division reimburses providers for general anesthesia or IV sedation as follows:

(i) D9220 or D9241: For the first 30 minutes;

(ii) D9221 or D9242: For each additional 15-minute period, up to three hours on the same day of service. Each 15-minute period represents a quantity of one. Enter this number in the quantity column;

(C) The Division reimburses administration of Nitrous Oxide (D9230) per date of service, not by time;

(D) Oral pre-medication anesthesia for conscious sedation (D9248):

(i) Limited to clients under 13 years of age;

(ii) Limited to four times per year;

(iii) Includes payment for monitoring and Nitrous Oxide; and

(iv) Requires use of multiple agents to receive payment;

(E) Upon request, providers must submit a copy of their permit to administer anesthesia, analgesia and/or sedation to the Division;

(F) For the purpose of Title XIX and Title XXI, the Division limits payment for code D9630 to those oral medications used during a procedure and is not intended for "take home" medication;

(c) The Division limits reimbursement of house/extended care facility call (D9410) only for urgent or emergent dental visits that occur outside of a dental office. This code is not reimbursable for provision of preventive services or for services provided outside of the office for the provider or facilities' convenience;

(d) Office visit for observation (D9430):

(A) Is covered only for clients under 21 years of age or who are pregnant; and

(B) The Division reimburses a maximum of three visits per year;

(e) Oral devices/appliances (E0485, E0486):

(A) These may be placed or fabricated by a dentist or oral surgeon, but are considered a medical service;

(B) Bill the Division or the FCHP/PCO for these codes using the professional claim format.

Stat. Auth.: ORS 413.042, 414.065 & 414.707

Stats. Implemented: ORS 414.065 & 414.707

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Hist.: HR 3-1994, f. & cert. ef. 2-1-94; HR 20-1995, f. 9-29-95, cert. ef. 10-1-95; OMAP 13-1998(Temp), f. & cert. ef. 5-1-98 thru 9-1-98; OMAP 28-1998, f. & cert. ef. 9-1-98; OMAP 23-1999, f. & cert. ef. 4-30-99; OMAP 8-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 17-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 48-2002, f. & cert. ef. 10-1-02; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 65-2003, f. 9-10-03 cert. ef. 10-1-03; OMAP 55-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 12-2005, f. 3-11-05, cert. ef. 4-1-05; DMAP 25-2007, f. 12-11-07, cert. ef. 1-1-08; DMAP 18-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 38-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 16-2009 f. 6-12-09, cert. ef. 7-1-09; DMAP 41-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 14-2010, f. 6-10-10, cert. ef. 7-1-10; DMAP 31-2010, f. 12-15-10, cert. ef. 1-1-11; DMAP 17-2011, f. & cert. ef. 7-12-11

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**Rule Caption:** Align with chapter 461, division 155 eligibility rules.

**Adm. Order No.:** DMAP 18-2011(Temp)

**Filed with Sec. of State:** 7-15-2011

**Certified to be Effective:** 7-15-11 thru 1-11-12

**Notice Publication Date:**

**Rules Amended:** 410-120-0006

**Subject:** The General Rules Program administrative rules govern the Division's payments for services provided to clients, and medical assistance eligibility determinations made by the Oregon Health Authority. In coordination with the Department of Human Services' (Department), temporary revision of OAR 461-155-0575 and OAR 461-155-0693, the Division temporarily amended OAR 410-120-0006 to assure that the Division's eligibility rule aligns with and reflects information found in Department eligibility rules. In OAR 410-120-0006, the Division adopts in rule by reference Department eligibility rules and must update OAR 410-120-0006 in coordination with Department revisions. The Division intends to file this rule permanently on or before January 11, 2012.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-120-0006

### Medical Eligibility Standards

As the state Medicaid and CHIP agency, the Oregon Health Authority (Authority) is responsible for establishing and implementing eligibility policies and procedure consistent with applicable law. As outlined in 943-001-0020, the Authority, and the Department of Human Services (Department) work together to adopt rules to assure that medical assistance eligibility procedures and determinations are consistent across both agencies.

(1) The Authority adopts and incorporates by reference the rules established in OAR Chapter 461, and in effect July 15, 2011, for all medical eligibility requirements for medical assistance when the Authority conducts eligibility determinations.

(2) Any reference to OAR Chapter 461 in Oregon Administrative Rules or contracts of the Authority are deemed to be references to the requirements of this rule, and shall be construed to apply to all eligibility policies, procedures and determinations by or through the Authority.

(3) For purposes of this rule, references in OAR chapter 461 to the Department or to the Authority shall be construed to be references to both agencies.

(4) Effective on or after July 1, 2011 the Authority shall conduct medical eligibility determinations using the OAR chapter 461 rules which are in effect on the date the Authority makes the medical eligibility determination.

(5) A request for a hearing resulting from a determination under this rule, made by the Authority shall be handled pursuant to the hearing procedures set out in division 25 of OAR Chapter 461. References to "the Administrator" in division 25 of chapter 461 or "the Department" are hereby incorporated as references to the Authority."

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.042 & 414.005

Hist.: DMAP 10-2011, f. 6-29-11, cert. ef. 7-1-11; DMAP 18-2011(Temp), f. & cert. ef. 7-15-11 thru 1-11-12

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**Rule Caption:** Updates and changes to the Preferred Drug List (PDL). 7/11 – Semi-Annual PDL updates, expansion of 90-day fill list of maintenance medications, changes to allow for the billing of certain diabetic supplies by pharmacies, and updates for vaccination billing, PA criteria update.

**Adm. Order No.:** DMAP 19-2011

**Filed with Sec. of State:** 7-15-2011

**Certified to be Effective:** 7-17-11

**Notice Publication Date:** 6-1-2011

**Rules Amended:** 410-121-0030

**Rules Repealed:** 410-121-0030(T)

**Subject:** The Division temporarily amended OAR 410-121-0030 effective March 1, 2011, to include the semi-annual changes to the current Preferred Drug List (PDL) classes. This filing will permanently amend this rule.

The Division also filed Notice of Proposed Rulemaking/Hearing for this rule to allow exceptions for the dispensing of brand name prescriptions instead of the generic form when a brand manufacturer contracts with the State and the branded product's Net Price to the Division becomes less than the generic Net price and it is listed as preferred on the PDL. This update is also included in the permanent rule.

This rule reflects the Division's agency authority from the Department of Human Services to the Oregon Health Authority and updated statutory reference. Other text may be revised to improve readability and to take care of necessary "housekeeping" corrections.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-121-0030

### Practitioner-Managed Prescription Drug Plan

(1) The Practitioner-Managed Prescription Drug Plan (PMPDP) is a plan that ensures that fee-for-service clients of the Oregon Health Plan shall have access to the most effective prescription drugs appropriate for their clinical conditions at the best possible price:

(a) Licensed health care practitioners (informed by the latest peer reviewed research), make decisions concerning the clinical effectiveness of the prescription drugs;

(b) The licensed health care practitioners also consider the health condition of a client or characteristics of a client, including the client's gender, race or ethnicity.

(2) PMPDP Preferred Drug List (PDL):

(a) The PDL is the primary tool that the Division developed to inform licensed health care practitioners about the results of the latest peer-reviewed research and cost effectiveness of prescription drugs;

(b) The PDL consists of prescription drugs in selected classes that the Division, in consultation with the Health Resources Commission (HRC), has determined represent the most effective drug(s) available at the best possible price;

(c) For each selected drug class, the PDL shall identify the drug(s) in the class that the Division determines to be the most effective drug(s) and determine the Net Price for each drug and Average Net Price of the class;

(d) The PDL shall include drugs in the class that are Medicaid reimbursable and the Food and Drug Administration (FDA) has determined to be safe and effective if the relative cost is less than the Average Net Price. If pharmaceutical manufacturers enter into supplemental rebate agreements with the Division that reduce the cost of their drug below that of the Average Net Price for the class, the Division, in consultation with the HRC recommendations, may include their drug on the PDL.

(3) PMPDP PDL Selection Process:

(a) The Division shall utilize the recommendations made by the HRC, that result from an evidence-based evaluation process, as the basis for identifying the most effective drug(s) within a selected drug class;

(b) The Division shall determine the drugs identified in (3)(a) that are available for the best possible price and shall consider any input from the HRC about other FDA-approved drug(s) in the same class that are available for a lesser relative price. The Division shall determine relative price using the methodology described in subsection (4);

(c) The Division shall evaluate drug classes and selected drugs for the drug classes periodically:

(A) Evaluation shall occur more frequently at the discretion of the Division if new safety information or the release of new drugs in a class or other information makes an evaluation advisable;

(B) New drugs in classes already evaluated for the PDL shall be non-preferred until the new drug has been reviewed by the HRC;

(C) The Division shall make all changes or revisions to the PDL, using the rulemaking process and shall publish the changes on the Division's Pharmaceutical Services provider rules Web page.

(4) Relative cost and best possible price determination:

(a) The Division shall determine the relative cost of all drugs in each selected class that are Medicaid reimbursable and that the FDA has determined to be safe and effective;



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(b) The Division may also consider dosing issues, patterns of use and compliance issues. The Division shall weigh these factors with any advice provided by the HRC in reaching a final decision;

(c) The Division shall determine the Average Net Price for each PDL drug class;

(d) The Division shall include drugs on the PDL based on all of the above and with a Net Price under the Average Net Price.

(5) Regardless of the PDL, pharmacy providers shall dispense prescriptions in the generic form, unless:

(a) The practitioner requests otherwise, subject to the regulations outlined in OAR 410-121-0155;

(b) The brand manufacturer contracts the Net Price to remain less than the generic Net Price and it is listed as preferred on the PDL.

(6) The exception process for obtaining non-preferred physical health drugs that are not on the PDL drugs shall be as follows:

(a) If the prescribing practitioner, in their professional judgment, wishes to prescribe a physical health drug not on the PDL, they may request an exception, subject to the requirements of OAR 410-121-0040;

(b) The prescribing practitioner must request an exception for physical health drugs not listed in the PDL subject to the requirements of OAR 410-121-0060;

(c) Exceptions shall be granted in instances:

(A) Where the prescriber in their professional judgment determines the non-preferred drug is medically appropriate after consulting with the Division or the Oregon Pharmacy Help Desk; or

(B) Where the prescriber requests an exception subject to the requirement of (6)(b) and fails to receive a report of PA status within 24 hours, subject to OAR 410-121-0060.

(7) Table 121-0030-1, PMPDP PDL.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 409.025, 409.040, 409.110, 414.065, 413.042 & 414.325

Stats. Implemented: ORS 414.065

Hist.: OMAP 25-2002, f. 6-14-02 cert. ef. 7-1-02; OMAP 31-2002, f. & cert. ef. 8-1-02; OMAP 36-2002, f. 8-30-02, cert. ef. 9-1-02; OMAP 29-2003, f. 3-31-03 cert. ef. 4-1-03; OMAP 35-2003, f. & cert. ef. 5-1-03; OMAP 47-2003, f. & cert. ef. 7-1-03; OMAP 57-2003, f. 9-5-03, cert. ef. 10-1-03; OMAP 70-2003(Temp), f. 9-15-03, cert. ef. 10-1-03 thru 3-15-04; OMAP 82-2003, f. 10-31-03, cert. ef. 11-1-03; OMAP 9-2004, f. 2-27-04, cert. ef. 3-1-04; OMAP 29-2004, f. 4-23-04 cert. ef. 5-1-04; OMAP 34-2004, f. 5-26-04 cert. ef. 6-1-04; OMAP 45-2004, f. 7-22-04 cert. ef. 8-1-04; OMAP 81-2004, f. 10-29-04 cert. ef. 11-1-04; OMAP 89-2004, f. 11-24-04 cert. ef. 12-1-04; OMAP 19-2005, f. 3-21-05, cert. ef. 4-1-05; OMAP 32-2005, f. 6-21-05, cert. ef. 7-1-05; OMAP 58-2005, f. 10-27-05, cert. ef. 11-1-05; OMAP 16-2006, f. 6-12-06, cert. ef. 7-1-06; OMAP 32-2006, f. 8-31-06, cert. ef. 9-1-06; OMAP 48-2006, f. 12-28-06, cert. ef. 1-1-07; DMAP 4-2007, f. 6-14-07, cert. ef. 7-1-07; DMAP 16-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 36-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 39-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 17-2010, f. 6-15-10, cert. ef. 7-1-10; DMAP 40-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 2-2011(Temp), f. & cert. ef. 3-1-11 thru 8-20-11; DMAP 19-2011, f. 7-15-11, cert. ef. 7-17-11

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**Oregon Health Authority,  
Office of Private Health Partnerships  
Chapter 442**

**Rule Caption:** Changes income criteria and modified reservation list.

**Adm. Order No.:** OPHP 7-2011(Temp)

**Filed with Sec. of State:** 7-15-2011

**Certified to be Effective:** 7-15-11 thru 1-10-12

**Notice Publication Date:**

**Rules Amended:** 442-005-0020, 442-005-0030, 442-005-0050, 442-005-0070

**Subject:** FHIAP is amending 442-005-0020 to add an additional reservation list for families with children.

FHIAP is amending 442-005-0030 to change non-self employment income document requirements from three months to one month to strengthen internal efficiency and lessen the paperwork burden for applicants.

FHIAP is amending 442-005-0050 to clarify eligibility.

FHIAP is amending 442-005-0070 to change non-self employment income document requirements from three months to one month to strengthen internal efficiency and lessen the paperwork burden for applicants.

**Rules Coordinator:** Cindy Bowman—(503) 378-4674

## 442-005-0020

### Reservation Lists

(1) To manage enrollment and ensure that funds are available to cover subsidy payments for those enrolled, FHIAP will establish three reservation

lists for prospective applicants. One reservation list for each of the following:

(a) Applicants who have or will have access to group coverage;

(b) Applicants who do not have access to group coverage; and

(c) Applicants who are families with potentially eligible children.

(2) The Office will establish procedures to manage the reservation lists with the goal of equal distribution of funds between the reservation lists. This may require FHIAP to release applications from one reservation list ahead of the other.

(3) An applicant may obtain an individual or group application by first getting on the reservation list; or may access a group application via FHIAP's website, or from an employer or insurance producer.

(4) Prospective applicants will be added to the appropriate reservation list or assigned a reservation number in order of the date FHIAP receives a completed reservation request either in writing or over the telephone. A completed application form may be deemed a reservation request if no prior request was made.

(5) Each request will be assigned a reservation number, which will also function as confirmation of placement on the appropriate reservation list.

(6) Prospective applicants on the reservation list will be notified of their right to apply for FHIAP, as program funds are available.

(7) When enrollment in FHIAP reaches the maximum that funding will allow, additional enrollment may occur as current members terminate or if additional program funding becomes available.

(8) A prospective applicant has 75 calendar days from the date the Office mails the application form, or notifies the prospective applicant that they may apply for a FHIAP subsidy, to return a completed application form to the Office.

(9) If a prospective applicant does not return an application form within 75 calendar days from the original date of mailing or notification, the Office will remove the prospective applicant's name from the reservation list.

(10) A prospective applicant may enroll in a health benefit plan while on the reservation list as long as they have met the two-month period of uninsurance requirement or exceptions to the period of uninsurance requirement prior to enrolling in the plan.

(11) FHIAP applicants may add new dependents to an existing insurance plan or their FHIAP application without adding them to the reservation list first.

(12) Members who have terminated from FHIAP cannot re-enroll in the program without first being placed on the appropriate reservation list unless they have a family member who is still enrolled in FHIAP.

Stat. Auth.: ORS 735.734, 735.722(2) & 735.728(2)

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-2006, f. & cert. ef. 6-1-06; OPHP 7-2011(Temp), f. & cert. ef. 7-15-11 thru 1-10-12

## 442-005-0030

### Application Process

(1) FHIAP will use an application and any documentation required on the application, will be used to determine eligibility and subsidy level.

(2) Applicants may only send in information providing program eligibility during the application process. FHIAP will not accept information sent outside of the application timeframe to use in an audit, appeal or contested case hearing except as provided in OARs 442-005-0310, 442-005-0320, 442-005-0330 and 442-005-0340.

(3) Program openings occur when funds are available.

(4) Applicants are mailed an application on a first come first serve basis, when there are program openings.

(5) FHIAP reviews applications in the order they are received. Eligibility decisions include:

(a) Approval for immediate subsidy;

(b) Denial; or

(c) Request for more information.

(6) When there are no program openings, FHIAP may approve the application, but the applicant may not be eligible for a subsidy right away. These approved applications are held in a queue. Applicants are mailed a notice when they are able to enroll for subsidies.

(7) Documents that verify required information requested on the application must be provided with the application if FHIAP is not able to verify the information electronically. Required documentation includes but is not limited to:

(a) A copy of a current Oregon identification or other proof of Oregon residency for all adult applicants;

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(b) For non-United States citizens, a copy of documentation from the Department of Homeland Security showing their status and when they arrived in the United States.

(c) Documents verifying all adult applicant's and spouse's earned and unearned income and children's unearned income for the one month prior to the month in which the application is signed. Documentation may include, but is not limited to, pay stubs, award letters, child support documentation and unemployment benefit stubs or printouts. If an applicant or spouse is employed by a business or partnership that is either partially or wholly owned by the applicant or spouse, business documentation as described in OAR 442-005-0070(2)(d) must also be submitted.

(d) A completed Self-Employment Income Worksheet and documents verifying income from self-employment and fishing for the twelve months prior to the signature month on the application for those submitting an income attestation. Documentation may include, but is not limited to, business ledgers, profit and loss statements and bank statements;

(e) A completed Farming and Ranching Income Worksheet and documents verifying income from farming, fishing and ranching for the 12 months prior to the signature month on the application for those submitting an income attestation. Documentation may include, but is not limited to, business ledgers, profit and loss statements and bank statements;

(f) The most recently filed federal tax return and all schedules for applicants who have income from self-employment, fishing, farming, or ranching, rentals or royalties, or capital gains, interest and dividends.

(g) A copy of any group insurance handbook, summary, or contract that is available to any applicant.

(h) A completed Group Insurance Information (GII) form, if the applicant has group insurance available to them.

(i) For applicants with no income, the completed No Income form or other signed statement explaining how the applicant is meeting their basic needs, such as food, clothing and shelter.

(8) Additional verification must be provided when FHIAP requests it.

(9) FHIAP may verify any factors affecting eligibility, benefit levels or any information reported, such as:

(a) Data or other information received by FHIAP that is inconsistent with information on the FHIAP application;

(b) Information provided on the application is inconsistent;

(c) Information reported on previous applications that is inconsistent with a current FHIAP application.

(10) FHIAP may decide at any time during the application process that additional eligibility factors must be verified.

(11) FHIAP may deny an application or end ongoing subsidy when acceptable verification or required documentation is not provided.

Stat. Auth.: ORS 735.734, 735.722(2) & 735.728(2)

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-2006, f. & cert. ef. 6-1-06; OPHP 6-2010(Temp), f. & cert. ef. 10-11-10 thru 4-8-11; OPHP 1-2011(Temp), f. & cert. ef. 1-5-11 thru 4-8-11; Administrative correction 4-25-11; OPHP 5-2011, f. & cert. ef. 4-22-11; OPHP 7-2011(Temp), f. & cert. ef. 7-15-11 thru 1-10-12

## 442-005-0050

### Eligibility

In order for an applicant to qualify for a FHIAP subsidy, applicants must:

(1) Be a resident of Oregon or a full-time college student with a parent who is a resident of Oregon.

(2) Be a United States citizen or a qualified non-citizen who meets the alien status requirement.

(3) Not be eligible for or receiving Medicare benefits.

(4) Have income of zero through 200 percent of the Federal Poverty Level in effect at the time of eligibility determination. Income determination is outlined in OAR 442-005-0070.

(5) Meet one of the statutory definitions of family in ORS 414.841(3) at the time of eligibility determination. To be included in the family size for FHIAP eligibility determination, the applicant's family members must meet the definition of dependent under OAR 442-005-0010(8):

(a) A dependent may be counted in two separate households for the purposes of determining eligibility for FHIAP and any other state assistance program;

(b) A dependent may be counted in two separate households for the purpose of determining eligibility for both families in FHIAP;

(c) A dependent may not be enrolled in FHIAP and OHP (or any other state medical assistance program) at the same time;

(d) A dependent may be enrolled in FHIAP and any other state assistance program (except medical) at the same time;

(e) If a dependent is counted in two separate households for the purpose of determining eligibility in two different assistance programs, enrollment will be determined by criteria established in procedure.

(6) Meet either a period of uninsurance requirement or exceptions listed in OAR 442-005-0060.

(7) Not be incarcerated for more than 30 days or be a ward of the State.

(8) Provide necessary materials by the due dates specified in FHIAP correspondence in order to allow for eligibility determination. If information is not submitted by the dates specified in FHIAP correspondence or the information is inconsistent or incomplete, the application may be denied.

(9) If applying for subsidy in the group market, must be able to enroll in a group insurance plan that meets the benchmark standard established by the Office within twelve months of eligibility determination. If an applicant to the group market does not have access to a group plan, the group plan they have access to does not meet the benchmark standard, or they cannot enroll into their group plan within twelve months of eligibility determination, the applicant will be denied and placed on the reservation list for an individual subsidy using the same date they were placed on the group reservation list.

(10) If an application is sent from the child-only reservation list, subsidies will only be approved for children. Adults are not eligible for subsidy on this type of application. If an application from the child-only list is denied, the family will be placed at the end of the group or individual reservation list, depending on the available insurance market.

Stat. Auth.: ORS 735.734 & 735.720 - 735.740

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-2006, f. & cert. ef. 6-1-06; IPGB 3-2006(Temp), f. & cert. ef. 11-27-06 thru 5-25-07; Administrative Correction, 6-16-07; OPHP 1-2007, f. & cert. ef. 6-18-07; OPHP 1-2010(Temp), f. & cert. ef. 1-7-10 thru 7-5-10; Administrative correction 7-27-10; OPHP 3-2010, f. & cert. ef. 7-22-10; OPHP 3-2011, f. & cert. ef. 2-25-11; OPHP 7-2011(Temp), f. & cert. ef. 7-15-11 thru 1-10-12

## 442-005-0070

### Income Determination

(1) In order to qualify for FHIAP an applicant must have an average monthly gross income, from all sources, up through 200 percent of the federal poverty level in effect at the time of determination. Subsidies will be approved on a sliding scale determined by income and family size. Income from more than one source will be determined individually based on the criteria for each source and the results totaled for a final average monthly income amount. For the purposes of FHIAP, there are six primary categories of income; these categories are:

(a) Earned and unearned income from non-self-employment sources.

(b) Self-employment and fishing income.

(c) Farming and ranching income.

(d) Income to owners of corporations and/or partnerships.

(e) Rental and royalty income.

(f) Interest and dividend income.

(2) FHIAP will determine into which category or categories an applicant's income falls and treat each type of income appropriately. FHIAP will determine the applicant's income eligibility according to the following detail:

(a) For earned and unearned income from non-self-employment sources, average gross monthly income will be determined using income received in the one month prior to the month in which the application was signed.

(b) For self-employment and fishing, average income will be determined using figures from the applicant's most recently filed federal Schedule C or C-EZ.

(c) For farming and ranching, income will be determined using figures from the applicant's most recently filed federal Schedule F.

(d) For owners of corporations and partnerships, income will be determined using wages paid to the applicant(s) plus any payments made from business funds for personal expenses in the three-calendar months prior to the month in which the application was signed. The following documents are required for eligibility determination:

(A) Owners of corporations must submit the corporation's most recently filed federal taxes with all schedules.

(B) Owners of partnerships must submit the partnerships most recently filed federal taxes with all schedules.

(C) Owners of either corporations or partnerships must submit three months of both personal and business bank statements.

(e) Income from rentals and royalties will be determined using figures from the applicant's most recently filed federal Schedule E.

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(f) Income from interest and dividends will be determined using figures from the applicant's most recently filed federal Schedule B, C, D, or 1099 DIV.

(3) In the event the taxes of an applicant with income in categories (1)(b) and (1)(c) do not reflect the applicant's current income, the applicant may submit an attestation of their income with documentation of their income for the previous six months for self-employed applicants or 12 months for farming, fishing and ranching applicants.

(a) Documentation includes but is not limited to business ledgers, profit and loss statements and bank statements.

(b) Average adjusted income will be determined by either method described below as specified by the applicant on the Self-Employment or Farming, Ranching and Fishing Income Worksheet. Whichever method the applicant chooses to use will be the method used throughout that year's eligibility determination, including appeal and contested case hearing processes.

(A) Income received from farming, fishing, ranching and self-employment will be reduced by 50 percent for business expenses; or

(B) Income received from farming, fishing, ranching or self-employment will be reduced by the actual allowable expenses incurred during the six or 12 months prior to the month in which the application was signed. Allowable expenses are listed on the Self-Employment or Farming, Ranching and Fishing Income Worksheets.

(c) Attestations are subject to future audit for accuracy. The file may be referred for collection if misrepresentation or overpayment are found.

(4) Income is available immediately upon receipt, or when the applicant has a legal interest in the income and the legal ability to make the income available, except in the following situations when it is considered available as indicated:

(a) For earned and unearned income:

(A) Income available prior to any deductions such as garnishments, taxes, payroll deductions, or voluntary payroll deductions will be considered as available; however, support payments as defined in OAR 442-005-0010(25) may be deducted from gross income if the applicant is able to prove the payments were made.

(B) Income usually paid monthly or on some other regular schedule, but paid early or late is treated as available on the regular payday.

(C) Payments made in a "lump sum" will be divided out over the number of months the payment is for. "Lump sum" payments will only be divided if the applicant can provide proof of the period for which the payment was made.

(b) Earned income is available as follows:

(A) Income withheld or diverted at the request of an employee is considered available in the month the wages would have been paid;

(B) An advance or draw that will be subtracted from later wages is available when received; and

(c) Payments that should legally be made directly to an applicant, but are paid to a third party on behalf of an applicant, are considered available the date that is on the check or stub.

(6) Income is not available if:

(a) The wages are withheld by an employer, with the exception of garnishment, even if in violation of the law;

(b) The income is paid jointly to the applicant and other individuals and the other individuals do not pay the applicant his/her share; and

(c) It is received by a separated spouse. FHIAP will determine when an applicant's spouse is deemed separated for purposes of this subsection (5)(c).

Stat. Auth.: ORS 735.734 & 735.720 - 735.740

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-2006, f. & cert. ef. 6-1-06; OPHP 5-2011, f. & cert. ef. 4-22-11; OPHP 7-2011(Temp), f. & cert. ef. 7-15-11 thru 1-10-12

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## Oregon Health Authority, Oregon Educators Benefit Board Chapter 111

**Rule Caption:** Amends OEBB's qualified status change rule.

**Adm. Order No.:** OEBB 11-2011

**Filed with Sec. of State:** 6-22-2011

**Certified to be Effective:** 6-22-11

**Notice Publication Date:** 4-1-2011

**Rules Amended:** 111-040-0040

**Rules Repealed:** 111-040-0040(T)

**Subject:** OAR 111-040-0040 is amended to include a qualified status change which allows an OEBB member to make a change to their

benefit selections outside of the annual open enrollment when their spouse/domestic partner's annual open enrollment or plan year is different from OEBB's.

**Rules Coordinator:** April Kelly—(503) 378-6588

### 111-040-0040

#### Qualified Status Changes (QSC's)

(1) Active eligible employees experiencing a change in family or work status as noted below after annual enrollment, or anytime during the plan year, have 31 calendar days beginning on the date of the event to make changes. If the event is gaining a child, as defined by 111-040-0040(2)(c), or results in a loss of eligibility, the eligible employee has 60 calendar days after the event to make changes.

(2) The eligible employee can only make changes that are consistent with the event for themselves and/or dependents.

(3) The employee must report the Qualified Status Change (QSC) to the employee's Educational Entity within the specified timeframe. Failure to report a QSC that will result in removal of a spouse, domestic partner, or child within the timeframe stated in 111-040-0040(1) may be considered intentional misrepresentation, and OEBB may retroactively terminate the individual's coverage back to the last day of the month in which the individual lost eligibility. Please refer to the QSC matrix for details on what changes can occur with each event.

(4) Qualified Status Changes which allow the employee to make changes to his or her coverage are:

(a) Gain spouse by marriage or domestic partner by meeting domestic partner eligibility;

(b) Loss of spouse or domestic partner by divorce, annulment, death or termination of domestic partnership,

(c) Gain a child by birth, placement for/or adoption, or Domestic Partner's children (by affidavit of domestic partnership),

(d) Active eligible employee starts new employment and gains eligibility;

(e) Change in employment status by active eligible employee which affects eligibility;

(f) Active eligible employee ends employment or other change in employment status resulting in a loss of eligibility;

(g) Spouse or domestic partner starts new employment or other change in employment status which affects eligibility;

(h) Spouse or domestic partner's employment ends or other change in employment status resulting in a loss of eligibility under their employer's plan;

(i) Event by which a child satisfies eligibility requirements under OEBB plans (for a list of requirements see 111-010-0015);

(j) Event by which a child ceases to satisfy eligibility requirements under OEBB plans (for a list of requirements see 111-010-0015),

(k) Changes in the residence of the active eligible employee, spouse, domestic partner, or child (i.e., moving out of the service area of an HMO);

(l) Reinstatement of coverage. Reinstatement can be used in the following situations:

(A) Military (USERRA);

(B) When coverage was continued under COBRA

(C) When coverage was terminated in error and there is no lapse in coverage.

(m) Significant changes in cost of the eligible employee's or early retiree's current plan and tier level that result in a negative impact of 10 percent or more to:

(A) The amount an active eligible employee or early retiree must contribute toward benefits.

(B) The amount a spouse or domestic partner must contribute toward his or her group health insurance plan cost.

(n) Different Open Enrollment/Plan Year under a spouse/domestic partner's employer plan.

(o) Related laws or court orders. For example: Qualified Medical Child Support Order (QMCSO), Medicare, HIPAA, or Family Health Insurance Assistance Program (FHIAP). Changes are determined by the applicable law or court order.

(5) Changes in coverage, or contribution amounts that result in a reduced amount that an employee or eligible dependent must contribute toward benefits, do not constitute a Qualified Status Change.

(6) The following applies to the Long Term Care benefit plans only:

(a) Cancel the plan at anytime without a QSC event.

(b) Plan additions or changes require a QSC event as defined 111-040-0040(2). The addition of a plan or change in plans with a QSC is subject to a medical evidence review by the LTC carrier.



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Stat. Auth.: ORS 243.860 - 243.886  
Stats. Implemented: ORS 243.864  
Hist.: OEBB 14-2008, f. & cert. ef. 8-15-08; OEBB 10-2009(Temp), f. 5-4-09, cert. ef. 5-5-09 thru 10-31-09; OEBB 11-2009, f. & cert. ef. 7-31-09; OEBB 17-2009(Temp), f. & cert. ef. 10-7-09 thru 4-4-10; OEBB 22-2009, f. & cert. ef. 12-17-09; OEBB 2-2010(Temp), f. & cert. ef. 3-3-10 thru 8-29-10; OEBB 6-2010, f. & cert. ef. 8-3-10; OEBB 9-2010(Temp), f. & cert. ef. 8-3-10 thru 1-29-11; OEBB 12-2010(Temp), f. 9-30-10, cert. ef. 10-1-10 thru 1-29-11; OEBB 3-2011, f. & cert. ef. 2-11-11; OEBB 7-2011(Temp), f. & cert. ef. 2-15-11 thru 8-13-11; OEBB 11-2011, f. & cert. ef. 6-22-11

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**Rule Caption:** Amends OEBB's Eligibility and Policy Term Violation rules.

**Adm. Order No.:** OEBB 12-2011

**Filed with Sec. of State:** 6-22-2011

**Certified to be Effective:** 6-22-11

**Notice Publication Date:** 4-1-2011

**Rules Amended:** 111-080-0040, 111-080-0045, 111-080-0050

**Rules Repealed:** 111-080-0040(T), 111-080-0045(T), 111-080-0050(T)

**Subject:** Amendments to 111-080-0040, 0045 and 0050 include the addition of new terminology used by OEBB to define an intentional and unintentional violation, as well as the consequences of each should they occur.

**Rules Coordinator:** April Kelly — (503) 378-6588

## 111-080-0040

### Eligibility and Policy Term Violations — Definitions

For the purposes of OAR 111-080-0045 and 111-080-0050, the following definitions will apply:

(1) "Eligibility or Enrollment Violations" means and includes a violation of the Oregon Educators Benefit Board's eligibility or enrollment rules or policies including fraud or material misrepresentation. Misstatements, misrepresentations, omissions or concealments on the part of the OEBB member are not fraudulent unless they are made with intent to knowingly defraud. OEBB has primary responsibility in investigating such violations. If an Eligibility Violation is considered a violation of the insurance carrier's policy, then the violation may also be considered a Policy Term Violation, and OAR 111-080-0050 would also apply.

(A) "Intentional Violation" is a violation that has occurred in which OEBB has electronic or written documentation that the eligible employee took action resulting in a non-eligible member being enrolled in OEBB benefits.

(B) "Unintentional Violation" is a violation that has occurred in which the eligible employee was not aware that such violation had occurred and there is no evidence of the eligible employee completing a paper form or logging in and enrolling an ineligible member in OEBB benefits.

(2) "Policy Term Violations" means and includes a violation of the insurance carrier's policy terms. The insurance carrier has primary responsibility in investigating such violations.

Stat. Auth.: ORS 243.860 - 243.886

Stats. Implemented: ORS 243.864(1)(a)

Hist.: OEBB 16-2010, f. & cert. ef. 12-10-10; OEBB 8-2011(Temp), f. & cert. ef. 2-15-11 thru 8-13-11; OEBB 12-2011, f. & cert. ef. 6-22-11

## 111-080-0045

### Eligibility Violations

(1) Unintentional Violation:

(A) OEBB will remove from coverage an ineligible OEBB member due to eligibility or enrollment violations. Removal from all benefit plans will be retroactive to the date the individual is determined to have no longer been eligible, or the effective date of coverage if eligibility criteria was never met unless in conflict with federal healthcare reform.

(B) When an eligibility or enrollment violation has been discovered and investigated, OEBB will notify the member and the Educational Entity with the outcome. If the outcome includes rescission of coverage, OEBB will give a 30 day notice of such rescission prior to terminating coverage retroactively to the date the member was no longer eligible for benefits.

(C) The member may be responsible for any claims paid during the period of time the member was enrolled inappropriately.

(2) Intentional Violation:

(A) The ineligible member shall be removed from coverage by OEBB. The ineligible member's coverage will be retroactively terminated to the date the individual is determined to have no longer been eligible, or the effective date of coverage if eligibility criteria was never met.

(B) OEBB may terminate the eligible employee along with remaining dependents from all plans excluding basic and mandatory plans selected by the educational entity. This will be a prospective termination lasting for a

period of 12 months. The prospective termination will be effective the first day of the following month that the Intentional Violation was discovered.

Stat. Auth.: ORS 243.860 - 243.886

Stats. Implemented: ORS 243.864(1)(a)

Hist.: OEBB 16-2010, f. & cert. ef. 12-10-10; OEBB 8-2011(Temp), f. & cert. ef. 2-15-11 thru 8-13-11; OEBB 12-2011, f. & cert. ef. 6-22-11

## 111-080-0050

### Policy Term Violations

(1) An OEBB-contracted insurance carrier may remove from coverage and/or deny the claims of an OEBB member due to policy term violations. Removal from coverage for policy term violations is at the discretion of the insurance carrier.

(A) If a policy term violation results in a termination from the plan or carrier that the violation was committed, it will not prevent the member from continuing enrollment in other OEBB types of coverages (e.g., medical, dental, vision, life, etc.), as long as they remain an employee and eligible for these benefits.

(B) If an eligible employee commits a policy term violation and loses coverage, OEBB will remove the entire family from the insurance plan since the benefits are extended to his or her dependents through the eligible employee. If the eligible employee chooses to, and it is offered, they can enroll in a different carrier plan (if applicable) during open enrollment and cover themselves and dependents during the upcoming plan year.

(C) If a dependent commits a policy term violation, OEBB will remove only the dependent from the insurance plan. If the eligible employee chooses to and it is offered, they can enroll in a different carrier plan (if applicable) during open enrollment and cover the dependent during the upcoming plan year, or as defined by the carrier.

(D) The OEBB member who is removed from an OEBB sponsored insurance plan may appeal the decision through the carrier that terminated coverage.

(E) When a policy term violation has been discovered and investigated, the applicable insurance carrier will notify OEBB and the member with the outcome.

(2) The insurance carrier may do the following when a member has violated a provision of the policy the OEBB member has enrolled in, committed fraudulent activity or misrepresentation:

(A) The insurance carrier may retain the value of any expenditure it made related to the member who committed the fraudulent activity or misrepresentation.

(B) The insurance carrier may deny future enrollments of the individual in accordance with the carrier's policies.

Stat. Auth.: ORS 243.860 - 243.886

Stats. Implemented: ORS 243.864(1)(a)

Hist.: OEBB 16-2010, f. & cert. ef. 12-10-10; OEBB 8-2011(Temp), f. & cert. ef. 2-15-11 thru 8-13-11; OEBB 12-2011, f. & cert. ef. 6-22-11

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## Oregon Health Authority, Public Health Division Chapter 333

**Rule Caption:** Revision of rules related to lead-based paint activities and renovation, repair and painting.

**Adm. Order No.:** PH 4-2011

**Filed with Sec. of State:** 6-16-2011

**Certified to be Effective:** 6-16-11

**Notice Publication Date:** 3-1-2011

**Rules Amended:** 333-068-0005, 333-068-0015, 333-068-0020, 333-068-0025, 333-068-0030, 333-068-0035, 333-068-0040, 333-068-0045, 333-068-0050, 333-068-0055, 333-068-0060, 333-068-0065, 333-069-0005, 333-069-0015, 333-069-0020, 333-069-0030, 333-069-0040, 333-069-0050, 333-069-0060, 333-069-0070, 333-069-0080, 333-069-0085, 333-069-0090, 333-070-0075, 333-070-0085, 333-070-0090, 333-070-0095, 333-070-0100, 333-070-0105, 333-070-0110, 333-070-0115, 333-070-0120, 333-070-0125, 333-070-0130, 333-070-0135, 333-070-0140, 333-070-0145, 333-070-0160

**Rules Repealed:** 333-069-0075, 333-070-0155

**Subject:** The Oregon Health Authority, Public Health Division is permanently amending Oregon Administrative Rules in chapter 333, divisions 68, 69 and 70 relating to regulating lead-based paint activities, accreditation of training providers and renovation, repair and painting activities involving lead-based paint. The proposed amendments make the following general changes to the rules: (1) House-keeping changes, including removal of unnecessary definitions,

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rewording of other definitions, and standardization of terms; (2) Creation of a mechanism for training programs, individuals and firms to become accredited/certified in Oregon if they are currently accredited/certified by EPA or another authorized state; (3) Raises the maximum heat gun temperature in the Work Practice Standards sections of OAR 333-069 and OAR 333-070 to 1100°F; and (4) Eliminates all references to the “opt out” provision in OAR 333-070.

**Rules Coordinator:** Brittany Sande—(971) 673-1291

## 333-068-0005

### Authority, Purpose, Scope

(1) Authority. These rules are promulgated in accordance with and under the authority of ORS 431.920.

(2) Purpose. These rules prescribe the requirements for accredited training programs to ensure a properly trained workforce to perform inspection, risk assessment and abatement of hazards associated with lead-based paint. These rules are designed to ensure that good quality training is available to those who need or want to have training in lead-based paint inspection, assessment or abatement activities.

(3) Scope.

(a) A training program may seek accreditation to offer lead-based paint activity courses in any of the following disciplines: inspector, risk assessor, supervisor, project designer, and abatement worker. A training program accredited in a discipline may also seek accreditation to offer refresher courses for the discipline.

(b) These rules prescribe the requirements for training programs to provide, offer, or claim to provide Authority accredited lead-based paint activities courses.

(c) These rules prescribe those actions or circumstances that constitute failure to achieve or maintain competency, or that otherwise are contrary to the public interest, for which the Authority may deny, suspend, or revoke accreditation.

(d) These rules provide criteria for the certification by the Authority and licensure by the Construction Contractors Board (CCB) of persons and the firms employing persons who have completed accredited training.

(e) These rules establish fees to the extent necessary to defray costs of those activities prescribed herein.

Stat. Auth.: ORS 431.920

Stats. Implemented: ORS 431.920

Hist.: HD 19-1997, f. & cert. ef. 12-12-97; PH 4-2011, f. & cert. ef. 6-16-11

## 333-068-0015

### Definitions

As used in these rules unless otherwise required by context:

(1) “Abatement” means any measure or set of measures designed to permanently eliminate lead-based paint hazards including, but not limited to:

(a) The removal of lead-based paint and lead-contaminated dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead-contaminated soil; and

(b) All preparation, cleanup, disposal, and post-abatement clearance examination activities associated with such measures;

(c) Specifically, abatement includes, but is not limited to:

(A) Projects for which there is a written contract or other documentation, which provides that an individual or firm will be conducting activities in or to a residential dwelling or child-occupied facility that results in permanent elimination of lead-based paint hazards or designed to permanently eliminate lead-based paint hazards as described in subsections (1)(a) and (1)(b) above.

(B) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by certified and licensed firms or individuals, unless such projects are covered under subsection (1)(d) of this definition.

(c) Projects resulting in the permanent elimination of lead-based paint hazards; conducted by firms or individuals who, through their company name or promotional literature, represent, advertise, or hold themselves out to be in the business of performing lead-based paint activities, unless such projects are covered under subsection (1)(d) of this section.

(d) Projects resulting in the permanent elimination of lead-based paint hazards that are conducted in response to state or local abatement orders.

(e) Abatement does not include renovation, remodeling, landscaping or other activities, when such activities are not designed to permanently eliminate lead-based paint hazards, but, instead, are designed to repair, restore, or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards. Furthermore, abatement does not include interim controls, opera-

tions and maintenance activities, or other measures and activities designed to temporarily, but not permanently, reduce lead-based paint hazards.

(2) “Accreditation” means the process whereby the Authority has reviewed and approved a training program’s written application with associated materials for accreditation, and has conducted an on-site audit finding the training program in compliance as specified in these rules.

(3) “Accredited Training Program” means an individual, corporation, partnership or other unincorporated association or public entity to which the Authority, the U.S. Environmental Protection Agency (EPA), or an EPA-authorized state or tribal program has received accreditation or provisional accreditation to provide training for individuals engaged in lead-based paint activities.

(4) “Approved” means approved in writing by the Authority.

(5) “Authority” means the Oregon Health Authority.

(6) “Certified” means successful completion of a training program accredited by the Authority, EPA or an EPA-authorized state or tribal program, passage of a certification examination administered by the Authority, satisfaction of any other requirements for the appropriate discipline, and submittal and approval of the appropriate application by the Authority for inspection, risk assessment or abatement activities in target housing and child-occupied facilities.

(7) “Certified firm” means a company, partnership, corporation, sole proprietorship, association, or other business entity that performs lead-based paint activities that the Authority has issued a certificate under OAR 333-069-0005 through 333-069-0090.

(8) “Clearance examination” means visual examination and clearance testing performed following abatement of lead-based paint or lead-based paint hazards using documented methodologies as defined in this section. Such examination shall be performed by a person certified to perform risk assessments or lead-based paint inspections.

(9) “Clearance examination standards” means values that indicate the maximum amount of lead permitted in dust on a surface or in soil following completion of an abatement activity. Standards for lead in dust are 40 micrograms per square foot ( $\mu\text{g}/\text{ft}^2$ ) on floors, 250  $\mu\text{g}/\text{ft}^2$  on interior window sills, and 400  $\mu\text{g}/\text{ft}^2$  on window troughs. The values for lead in soil are 400 parts per million (ppm) in play areas and 1,200 ppm in the remainder of the yard.

(10) “Contact hour” means 60 minutes of lead-based paint related training which may include a break of not more than 10 minutes.

(11) “Course completion document” means documentation issued by an accredited training program to an individual as proof of successful completion of an Authority approved lead-based paint course or refresher training course.

(12) “Demonstration testing” means the observation and scoring of a student’s job task and equipment use skills taught during a course or refresher training course.

(13) “Discipline” means a specific type or category of lead-based paint activity.

(14) “Guest instructor” means an individual who is responsible for providing less than 30 percent of training in any course.

(15) “Hands-on training” means training during which students practice skills that they will be expected to perform at the worksite.

(16) “Inspection” means a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report, in writing, explaining the results of the investigation.

(17) “Inspector” means an individual who is certified by the Authority to conduct in target housing and child-occupied facilities a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a written report explaining the results of the investigation; and to collect dust-wipe and soil samples incidental to post-abatement clearance examination, in accordance with OAR 333-069-0070.

(18) “Instructor” means an individual who is responsible for providing 30 percent or more of training in any course.

(19) “Interactive/participatory teaching methods” means instruction which consists of active participation of the students, such as brainstorming, hands-on training, demonstration and practice, small group problem-solving, learning games, discussions, risk mapping, field visits, walk-throughs, problem-posing, group work assignments, homework review sessions, question-and-answer periods, skits, or role-playing sessions. Lecture is not considered an interactive/participatory teaching method.

(20) “Job tasks” mean the specific activities performed in the context of work.

(21) “Lead-based paint” means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.

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(22) "Lead-based paint activities" means, in the case of target housing and child-occupied facilities, inspection, risk-assessment, and abatement.

(23) "Lead-based paint hazard" means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces or impact surfaces that would result in adverse human health effects.

(24) "Licensed" means a person who has been certified by the Authority in one or more disciplines and has completed the requirements of the CCB.

(25) "Person" means individuals, corporations, associations, firms, partnerships, joint stock companies, and public entities.

(26) "Principal instructor" means the individual who has the primary responsibility for organizing and teaching a particular course.

(27) "Proficiency test" means any alternative to a conventional written examination that is used to measure a trainee's mastery of course content. An oral examination offered to a trainee with a manual disability is an example of a proficiency test.

(28) "Provisional accreditation" means the Authority has reviewed and finds acceptable a training program's written application for accreditation, but has not conducted an on-site audit as specified in these rules.

(29) "Project designer" means an individual who is certified by the Authority and licensed by the CCB to interpret lead inspection or risk assessment reports and to develop plans, specifications, and project procedures for lead abatement projects in target housing and child-occupied facilities, including, occupant notification and protection, clean-up and clearance, and abatement reports.

(30) "Refresher training course" means a minimum seven hour training course (or four hours for project designer) accredited by the Authority to update an individual's knowledge and skills in the discipline in which training is offered.

(31) "Risk assessment" means an on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards, and the provision of a report by the individual or the firm conducting the risk assessment, explaining the results of the investigation and options for reducing lead-based hazards.

(32) "Risk assessor" means an individual who is certified by the Authority and licensed by the CCB to conduct, in target housing and child-occupied facilities, on-site investigations to determine the existence, nature, severity, and location of lead-based paint hazards, and to provide a report explaining the results of the investigation and options for reducing lead-based hazards; and who may conduct a lead-hazard investigation, in accordance with OAR 333-069-0070.

(33) "Sample quality control" means a plan or design which ensures the authenticity, integrity, and accuracy of samples, including dust, soil, and paint chip or film samples. Sample quality control also includes provisions for representative sampling and control samples.

(34) "Supervisor" means an individual who is certified by the Authority and licensed by the CCB to either conduct or oversee and direct the work-site conduct of lead-based paint abatement and clearance activities in target housing and child-occupied facilities, and to prepare occupant protection plans and abatement reports in accordance with OAR 333-069-0070.

(35) "These rules" means OAR 333-068-0005 through 333-068-0065.

(36) "Training manager" means the individual responsible for administering a training program and monitoring the performance of principal instructors and guest instructors.

(37) "Worker" means an individual who is certified by the Authority and licensed by the CCB to conduct work site lead-based paint abatement activities in target housing and child-occupied facilities in accordance with OAR 333-069-0070.

Stat. Auth.: ORS 431.920

Stats. Implemented: ORS 431.920

Hist.: HD 19-1997, f. & cert. ef. 12-12-97; PH 4-2011, f. & cert. ef. 6-16-11

## 333-068-0020

### Accreditation Required

(1) No person shall provide, offer, or claim to provide an accredited lead-based paint activities course unless the person has received accreditation or provisional accreditation from the Authority.

(2) Curricula may be accredited for the initial and refresher training courses for inspector, risk assessor, abatement worker, supervisor, and project designer.

(3) Only Authority accredited or provisionally accredited training programs are eligible to offer refresher training courses for lead-based paint discipline courses.

(4) To qualify for and maintain accreditation, a training program shall:

(a) Propose and offer at least one accredited or provisionally accredited lead-based paint training course.

(b) Conform with personnel, operational and curriculum requirements.

(c) Comply with accreditation application and procedural requirements.

(5) The Authority shall review and approve or deny accreditation, provisional accreditation, or renewal of accreditation of any applicant.

(a) If approved, a written notice shall be sent to the applicant.

(b) If denied, the Authority shall state, in writing, the reasons for denial. An applicant may reapply for accreditation of the same course after a period of 30 days from the date the application was denied.

(6) Provisional status shall be removed upon an on-site audit stating that requirements for Authority approval are satisfied.

(a) A provisional accredited or accredited training program shall permit the Authority to conduct an audit without charge to the Authority.

(b) Advance notice shall not be required prior to conducting an audit.

(c) An audit shall be performed on-site and shall include, but not be limited to, a review of: records, including course completion forms and attendance records; facilities; instructional curriculum; examination design, administration and security procedures, and results, including those of demonstration testing; classroom instruction; audio-visual materials; course content; and coverage.

(7) Accreditation must be obtained and maintained for each training course and refresher training course.

(8) Accreditation shall be valid for 1 year, must be renewed annually, and shall not be transferrable.

(9) Accreditation based on a valid lead-based paint accreditation issued by the EPA or by an EPA-authorized state or tribal program shall be issued with an expiration date not to exceed the date of expiration listed on the EPA or EPA-authorized state or tribal accreditation document.

(10) The provider of an accredited or provisionally accredited training course shall submit for review a written description of changes in method or content that affect one-half hour or more of contact instruction.

(11) A provider of an accredited training course may not implement changes in method or content that affect one-half hour or more of contact instruction without prior approval of the Authority.

(12) An accredited or provisionally accredited training program shall permit the Authority to conduct unannounced on-site audits at any time.

(13) An accredited or provisionally accredited training program shall notify the Authority within 30 days of any change to the current application.

Stat. Auth.: ORS 431.920

Stats. Implemented: ORS 431.920

Hist.: HD 19-1997, f. & cert. ef. 12-12-97; PH 4-2011, f. & cert. ef. 6-16-11

## 333-068-0025

### Application

(1) Submittal of a completed application for course accreditation or re-accreditation shall include:

(a) Name, address, and phone number of training program and training program manager.

(b) List of course(s) for which accreditation is being applied.

(c) Training program manager signed statement certifying each instructor meets qualifications under OAR 333-068-0030 in these rules, as well as, a list of the topics/skill areas to be taught by each instructor.

(d) A copy of the entire course or refresher course instruction curriculum, including, but not limited to: learning objectives; documentation of course agenda with time allocation for each course topic and sequence of topics to be covered during the course(s); student and instructor manuals, handouts, quizzes and homework.

(e) Copy of the test blueprint describing the portion of test questions devoted to each major course topic.

(f) Description of the classroom and field site training facilities, equipment for lecture and hands-on training and equipment storage.

(g) Description of the procedures for conducting the assessment of the hands-on skills and evaluation testing of trainees' ability to perform work practices.

(h) A copy of the quality control plan developed by the training manager. The plan shall be used to maintain and improve the training program and contain at least the following elements:

(A) Procedures for periodic revision of training materials and course test to be current with innovations in the field.



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(B) Procedures for the training manager's annual review of principle instructor competency.

(i) An example of numbered certificates to be issued to students who successfully complete the training course.

(j) Description of record keeping procedures.

(k) Schedule of anticipated course dates and location(s).

(l) Description of the amount of time and type of hands-on training including student-to-instructor ratio during hands-on training.

(m) Description of the teaching methods to be used for each major topic and for hands-on training.

(n) Description of the audio/visual aids to be used for each major topic.

(2) The program application materials shall demonstrate that it meets the minimum requirements for each discipline for which the program is seeking accreditation.

(3) Documentation of compliance with Oregon Administrative Rules for radioactive lead detection devices in accordance with OAR chapter 333, divisions 102 and 103, which includes, but is not limited to, licensing, storage, and use requirements shall be provided.

(4) Documentation of accreditation issued by the EPA or an EPA-authorized state or tribal program, if applicable.

(5) Applicants for accreditation based on accreditation from the EPA or an EPA-authorized state or tribal program must document to the Authority that they have read and understand the accreditation standards as described in these rules.

(6) When re-accrediting, the training program shall submit a completed application form and required documentation, except for unchanged information and documentation that was submitted with the original application.

(7) When seeking accreditation to offer an additional course, the training program shall submit a completed application form and required documentation, except for unchanged information and documentation submitted with the original application for accreditation.

(8) The Authority may deny an application for accreditation or re-accreditation of a training course for any of the following reasons:

(a) Failure to complete application in accordance with Authority policy or instructions.

(b) Failure to meet minimum curriculum standards as set forth in these rules.

(c) Failure to meet minimum operational standards as set forth in these rules.

(d) Failure to pass a field audit conducted in accordance with Authority policy and procedures.

(9) An applicant whose application for accreditation or re-accreditation of a training course has been denied by the Authority may submit another application for accreditation or reaccreditation of the course after a period of 30 days from the date the application was denied.

(10) The Authority may withdraw provisional accreditation of a training program following the failure of a field audit of that course. If provisional accreditation is withdrawn by the Authority, the training program is required to receive written permission from the Authority before continuing to offer the course for which provisional accreditation has been withdrawn.

Stat. Auth.: ORS 431.920

Stats. Implemented: ORS 431.920

Hist.: HD 19-1997, f. & cert. ef. 12-12-97; PH 4-2011, f. & cert. ef. 6-16-11

## 333-068-0030

### Minimum Personnel Requirements

(1) The training program shall be administered by a training manager having the following minimum qualifications:

(a) Two years of experience administering training programs or two years of experience teaching or training adults;

(b) Successful completion of a course that provides instruction in the planning and teaching of an adult education course, or has obtained a bachelor's or graduate level degree in adult education from an accredited college or university;

(c) A bachelor's or graduate degree in building construction technology, engineering, industrial hygiene, safety, public health, education, business administration or program management including: lead or asbestos abatement, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene;

(d) Successful completion of at least 16 contact hours of lead-based paint training from any of the required topics listed in OAR 333-068-0040.

(2) Each training program shall be taught by a principal instructor who shall be responsible for the organization of the course, teaching of all

course material, may deliver course content and has the following minimum qualifications:

(a) Has completed a course that provides instruction in the planning and teaching of any adult education course, or has obtained a degree in adult education from an accredited college or university, or has at least two years of classroom experience in teaching workers or adults;

(b) Successful completion of at least 16 contact hours lead-based paint training from any of the required topics listed in OAR 333-068-0040;

(c) Demonstrated one year of experience, education, or training in lead or asbestos abatement, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene. Except, that instructors of hands-on training must have two years of such experience; and

(d) Successful completion of seven contact hours of an Authority accredited refresher training instruction annually.

(3) Only a principal instructor receiving a satisfactory annual performance review by the training manager shall provide course or refresher training, unless the instructor is also the training manager.

(4) The training manager may designate guest instructors as needed for teaching particular skills specific to the lecture, hands-on activities, or work practice components of a course.

(a) Each qualified guest instructor shall have a minimum of one year of experience related to the subject matter that they teach.

(b) Except that, guest instructors of hands-on training shall have a minimum of two years of lead-based paint activities experience.

(5) The maximum student to instructor ratio shall be 30 to 1 for classroom training and 10 to 1 for hands-on instruction.

Stat. Auth.: ORS 431.920

Stats. Implemented: ORS 431.920

Hist.: HD 19-1997, f. & cert. ef. 12-12-97; OHD 1-1999, f. & cert. ef. 1-19-99; PH 4-2011, f. & cert. ef. 6-16-11

## 333-068-0035

### Minimum Operation Requirements

(1) The training program shall have available and provide adequate facilities for delivery of the lecture, hands-on training and assessment activities. This includes training equipment that reflects current work practices, and maintaining or updating the equipment and facilities as needed.

(2) For each course offered, the training program shall conduct at the completion of each course a course test composed of questions relevant to the objectives of the course and, if applicable, a hands-on skills assessment, or in the alternative, a proficiency test for that discipline.

(a) The written course examination shall contain a minimum of 50 questions, which shall be presented in multiple-choice format.

(b) A member of the training staff or a designated proctor must remain in the room where the examination is being administered until all trainees have completed the exam.

(c) Each trainee must successfully complete the hands-on skills assessment and receive a passing score on the written course test to pass any course, or successfully complete a proficiency test.

(d) The hands-on skill assessment is an evaluation of the effectiveness of the hands-on training which shall test the ability of the trainees to demonstrate satisfactory performance of work practices and procedures in OAR 333-069-0070, as well as any other skills demonstrated in the course.

(3) The training manager is responsible for maintaining the validity and integrity of the hands-on skills assessment or proficiency test to assure that it accurately evaluates the trainee's performance of the work practices and procedures associated with the course topics.

(4) The training manager is responsible for maintaining the validity and integrity of the course test to ensure that it accurately evaluates the trainee's knowledge and retention of the course topics.

(a) The course test is an evaluation of the overall effectiveness of the training which shall test the trainee's knowledge and retention of the topics covered during the course. A score of 70 percent is considered passing the course test.

(b) The course test shall be developed in accordance with the test blueprint submitted with the training course accreditation application.

(5) Training programs shall issue unique course completion certificates to each individual who successfully completes the course requirements. The course completion certificate shall include:

(a) The name, a unique identification number, and the individual's address;

(b) Name of particular course completed;

(c) Dates of course completion/test passage;

(d) Expiration date of certification, which shall be six months from date of course completion;

(e) Name, address, and telephone number of training program

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(6) The training manager shall develop and implement a quality control plan to be used to maintain or improve the quality of the training program and contain at least:

(a) Procedures for periodic revision of training materials and course test to reflect innovations in the field; and

(b) Procedures for training manager's annual review of instructor competency.

(7) The training manager shall offer courses which teach the work practice standards, testing criteria and field measurements for conducting lead-based paint activities and other lead-based paint standards that are at least as protective of the environment and of public health as those developed by the EPA, and in accordance with worker safety requirements of the Oregon Occupational Safety and Health Administration (OR-OSHA), and based on principles and practices determined to protect the environment and human beings from exposure to lead contaminants. These standards shall be taught in the appropriate courses to provide trainees with the knowledge needed to perform the lead-based paint activities they are responsible for conducting

(8) The training manager shall be responsible for ensuring that the training program complies at all times with the accreditation regulations.

(9) The training manager shall provide the Authority with a current listing of training courses including the date, time and location of scheduled lead-based paint training courses.

(10) The training manager shall permit the Authority to conduct a course audit without charge to the Authority.

(a) Advance notice shall not be required prior to conducting a course audit to verify the contents of the application for accreditation.

(b) A course audit shall be performed on-site and shall include, but not be limited to, a review of: instructional curriculum; examination design, administration and security procedures, and results, including those of demonstration testing; classroom instruction; audio-visual materials; course content; coverage; teaching facilities, and equipment licensure.

(11) An accredited training program shall maintain at the principal place of business in Oregon, accurate records of attendance; examination results including demonstration testing; completed course forms; and training director, instructor and guest instructor qualifications, for at least seven years.

Stat. Auth.: ORS 431.920

Stats. Implemented: ORS 431.920

Hist.: HD 19-1997, f. & cert. ef. 12-12-97; PH 4-2011, f. & cert. ef. 6-16-11

## 333-068-0040

### Minimum Curriculum Requirements

(1) The inspector course shall consist of a minimum of 24 contact hours. At least 10 of the 24 required contact hours shall be taught using interactive/participatory teaching methods, which includes a minimum of eight hours hands-on training.

(a) Classroom instruction shall include, but not be limited to:

(A) Roles and responsibilities of lead-based paint inspector including qualifications and conflicts of interest.

(B) One contact hour of background information on lead, including but not limited to, identification of environmental lead sources such as surface dust, soil, water, air and food; history of uses and locations of lead and leaded paint in buildings; lead dust and paint characteristics; and summary of abatement control options.

(C) One contact hour of adverse health effects of lead exposure, including but not limited to, nature of lead-related diseases; pathways of exposure and how exposure occurs; dose-response relationships; permissible exposure limit; blood lead levels in children and adults; effects on various body systems; different effects on children and adults including women and the fetus during pregnancy; symptoms and diagnosis of lead poisoning and reportable blood lead levels; how lead in the body is absorbed, distributed and eliminated; medical treatment for lead poisoning including but not limited to chelation therapy.

(D) One contact hour on regulatory review and background information of relevant federal, state, and local regulations including guidance that pertains to lead-based paint and lead-based paint activities.

(E) At least one contact hour on radiation information and safety training requirements including but not limited to:

(i) The Oregon radiation safety training requirements.

(ii) Ionization radiation including atomic structure, units of radiation, radioactivity, radioactive decay, ionization, radiation absorption in matter, and radiation detection.

(iii) Safe use of X-ray florescent (XRF) analyzers, including limitations, transportation, storage, records, record keeping and licensing requirements.

(F) At least two contact hours on lead-based paint respiratory protection and personal protective training that conforms with OAR 437-003-0001(4)(m).

(G) At least six contact hours on inspection work practice standard tasks including, but not limited to:

(i) Legal responsibilities and insurance issues including liabilities, errors and omissions, and bonding.

(ii) Formulation of a testing plan for multi-family dwellings and single family target housing and child-occupied facilities, including notification of property owner and occupants, building access, and use of warning signs.

(iii) Investigation protocol, sample collection including equipment, procedures, quality assurance, contamination factors before, during and after abatement as set forth in the U.S. Housing and Urban Development's (HUD's) "Guidelines for the Evaluation and Control of Lead-based Paint Hazards in Housing" and EPA's "Residential Sampling of Lead: Protocols for Dust and Soil Sampling".

(iv) Sample analysis and quality assurance procedures including National Lead Laboratory Accreditation Program (NLLAP) recognized laboratories to test paint, dust, soil and other media.

(b) Hands-on training shall include performance of tasks including but not limited to:

(A) Lead-based paint inspection methods including selection of rooms and components for sampling or testing.

(B) Paint, dust and soil sampling methodologies.

(C) Clearance standards and testing, including random sampling.

(D) Preparation of a final inspection report.

(2) The risk assessor course shall consist of a minimum of 40 contact hours, which includes a 24 contact hour inspector course. At least 16 of the 40 required contact hours shall be taught using interactive/participatory teaching methods, which includes a minimum of 12 hours of hands-on training.

(a) Classroom instruction shall include, but not be limited to:

(A) Role and responsibilities of a risk assessor including risk assessor qualifications, legal obligations, conflicts of interest, and insurance issues.

(B) Collection of background information to perform a risk assessment

(C) Sources of environmental lead contamination exposure sources including paint, surface dust and soil, water, air, packaging, and food.

(D) Risk assessment report form;

(E) Lead hazard screen protocol;

(F) Development of hazard control options, the role of interim controls, and operations and maintenance activities to reduce lead-based paint hazards.

(G) Preparation of a final risk assessment report;

(H) Record keeping;

(I) At least nine contact hours on lead hazard screen and risk assessment work practice standard tasks for target housing and child-occupied facilities.

(b) Hands-on training shall include performance of tasks including but not limited to:

(A) Visual inspections for the purposes of identifying potential lead-based paint hazard sources;

(B) Sampling for other sources of lead exposure;

(C) Interpretation of lead-based paint and other lead sampling results including all applicable state or federal guidance or regulations pertaining to lead-based paint hazards.

(3) The supervisor course shall consist of at least a minimum of 32 contact hours. At least 13 of the 32 required contact hours shall be taught using interactive/participatory teaching methods which includes a minimum of eight hours hands-on training.

(a) Classroom instruction shall include, but not be limited to:

(A) Roles and responsibilities of lead-based paint supervisor including supervisor qualifications, legal obligations, conflicts of interest, abatement liability, and insurance issues.

(B) Background information on lead, including but not limited to, identification of environmental lead sources such as surface dust, soil, water, air and food; history of uses and locations of lead and leaded paint in buildings; lead dust and paint characteristics; and summary of abatement control options.

(C) Adverse health effects of lead exposure, including but not limited to, nature of lead related diseases; pathways of exposure and how exposure occurs; dose-response relationships; permissible exposure limit; blood lead levels in children and adults; effects on various body systems; different effects on children and adults including women and the fetus during preg-

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nancy; symptoms and diagnosis of poisoning and reportable blood lead levels; how lead in the body is absorbed, distributed and eliminated; medical treatment for lead poisoning including but not limited to chelation therapy.

(D) Regulatory review and background information of relevant federal, state, and local regulations including guidance that pertains to lead-based paint and lead-based paint activities.

(E) At least two contact hours on lead-based paint respiratory protection and personal protective training that conforms with OAR 437-003-0001(64)(m).

(F) Identification and prevention of hazards encountered during lead-based paint activities including potential lead hazard exposure; prevention of lead dust contamination; emergency procedures for sudden releases and electrical, heat stress, fire, explosion and other hazards, chemical air contaminants, and disturbance of friable asbestos.

(G) Record keeping.

(H) Personal hygiene, including entry and exit procedures for the work area, use of showers, avoidance of eating, drinking, smoking, chewing, and applying cosmetics in the work or changing area, avoidance of take-home exposures.

(I) Medical monitoring requirements discussion of need for medical monitoring of lead toxicity and disclosure of lead related medical history and treatment of lead poisoning cases including medical removal and issues involved in selecting medical services.

(J) Hazard communication with property owner, occupants and neighbors relative to the reduction or elimination of lead sources at the job site.

(K) Development and implementation of an occupant protection plan and abatement report.

(L) Clearance examination standards and testing.

(M) Clean-up and waste disposal.

(N) At least six contact hours on supervisor work practice standard tasks including but not limited to:

(i) Interior and exterior leaded paint, soil and dust abatement methods, including chemical, enclosure, manual, mechanical, blasting, and encapsulation; removal and demolition; ventilation and engineering controls; management in place; and clean-up techniques, including high efficiency particulate air (HEPA) vacuums and negative air machines, as described in HUD's "Guidelines for the Evaluation and Control of Lead-based Paint Hazards in Housing."

(ii) Construction and maintenance of containment barriers.

(iii) Warning signs and their placement.

(iv) Electrical and ventilation system lockout and hazardous and non-hazardous waste characterization and disposal.

(b) Hands-on training shall include performance of tasks including but not limited to:

(A) Risk assessment and inspection report interpretation;

(B) Hazard recognition and control;

(C) Respiratory protection and protective clothing;

(D) Lead paint abatement or lead hazard reduction including prohibited methods;

(E) Interior dust abatement/clean-up or lead hazard reduction;

(F) Soil and exterior dust abatement or lead hazard reduction.

(4) The project designer course shall consist of at least a minimum of 40 contact hours, which includes a 32 contact hours supervisor course. At least 16 of the 40 required contact hours shall be taught using interactive/participatory teaching methods, which includes a minimum of eight hours hands-on training and shall include, but not be limited to:

(a) Role and responsibilities of a project designer.

(b) Development and implementation of an occupant protection plan for large scale abatement projects.

(c) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices for large scale projects.

(d) Interior dust abatement/clean-up or lead hazard control and reduction methods for large scale projects.

(e) Clearance examination standards and testing for large scale projects.

(f) Integration of lead-based paint abatement methods with modernization and rehabilitation projects for large scale abatement projects.

(5) The abatement worker course shall consist of at least a minimum of 16 contact hours. At least eight of the 16 required contact hours shall be taught using interactive/participatory teaching methods, which includes a minimum of eight hours hands-on training.

(a) Classroom instruction shall include, but not be limited to:

(A) Role and responsibilities of an abatement worker.

(B) One contact hour of background information on lead, including but not limited to, identification of environmental lead sources such as sur-

face dust, soil, water, air and food; history of uses and locations of lead and leaded paint in buildings; lead dust and paint characteristics; and summary of abatement control options.

(C) One contact hour of adverse health effects of lead exposure, including but not limited to, nature of lead related diseases; pathways of exposure and how exposure occurs; dose-response relationships; permissible exposure limit; blood lead levels in children and adults; effects on various body systems; different effects on children and adults including women and the fetus during pregnancy; symptoms and diagnosis of poisoning and reportable blood lead levels; how lead in the body is absorbed, distributed and eliminated; medical treatment for lead poisoning including but not limited to chelation therapy.

(D) One contact hour on regulatory review and background information of relevant federal, state, and local regulations including guidance that pertains to lead-based paint and lead-based paint activities.

(E) Identification and prevention of hazards encountered during lead-based paint activities including potential lead hazard exposure; prevention of lead dust contamination; emergency procedures for sudden releases and electrical, heat stress, fire, explosion and other hazards, chemical air contaminants, and disturbance of friable asbestos.

(F) At least six contact hours on lead-based paint abatement work practice standard tasks including, but not limited to:

(i) Interior and exterior leaded paint, soil and dust abatement methods, including chemical, enclosure, hand, mechanical, blasting, encapsulation, and management in place, and clean-up techniques, including high efficiency particulate air (HEPA) vacuums and negative air machines, as described in HUD's "Guidelines for the Evaluation and Control of Lead-based Paint Hazards in Housing."

(ii) Construction and maintenance of containment barriers.

(iii) Warning signs and their placement.

(iv) Electrical and ventilation system lockout and hazardous and non-hazardous waste characterization and disposal.

(G) Record keeping.

(H) At least two contact hours on lead-based paint respiratory protection and personal protective training that conforms with OAR 437-003-0001(4)(m).

(I) Personal hygiene, including entry and exit procedures for the work area, use of showers, avoidance of eating, drinking, smoking, chewing, and applying cosmetics in the work or changing area, avoidance of take-home exposures.

(J) Medical monitoring requirements discussion that shall include, but not be limited to, the need for medical monitoring of lead toxicity; the disclosure of lead-related medical history; and the treatment of lead poisoning cases, including issues of medical removal and of selecting medical services.

(K) Hazard communication with property owner, occupants and neighbors relative to the reduction or elimination of lead sources at the job site.

(b) Hands-on training shall include performance of tasks including but not limited to:

(A) Lead-based paint hazard recognition and control;

(B) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices;

(C) Interior dust abatement/clean-up methods or lead hazard reduction;

(D) Soil & exterior dust abatement methods or lead hazard reduction;

(E) Waste disposal.

(6) OR-OSHA respiratory protection and personal protective equipment training is required under these rules. Other OR-OSHA lead-based paint requirements may be included in the training, but are not required by the Authority.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 431.920

Stats. Implemented: ORS 431.920

Hist.: HD 19-1997, f. & cert. ef. 12-12-97; PH 4-2011, f. & cert. ef. 6-16-11

## 333-068-0045

### Minimum Requirements for Accreditation of Refresher Training Course

(1) Refresher training shall only be provided by an accredited training program for the same course discipline.

(2) Refresher training course shall consist of at least seven contact hours of training except for the project designer refresher course which shall consist of at least four contact hours of training.



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(3) Each refresher training course shall review the curriculum topics of the respective accredited or provisionally accredited lead-based paint training course and include, but not be limited to:

(a) An overview of current lead-based paint safety practices in general, as well as, specific safety practices for the refresher discipline.

(b) An update on current federal, state, and local lead-based paint laws and regulations in general, as well as, specific laws and regulations applicable to the discipline.

(c) An update on current technologies relating to lead-based paint activities in general, as well as, specific information pertaining to the discipline.

(4) Each student shall be required to pass a course test and a hands-on assessment (if applicable) covering course topics and upon passing the student shall be provided with a course completion certificate.

(5) The training program shall conduct a hands-on assessment, if applicable, and a course completion test for each course offered.

(6) At least 40 percent of refresher education instruction shall be taught using interactive/participatory teaching methods, except for refresher education instruction for lead abatement workers, which shall be taught using at least 50 percent interactive/participatory teaching methods.

(7) A training program seeking accreditation of a refresher course shall submit a written application including:

(a) Name, address, and telephone number;

(b) List of course(s) for which accreditation application is being made;

(c) A copy of student manuals and instructor manuals to be used for each course;

(d) A copy of the course agenda for each course;

(e) Also include with the application for accreditation documentation that complies with OAR 333-068-0030(1) through (4).

Stat. Auth.: ORS 431.920

Stats. Implemented: ORS 431.920

Hist.: HD 19-1997, f. & cert. ef. 12-12-97; PH 4-2011, f. & cert. ef. 6-16-11

## 333-068-0050

### Renewal of Training Program

(1) If a training program meets the regulations for accreditation the program shall be reaccredited. A training program accreditation shall expire one year from date of reaccreditation and shall not be transferable.

(2) A training program seeking reaccreditation shall submit an application to the Authority no later than 60 days before its accreditation expires. If a training program does not submit its application for reaccreditation by that date, the Authority cannot guarantee that the program will be reaccredited before the end of the accreditation period.

(3) The application shall contain:

(a) The training program's name, address, and telephone number;

(b) List of courses for which it is applying for reaccreditation;

(c) Description of any changes or updates to the training facility or equipment; and

(d) The certified statement as described in OAR 333-069-0050(4) below.

(4) The training program's application for reaccreditation shall contain a statement signed by the training program manager certifying that:

(a) The course materials, for each course, meet the minimum training curricula requirements, as appropriate;

(b) The training manager, principal instructors, and guest instructors meet the qualifications in OAR 333-068-0030(1) through OAR 333-068-0030(4);

(c) The training program manager complies at all times with all requirements in OAR 333-068-0030;

(d) The quality control program meets the requirements in OAR 333-068-0025(h); and

(e) The record keeping and reporting requirements of OAR 333-068-0060 shall be followed.

(5) An audit may be performed by the Authority to verify the certified statement and the contents of the application.

Stat. Auth.: ORS 431.920

Stats. Implemented: ORS 431.920

Hist.: HD 19-1997, f. & cert. ef. 12-12-97; PH 4-2011, f. & cert. ef. 6-16-11

## 333-068-0055

### Suspensions, Revocation and Modification of Accredited Training Course Curriculum

(1) After notice and a hearing, the Authority may suspend, revoke, or modify a training program's accreditation if a training program, training manager, or other person with supervisory authority over the program has:

(a) Misrepresented the contents of the training course to the Authority and/or student population;

(b) Failed to submit required notifications in a timely manner;

(c) Failed to maintain required records;

(d) Falsified accreditation records, instructor qualifications, or other accreditation information;

(e) Failed to comply with the training standards and requirements for accreditation of training programs or to deliver the course according to the content and format described in the training program's application for accreditation and granted provisional approval by the Authority.

(f) Failed to comply with federal, state or local lead-based paint statutes or regulations.

(2) In addition to an administrative or judicial finding of violation, execution of a consent agreement in settlement of an enforcement action constitutes evidence of a failure to comply with relevant statutes or regulations.

(3) Training programs shall permit representatives of the Authority to attend any training course for the purpose of evaluation or monitoring of the course without charge.

(4) Prior to suspending, revoking, or modifying an accreditation of a training program the program shall be notified in writing of procedures in accordance with ORS 183.310 to 183.540.

(5) A training program, for whom the Authority has suspended or revoked a training course, must initiate a new application process with the Authority for re-instatement of the training program and may do so after 45 days following the date of the suspension or revocation.

(6) The Authority shall maintain a list, available to the public, of parties whose accreditation has been suspended, revoked, or modified.

Stat. Auth.: ORS 431.920

Stats. Implemented: ORS 431.920

Hist.: HD 19-1997, f. & cert. ef. 12-12-97; PH 4-2011, f. & cert. ef. 6-16-11

## 333-068-0060

### Training Course Record-Keeping

(1) Accredited training programs shall maintain, and make available to the Authority if requested, the following records:

(a) All documents specified in OAR 333-068-0030 that demonstrate the qualifications listed in OAR 333-068-0030(2), (3), and (4) for training manager, principal instructors, and work practice instructors;

(b) Current curriculum, course materials and documents reflecting any changes made to these materials;

(c) Course test blueprint;

(d) Information on how hands-on assessment is conducted including, but not limited to, who conducts the assessment, how skills are graded, what facilities are used, and the pass/fail rate;

(e) The quality control plan;

(f) Results of student's hands-on skills assessments and course tests and a copy of each student's course completion certificate; and

(g) Any other material submitted as part of the program's application for accreditation.

(2) All training course records shall be retained a minimum of seven years at the location

specified on the training course accreditation application.

(3) The Authority shall be notified 30 days prior to any change in the training program's current application.

(4) Accredited or provisionally accredited training programs shall provide the Authority with a course roster of persons who have successfully completed the training course within 30 days of course completion.

(5) Accredited or provisionally accredited training programs shall notify the Authority with the location and dates of each course a minimum of 30 days prior to course starting date.

Stat. Auth.: ORS 431.920

Stats. Implemented: ORS 431.920

Hist.: HD 19-1997, f. & cert. ef. 12-12-97; PH 4-2011, f. & cert. ef. 6-16-11

## 333-068-0065

### Fees

The following fees are established:

(1) A non-refundable application fee of \$750 for accreditation of a standard lead-based paint inspector or supervisor training course and \$500 for accreditation of a standard lead-based paint risk assessor or worker training course; a non-refundable application fee of \$600 for a refresher lead-based paint activities training course covering more than two disciplines; and a non-refundable application fee of \$500 for an inspector or supervisor refresher training course; and \$350 for a risk assessor or a worker refresher training course.

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(2) A non-refundable annual reaccreditation application fee of \$300 for any initial standard lead-based paint activities training course for each discipline; a non-refundable annual reaccreditation application fee of \$200 for a refresher training course covering more than two disciplines; and a non-refundable annual renewal application fee of \$100 for a refresher training course covering up to two disciplines.

(3) For initial accreditation application, the following non-refundable fees shall apply for each standard training or refresher training course: Training manager: \$175; Each additional instructor or guest instructor: \$90.

(4) For annual reaccreditation application, the following non-refundable fees shall apply for each standard training or refresher training course: Training manager: \$100; Each additional instructor or guest instructor: \$50.

(5) Applicants for accreditation shall pay no more than the maximum single training manager fee for each training manager. An additional instructor or guest instructor fee shall be paid for every training course that is taught by the training manager.

Stat. Auth.: ORS 431.920

Stats. Implemented: ORS 431.920

Hist.: HD 19-1997, f. & cert. ef. 12-12-97; OHD 1-1999, f. & cert. ef. 1-19-99; PH 4-2011, f. & cert. ef. 6-16-11

## 333-069-0005

### Authority, Purpose, Scope

(1) Authority. These rules are promulgated in accordance with and under the authority of ORS 431.920.

(2) Purpose:

(a) The purpose of these rules is to address Oregon's need for a qualified and properly trained workforce to perform inspection, risk assessment and removal of hazards associated with lead-based paint, to safeguard the environment and protect human health, and the health of building occupants, especially for high-risk groups (children under six years of age), from lead-based paint hazards.

(b) These rules prescribe the requirements for certification of individuals and firms engaged in lead-based paint activities in target housing and child-occupied facilities.

(c) These rules will establish work practice standards for the performance of lead-based paint inspection, risk assessment, and abatement activities for individuals and firms and will require that all lead-based paint activities be performed only by certified individuals and firms.

(3) Scope:

(a) These rules apply to all individuals and firms who are engaged in lead-based paint activities for compensation or where a child residing in the building has been identified as having an elevated blood lead level.

(b) These rules establish the requirement that lead-based paint activities be performed only by certified individuals and firms.

(c) These rules prescribe the requirements for, and the manner of, certifying competency of applicants for certification of lead-based paint inspector, risk assessor, supervisor, project designer, and worker, and of firms employing such individuals.

(d) These rules prescribe work practice standards for the removal or mitigation of lead-based paint hazards and for the performance of lead-based paint inspection and risk assessment, and those actions or circumstances that constitute failure to achieve or maintain competency, or that otherwise are contrary to the public interest, for which the Authority may assess civil penalties, deny, suspend, or revoke certification.

(e) These rules establish fees to the extent necessary to defray costs of those activities prescribed herein.

Stat. Auth.: ORS 431.920

Stats. Implemented: ORS 431.920

Hist.: HD 5-1996(Temp), f. & cert. ef. 9-30-96; HD 6-1997, f. 4-25-97, cert. ef. 5-1-97; OHD 12-1998, f. & cert. ef. 10-27-98; PH 8-2003, f. & cert. ef. 6-20-03; PH 22-2010(Temp), f. & cert. ef. 9-24-10 thru 3-22-11; Administrative correction 4-25-11; PH 4-2011, f. & cert. ef. 6-16-11

## 333-069-0015

### Definitions

As used in these rules unless otherwise required by context:

(1) "Abatement" means any measure or set of measures designed to permanently eliminate lead-based paint hazards including, but not limited to:

(a) The removal of paint and dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of painted surfaces or fixtures, or the removal or covering of soil, when lead-based paint hazards are present in such paint, dust or soil; and

(b) All preparation, cleanup, disposal, and post-abatement clearance examination activities associated with such measures,

(c) Specifically, abatement includes, but is not limited to:

(A) Projects for which there is a written contract or other documentation, which provides that an individual or firm will be conducting activities in or to a residential dwelling or child-occupied facility that results in permanent elimination of lead-based paint hazards or designed to permanently eliminate lead-based paint hazards and described in subsections (1)(a) and (1)(b) above.

(B) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by certified and licensed firms or individuals, unless such projects are covered under subsection (1)(d) of this definition.

(C) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by certified firms or individuals who, through their company name or promotional literature, represent, advertise, or hold themselves out to be in the business of performing lead-based paint activities, unless such projects are covered under subsection (1)(d) of this section.

(D) Projects resulting in the permanent elimination of lead-based paint hazards that are conducted in response to state or local abatement orders.

(d) Abatement does not include renovation, remodeling, landscaping or other activities, when such activities are not designed to permanently eliminate lead-based paint hazards, but, instead, are designed to repair, restore, or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards. Furthermore, abatement does not include interim controls, operations and maintenance activities, or other measures and activities designed to temporarily, but not permanently, reduce lead-based paint hazards.

(2) "Accredited training program" means a training program accredited or provisionally accredited by the Authority, the Environmental Protection Agency (EPA), or an EPA-authorized state or tribal program, to provide training for individuals engaged in lead-based paint activities.

(3) "Arithmetic mean" means the algebraic sum of data values divided by the number of data values (e.g., the sum of the concentration of lead in several soil samples divided by the number of samples).

(4) "Authority" means the Oregon Health Authority.

(5) "Certified" means successful completion of a training program accredited by the Authority, passage of a certification examination administered by the Authority and satisfaction of any other requirements for the appropriate discipline, and submittal and approval of the appropriate application by the Authority for inspection, risk assessment or abatement activities in target housing and child-occupied facilities.

(6) "Certified firm" means a company, partnership, corporation, sole proprietorship, association, or other entity that performs lead-based paint activities to which the Authority has issued a certificate under these rules.

(7) "Chewable surface" means an interior or exterior surface painted with lead-based paint that a young child can mouth or chew. A chewable surface is the same as an accessible surface. Hard metal substrates and other materials that cannot be dented by the bite of a young child are not considered chewable.

(8) "Child-occupied facility" means a building, or a portion of a building, constructed prior to 1978, visited regularly by the same child, under six years of age, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least three hours and the combined weekly visit lasts at least six hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may include, but are not limited to, day-care centers, preschools and kindergarten classrooms.

(9) "Clearance examination" means visual examination and clearance testing performed following abatement of lead-based paint or lead-based paint hazards using documented methodologies as defined in this rule. Such examination shall be performed by a person certified to perform risk assessments or lead-based paint inspections.

(10) "Clearance examination standards" means values that indicate the maximum amount of lead permitted in dust on a surface or in soil following completion of an abatement activity. Standards for lead in dust are 40 micrograms per square foot ( $\mu\text{g}/\text{ft}^2$ ) on floors, 250  $\mu\text{g}/\text{ft}^2$  on interior window sills, and 400  $\mu\text{g}/\text{ft}^2$  on window troughs. The values for lead in soil are 400 parts per million (ppm) in play areas and 1,200 ppm in the remainder of the yard.

(11) "Common area" means a portion of a building that is generally accessible to all occupants that may include, but that is not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, garages, and boundary fences.

(12) "Common area group" means a group of common areas that are similar in design, construction, and function. Common area groups include, but are not limited to hallways, stairwells, and laundry rooms.

## ADMINISTRATIVE RULES

(13) "Component" means an architectural element of a dwelling unit or common area identified by type and location, such as a bedroom wall, an exterior window sill, a baseboard in a living room, a kitchen floor, an interior window sill in a bathroom, a porch floor, stair treads in a common stairwell, or an exterior wall.

(14) "Concentration" means the relative content of a specific substance contained within a larger mass, such as the amount of lead (in micrograms per gram or parts per million by weight) in a sample of dust or soil.

(15) "Contact hour" means 60 minutes of lead-based paint related training, which may include a break of not more than 10 minutes.

(16) "Containment" means a process or arrangement of materials to protect workers and the environment by controlling exposure to the lead-contaminated dust and debris created during an abatement.

(17) "Course completion date" means the final date of classroom instruction and/or student examination of an accredited lead-based paint training course.

(18) "Course completion certificate" means documentation issued by an accredited training program to an individual as proof of successful completion of an Authority-accredited lead-based paint training course.

(19) "Critical barrier" means a containment structure that allows for the passage of persons or materials.

(20) "Demonstration testing" means the observation and scoring of a student's job task and equipment use skills taught during a course or continuing education instruction.

(21) "Deteriorated paint" means any interior or exterior paint or other coating that is peeling, chipping, chalking or cracking, or any paint or coating located on an interior or exterior surface or fixture that is otherwise damaged or separated from the substrate.

(22) "Discipline" means a specific type or category of lead-based paint activity.

(23) "Distinct painting history" means the application history, as indicated by the visual appearance or a record of application, over time, of paint or other surface coatings to a component or room.

(24) "Documented methodologies" are written methods or protocols used to sample for the presence of lead in paint, dust, and soil as recommended in U.S. Department of Housing and Urban Development (HUD) "Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing", and "EPA's Residential Sampling for Lead: Protocols for Dust and Soil Sampling".

(25) "Dripline" means the area within three feet surrounding the perimeter of a building.

(26) "Dust-lead hazard" means surface dust in a residential dwelling or child-occupied facility that contains a mass-per-area concentration of lead equal to or exceeding 40  $\mu\text{g}/\text{ft}^2$  on floors, 250  $\mu\text{g}/\text{ft}^2$  on interior window sills, or 400  $\mu\text{g}/\text{ft}^2$  based on wipe samples.

(27) "Emergency" means a situation in which failure to act promptly would likely result in immediate harm to persons or property.

(28) "Emergency lead-based paint abatement activities" means activities required in response to an elevated blood lead level determination, or federal, state, tribal or local emergency abatement order, or operations necessitated by non-routine failures of equipment, that were not planned but result from a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard, or threatens equipment and/or property with significant damage.

(29) "Firm" means a sole proprietorship, corporation, association, partnership, or joint stock company.

(30) "Friction surface" means an interior or exterior surface that is subject to abrasion or friction, including, but not limited to, certain window, floor, and stair surfaces.

(31) "Hands-on training" means training during which students practice skills that they will be expected to perform at the worksite.

(32) "Impact surface" means an interior or exterior surface that is subject to damage by repeated sudden force such as certain parts of door frames.

(33) "Inspection" means a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report, in writing, explaining the results of the investigation.

(34) "Inspector" means an individual who is certified by the Authority and licensed by the Construction Contractors Board (CCB), except where exempt by these rules, to conduct in target housing and child-occupied facilities a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report, in writing; and conduct clearance procedures in accordance with OAR 333-069-0070. An inspector may also collect dust and soil samples and perform clearance examinations. An

inspector may cite the applicable standard for the medium being sampled, but may not evaluate the results or assess risk.

(35) "Interior window sill" means the portion of the horizontal window ledge that protrudes into the interior of the room.

(36) "Job tasks" mean the specific activities performed in the context of work.

(37) "Lead-based paint" means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.

(38) "Lead-based paint activities" means, in the case of target housing and child-occupied facilities, inspection, risk-assessment, and abatement.

(39) "Lead-based paint hazard" means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces or impact surfaces that would result in adverse human health effects.

(40) "Lead hazard standard" means the amount of lead the Authority considers to be a hazard in target housing or child-occupied facilities. The standards for lead in dust are 40 micrograms per square foot ( $\mu\text{g}/\text{ft}^2$ ) on floors, 250  $\mu\text{g}/\text{ft}^2$  on interior window sills, and 400  $\mu\text{g}/\text{ft}^2$  on window troughs. The standards for lead in soil are 400 parts per million (ppm) in play areas and 1,200 ppm in the remainder of the yard.

(41) "Licensed" means a person or firm who has been certified by the Authority in one or more disciplines and is licensed by the CCB.

(42) "Loading" means the quantity of specific substance present per unit of surface area, such as the amount of lead in micrograms contained in the dust collected from a certain surface area divided by the surface area in square feet or square meters.

(43) "Multi-family housing" means a housing property consisting of more than four dwelling units.

(44) "Notice of noncompliance" is a description, in writing, of activities conducted in violation of these rules observed or documented by the Authority, and of requirements for corrective action.

(45) "Paint in poor condition" means more than 10 square feet of deteriorated paint on exterior components with large surface areas; or more than two square feet of deteriorated paint on interior components with large surface areas (e.g., walls, ceilings, floors, doors); or more than 10 percent of the total surface area of the component is deteriorated on interior or exterior components with small surface areas (window sills, baseboards, soffits, trim).

(46) "Paint-lead hazard" means any of the following:

(a) Any lead-based paint on a friction surface that is subject to abrasion and where the lead dust levels on the nearest horizontal surface underneath the friction surface (e.g., the window sill, or floor) are equal to or greater than the dust-lead hazard levels identified in these rules.

(b) Any damaged or otherwise deteriorated lead-based paint on an impact surface that is caused by impact from a related building component (such as a door knob that knocks into a wall or a door that knocks against its door frame).

(c) Any chewable lead-based painted surface on which there is evidence of teeth marks.

(d) Any other deteriorated lead-based paint in any residential building or child-occupied facility or on the exterior of any residential building or child-occupied facility.

(47) "Permit" means a written authorization obtained from the Authority without which a painter may not remove or stabilize paint on target housing or pre-1978 child-occupied facilities.

(48) "Permanent" means having an expected design life of 20 years.

(49) "Permanently covered soil" means soil which has been separated from human contact by the placement of a barrier consisting of solid, relatively impermeable materials, such as pavement or concrete. Grass, mulch, and other landscaping materials are not considered permanent covering.

(50) "Person" means an individual.

(51) "Play area" means an area of frequent soil contact by children under six years of age as indicated by, but not limited to, such factors including the following: the presence of play equipment (e.g., sandboxes, swing sets, and sliding boards), toys, or other children's possessions, observations of play patterns, or information provided by parents, residents, care givers, or property owners.

(52) "Preliminary clearance" means clearance of interior living areas according to which an inspector or risk assessor determines that residual lead levels (as determined by laboratory analysis) do not exceed clearance examination standards.



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(53) "Project designer" means an individual who is certified by the Authority and licensed by the CCB to interpret lead inspection or risk assessment reports and to develop plans, specifications, and project procedures for lead abatement projects in target housing and child-occupied facilities, including occupant notification and protection, clean-up and clearance, and abatement reports.

(54) "Public agency" means an entity that functions as part of a governmental body or organization at the local, state, or federal level.

(55) "Refresher training course" means a minimum seven hour training program accredited by the Authority to update an individual's knowledge and skills so that he/she can effectively and safely continue to practice in the field.

(56) "Residential building" means a building containing one or more residential dwellings.

(57) "Residential dwelling" means:

(a) A detached single family dwelling unit, including attached structures such as porches and stoops; or

(b) A single family dwelling unit in a structure that contains more than one separate residential dwelling unit, which is used or occupied, or intended to be occupied, in whole or in part, as the home or residence of one or more persons.

(58) "Risk assessment" means an on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards, and the provision of a report by the individual or the firm conducting the risk assessment, explaining the results of the investigation and options for reducing lead-based paint hazards.

(59) "Risk assessor" means an individual who is certified by the Authority and licensed by the CCB, unless where exempt by the rules, to conduct in target housing and child-occupied facilities on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards, and to provide a report explaining the results of the investigation and options for reducing lead-based paint hazards; and who may conduct a lead-hazard screen, in accordance with OAR 333-069-0070.

(60) "Room" means a separate part of the inside of a building, such as a bedroom, living room, dining room, kitchen, bathroom, laundry room, or utility room. To be considered a separate room, the room must be separated from adjoining rooms by built-in walls or archways that extend at least six inches from an intersecting wall. Half walls or bookcases count as room separators if built-in. Movable or collapsible partitions or partitions consisting solely of shelves or cabinets are not considered built-in walls. A screened in porch that is used as a living area is a room.

(61) "Sample quality control" means a plan or design which ensures the authenticity, integrity, and accuracy of samples, including dust, soil, and paint chip or film samples. Sample quality control also includes provisions for representative sampling and control samples.

(62) "Scope of work" means a written description of all of the abatement activities to be conducted at a specific abatement project site.

(63) "Soil-lead hazard" means bare soil on residential real property or on the property of a child-occupied facility that contains total lead equal to or exceeding 400 ppm in a play area or average of 1,200 ppm of bare soil in the remainder of the yard based on soil samples.

(64) "Soil sample" means a sample collected in a representative location using American Society for Testing Materials (ASTM) E1727, "Standard Practice for Field Collection of Soil Samples for Lead Determination by Atomic Spectrometry Techniques," or equivalent method.

(65) "Supervisor" means an individual who is certified by the Authority and licensed by the CCB to either conduct or oversee and direct the work-site conduct of lead-based paint abatement and clearance activities in target housing and child-occupied facilities, and to prepare occupant protection plans and abatement reports in accordance with OAR 333-069-0070.

(66) "Target housing" means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any one or more children under six years of age resides or is expected to reside in such housing for the elderly or persons with disabilities) or any zero-bedroom dwelling.

(67) "These rules" means OAR 333-069-0005 through 333-069-0090.

(68) "Weighted arithmetic mean" means the arithmetic mean of sample results weighted by the number of subsamples in each sample. Its purpose is to give influence to a sample relative to the surface area it represents. A single surface sample is comprised of a single subsample. A composite sample may contain from two to four subsamples of the same area as each other and of each single surface sample in the composite. The weighted arithmetic mean is obtained by summing, for all samples, the product of the sample's result multiplied by the number of subsamples in the sample,

and dividing the sum by the total number of subsamples contained in all samples. For example the weighted arithmetic mean of a single surface sample containing 60  $\mu\text{g}/\text{ft}^2$ , a composite sample (three subsamples) containing 100  $\mu\text{g}/\text{ft}^2$ , and a composite sample (4 subsamples) containing 110  $\text{mg}/\text{ft}^2$  is 100  $\mu\text{g}/\text{ft}^2$ . This result is based on the equation  $[60+(3*100) + (4*110)]/(1+3+4)$ .

(69) "Window trough" means for a typical double-hung window, the portion of the exterior window sill between the interior window sill (or stool) and the frame of the storm window. If there is no storm window, the window trough is the area that receives both the upper and lower window sashes when they are both lowered. The window trough is sometimes referred to as the window "well".

(70) "Wipe sample" means a sample collected by wiping a representative surface of known area, as determined by ASTM E 1728, "Standard Practice for Field Collection of Settled Dust Samples Using Wipe Sampling Methods for Lead Determination by Atomic Spectrometry Techniques, or equivalent method, with an acceptable wipe material as defined in ASTM E 1792, "Standard Specification for Wipe Sampling Materials for Lead in Surface Dust."

(71) "Worker" means an individual who is certified by the Authority and licensed by the CCB to conduct lead-based paint abatement activities in target housing and child-occupied facilities in accordance with OAR 333-069-0070.

Stat. Auth.: ORS 431.920

Stats. Implemented: ORS 431.920

Hist.: HD 5-1996(Temp), f. & cert. ef. 9-30-96; HD 6-1997, f. 4-25-97, cert. ef. 5-1-97; OHD 12-1998, f. & cert. ef. 10-27-98; OHD 11-2000, f. & cert. ef. 12-8-00; OHD 4-2001(Temp) f. & cert. ef. 4-10-01 thru 10-5-01; OHD 25-2001, f. & cert. ef. 11-15-01; PH 8-2003, f. & cert. ef. 6-20-03; PH 22-2010(Temp), f. & cert. ef. 9-24-10 thru 3-22-11; Administrative correction 4-25-11; PH 4-2011, f. & cert. ef. 6-16-11

### 333-069-0020

#### Certification Required

(1) No person, firm, or public agency shall offer to perform or perform lead-based paint inspection, risk assessment, or abatement activities in target housing or child-occupied facilities without first receiving certification from the Authority and a license from the CCB, except if such a person, firm, or public agency is exempt from CCB licensing requirements.

(2) All certificates to perform lead-based paint activities shall expire on June 30, and are renewable upon meeting all of the requirements as determined by the Authority.

(3) Certified persons or firms conducting lead-based paint activities shall comply with the work practice standards for performing lead-based paint activities as prescribed in these rules. Painters shall follow the work practices described on the Permit application.

(4) It shall be considered a violation of these rules and the CCB regulations for any person to conduct any of the lead-based paint activities described in these rules unless the individual has received certification from the Authority and licensure from the CCB, except if such a person, is exempt from CCB licensing requirements.

(5) Applicants for inspector, risk assessor, project designer and supervisor shall pass with a score of 70 or more on a certification examination administered by the Authority for each discipline for which certification is desired.

(6) Individuals may take the certification examination no more than three times within six months of the course completion date of the accredited lead-based paint training course.

(7) If an individual applicant does not complete all certification requirements (including passing the certification examination for required disciplines) within six months of the course completion date of the accredited lead-based paint training course, the individual shall successfully complete the appropriate accredited standard or refresher training course before reapplying for certification.

(8) A certificate for an individual will be issued by the Authority in the form of an identification card and a numbered certificate. This card will identify each discipline for which a person is certified and must be available on demand for inspection at all times while conducting inspection, risk assessment, or abatement activities.

(9) A numbered certificate for a certified firm will be issued by the Authority.

(10) A public agency whose employees perform 'in house' lead-based paint services need not be a certified firm, but shall furnish the Authority with a letter of compliance certifying the following:

(a) The agency will use only certified individuals of the appropriate discipline to conduct lead-based paint activities as described in these rules;

(b) The agency will follow the standards for conducting lead-based paint activities as prescribed in these rules; and

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(c) The agency will maintain records of all such activities per these rules.

(d) The letter of compliance will be signed by an individual authorized to sign on the agency's behalf.

(e) Any public agency determined by the Authority to be in violation of this exemption shall be subject to the certification requirements of a non-exempt firm.

(11) A firm or public agency that contracts with a certified firm or public agency to provide lead-based paint activities on its behalf need not be certified.

(a) The contracting firm or public agency shall submit to the Authority a letter of compliance stating the following:

(A) The firm or agency will use only certified firms and certified individuals of the appropriate discipline to conduct lead-based paint activities as described in these rules;

(B) The firm or agency will ensure that the standards for conducting lead-based paint activities as prescribed in these rules will be followed; and

(C) The firm or agency will maintain records of all such activities per these rules.

(D) The letter of compliance will be signed by an individual authorized to sign on the firm or the agency's behalf.

(b) The contracting firm shall submit to the Authority, upon request, a copy of the contract agreement between the contracting firm and the certified firm or firms.

(12) Employees or agents of regulatory agencies are exempt from these rules if:

(a) Those employees or agents are acting in a regulatory capacity;

(b) They are carrying out activities within the scope of the agency's regulatory authority; and

(c) They have been trained in a manner consistent with the public and environmental health objectives of these rules.

Stat. Auth.: ORS 431.920

Stats. Implemented: ORS 431.920

Hist.: HD 5-1996(Temp), f. & cert. ef. 9-30-96; HD 6-1997, f. 4-25-97, cert. ef. 5-1-97; OHD 12-1998, f. & cert. ef. 10-27-98; PH 8-2003, f. & cert. ef. 6-20-03; PH 22-2010(Temp), f. & cert. ef. 9-24-10 thru 3-22-11; Administrative correction 4-25-11; PH 4-2011, f. & cert. ef. 6-16-11

## 333-069-0030

### Eligibility

(1) Inspector. To qualify, an individual shall complete all elements on the application form and meet the following eligibility requirements:

(a) Successfully complete and receive a course completion certificate from an Authority accredited training program as an inspector;

(b) Pass the certification examination administered by the Authority for an inspector.

(2) Risk assessor. To qualify, an individual shall complete all elements on the application form and meet the following minimum eligibility requirements:

(a) Successfully complete and receive a course completion certificate from an Authority accredited training program as a risk assessor and inspector;

(b) Pass the certification exam administered by the Authority for a risk assessor;

(c) Have completed one of the following education and applicable experience criteria:

(A) Certification as an industrial hygienist, an engineer, a registered architect, certified safety professional, registered sanitarian, or registered environmental health specialist; or

(B) A bachelor's degree and one year of experience in a related field (e.g. lead, asbestos, environmental remediation work, or construction); or an associates degree and two years experience in a related field (e.g., lead, asbestos, environmental remediation work, or construction); or

(C) A high school diploma (or equivalent), plus at least three years of experience in a related field (e.g. lead, asbestos, environmental remediation work, or construction).

(3) Supervisor. To qualify, an individual shall complete all elements on the application form and meet the following minimum eligibility requirements:

(a) Successfully complete and receive a course completion certificate from an Authority accredited training program as a lead abatement supervisor;

(b) Pass the certification exam administered by the Authority for a supervisor;

(c) Have completed one of the following experience requirements:

(A) One year of experience as a certified lead-based paint abatement worker; or

(B) At least two years of experience in a related field (e.g. lead, asbestos, or environmental remediation work) or in the building trades.

(4) Abatement worker. To qualify, an individual shall complete all elements on the application form and successfully complete and receive a course completion certificate from an Authority accredited training program as a lead abatement worker.

(5) Project designer. To qualify, an individual shall comply with all application requirements and meet the following minimum eligibility requirements:

(a) Successfully complete and receive a course completion certificate from an Authority accredited training program as a lead abatement supervisor and project designer;

(b) Have completed one of the following education and applicable experience criteria:

(A) Bachelor's degree in engineering, architecture, or a related profession, and one year of experience in building construction and design or a related field; or

(B) Four years of experience in building construction and design or a related field; and

(C) Pass the certification examination administered by the Authority for a project designer.

(6) Applicants for certification may complete a refresher course in the same discipline in satisfaction of the training requirement if no more than one year has passed since the original course was completed and the original course was accredited by the Authority, EPA, or an EPA-authorized state or tribal program.

(7) The Authority may certify an individual who has been certified as an inspector, risk assessor, supervisor, project designer, or abatement worker by the EPA or an EPA-authorized state or tribal program upon receiving evidence that the individual has:

(a) Completed and received a course completion certificate from an accredited training course specific to the position for which the individual has applied and the course is accredited by the EPA or by a state or tribal program authorized by the EPA under 40 CFR 745.234;

(b) Met or exceeded all other eligibility requirements specified in OAR 333-069-0030 specific to the position applied for;

(c) Met all application requirements in OAR 333-069-0040; and

(d) Completed any additional requirements established by the Authority.

(8) Applicants for certification based on certification from another state or tribal program must document to the Authority that they have read and understand the certification and work practice standards as described in these rules.

(9) Certification based on a valid lead-based paint certification issued by the EPA or an EPA-authorized state or tribal program shall be issued with an expiration date not to exceed the date of expiration listed on the certification.

Stat. Auth.: ORS 431.920

Stats. Implemented: ORS 431.920

Hist.: HD 5-1996(Temp), f. & cert. ef. 9-30-96; HD 6-1997, f. 4-25-97, cert. ef. 5-1-97; OHD 12-1998, f. & cert. ef. 10-27-98; PH 8-2003, f. & cert. ef. 6-20-03; PH 4-2011, f. & cert. ef. 6-16-11

## 333-069-0040

### Application Requirements

(1) No person, firm or public agency shall conduct lead-based paint activities in or on target housing or child-occupied facilities without first applying to the Authority for and receiving certification to conduct such activities.

(2) Applications for certification or permit shall be accompanied with a check or money order made out to the 'Oregon Health Authority' in the amount as described in OAR 333-069-0090.

(3) Applications for a person shall be submitted on forms prescribed by the Authority and shall be accompanied, as appropriate, by:

(a) Documentation of applicant's training, experience, and education including:

(A) Lead-based paint training course completion certificate issued by an Authority-accredited training program.

(B) Documentation of experience must include name and address of employer, name and telephone number of supervisor; or indicate if self-employed. Documentation must also include employment dates, description of specific duties performed, estimated percentage of time associated with conducting inspections and assessing health, safety or environmental hazards. This documentation must be signed by supervisor or employer verifying, under penalty of perjury, that the information is true and correct. A self-employed individual must submit a notarized affidavit attesting to the work experience claimed for the purposes of application.

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(C) Evidence of completion of educational requirements under OAR 333-069-0030, such as a transcript or diploma, if applicable.

(b) Two current, passport size photos.

(c) Applicant's name, printed or typed, date, and signature, verifying, under penalty of perjury, that all information submitted is true and correct.

(4) Applications for a certification or permit shall be submitted on forms prescribed by the Authority. Application materials can be obtained from the Authority's website.

(5) Applications for certification of a firm shall be accompanied by a letter of compliance certifying the following:

(a) The firm will employ only certified employees of the appropriate discipline to conduct lead-based paint activities as prescribed in these rules.

(b) The firm will follow the standards for conducting lead-based paint activities as prescribed in these rules.

(c) The firm shall maintain all records pursuant to these rules.

(d) The letter of compliance shall be signed by an officer of the firm, or an individual authorized to sign on the firm's behalf.

(6) Certified individuals, firms and permit holders shall notify the Authority within 30 calendar days of any change to the current application.

(7) For the purposes of application, photocopies of original documents are acceptable.

Stat. Auth.: ORS 431.920

Stats. Implemented: ORS 431.920

Hist.: HD 5-1996(Temp), f. & cert. ef. 9-30-96; HD 6-1997, f. 4-25-97, cert. ef. 5-1-97; Administrative correction 8-25-97; OHD 12-1998, f. & cert. ef. 10-27-98; PH 8-2003, f. & cert. ef. 6-20-03; PH 22-2010(Temp), f. & cert. ef. 9-24-10 thru 3-22-11; Administrative correction 4-25-11; PH 4-2011, f. & cert. ef. 6-16-11

## 333-069-0050

### Renewal and Recertification

(1) To maintain a permit or certification in a particular discipline, application for recertification shall be made annually to the Authority. Applicants shall submit completed application forms available from the Authority, postmarked 60 days or more before the date the current certification expires, and shall pay the appropriate fee per OAR 333-069-0090.

(2) Recertification is required for individuals by June 30, no more than three years after the issue date of an original certification or recertification, whichever is most recent. To obtain recertification, an individual shall fulfill the following:

(a) Submit to the Authority an application for recertification that shall include two current passport-size photos and the appropriate fee per OAR 333-069-0090; and

(b) Submit to the Authority a copy of the course completion certificate from an accredited lead-based paint standard or refresher training course in the appropriate discipline.

(3) An individual whose Authority certification has been expired for more than six months must complete a standard or refresher course in that discipline and pass a qualifying examination administered by the Authority. An individual whose Authority certification has been expired for more than one year shall successfully complete a standard course in that discipline and pass a qualifying examination administered by the Authority.

Stat. Auth.: ORS 431.920

Stats. Implemented: ORS 431.920

Hist.: HD 5-1996(Temp), f. & cert. ef. 9-30-96; HD 6-1997, f. 4-25-97, cert. ef. 5-1-97; OHD 12-1998, f. & cert. ef. 10-27-98; PH 8-2003, f. & cert. ef. 6-20-03; PH 22-2010(Temp), f. & cert. ef. 9-24-10 thru 3-22-11; Administrative correction 4-25-11; PH 4-2011, f. & cert. ef. 6-16-11

## 333-069-0060

### Certification Procedures

(1) The Authority shall inform the applicant, in writing, when his/her application is granted, denied or incomplete and of the additional information and/or documentation that is required to complete the application.

(a) If granted, a certificate shall be mailed to the applicant and the effective date shall be the issuance date of certification or recertification.

(b) A unique certification number will be assigned to each certificate holder.

(c) If an application is denied, the Authority shall state, in writing, the reasons for denial.

(d) An application may be withdrawn at any time by written request to the Authority.

(2) The Authority may take into consideration various factors in determining whether to grant or deny a permit or certification including, but not limited to:

(a) Failure to satisfy eligibility requirements for certification;

(b) Failure to satisfy training requirements;

(c) Failure to provide required documentation or information requested by the Authority;

(d) History of citations or violations of existing regulations or standards;

(e) History of revocation of a certificate;

(f) Making false or misleading statements in the application.

(3) Certification and permits shall be non-transferable.

(4) All certifications and permits shall expire on June 30.

Stat. Auth.: ORS 431.920

Stats. Implemented: ORS 431.920

Hist.: HD 6-1997, f. 4-25-97, cert. ef. 5-1-97; OHD 12-1998, f. & cert. ef. 10-27-98; PH 8-2003, f. & cert. ef. 6-20-03; PH 22-2010(Temp), f. & cert. ef. 9-24-10 thru 3-22-11; Administrative correction 4-25-11; PH 4-2011, f. & cert. ef. 6-16-11

## 333-069-0070

### Work Practice Standards

(1) When performing any lead-based paint activity described by a certified and licensed individual as an inspection, lead hazard screen, risk assessment or abatement, a certified and licensed person must perform that activity in compliance with these rules, documented methodologies, procedures and work practice standards.

(2) Inspection. An inspection shall be conducted only by a person certified by the Authority and licensed by the CCB as an inspector or risk assessor. Persons exempt from CCB licensing requirements shall be certified by the Authority. Employees of public agencies who conduct 'in-house' lead-based paint activities are exempt from licensing by the CCB.

(a) Locations shall be selected according to documented methodologies and tested for the presence of lead as follows:

(A) In target housing and child-occupied facilities, each component with a distinct painting history shall be tested, except those components determined to have been replaced after 1978 or to not contain lead-based paint; and

(B) In a multi-family dwelling or child-occupied facility, each component with a distinct painting history in every common area shall be tested, except those components determined to have been replaced after 1978 or to not contain lead-based paint.

(b) Paint shall be tested for the presence of lead using documented methodologies which incorporate sampling quality control procedures and all paint chip, dust, and soil samples shall be analyzed for detectable levels of lead by a laboratory accredited under the National Lead Laboratory Accreditation Program.

(c) Inspection reports shall be prepared and include at least:

(A) Inspection date;

(B) Building address;

(C) Date of construction;

(D) Apartment identification (numbers, letters, names if applicable);

(E) Name, address and telephone number of owner or owners of each unit;

(F) Name, signature, and certification number of each inspector and/or risk assessor conducting testing;

(G) Name, address and telephone number of the certified firm employing each inspector and/or risk assessor;

(H) Each testing method and device and/or sampling procedure employed for paint analysis, including sample quality control data, and if used, the serial number of any X-ray fluorescence (XRF) device; and

(I) Specific locations of each painted component tested and the results of the inspection expressed in appropriate units for the sampling method used.

(3) Lead hazard screen. A lead hazard screen shall be conducted only by a person certified by the Authority and licensed by the CCB as a risk assessor, except if such a person, is exempt from CCB licensing requirements, and shall be conducted as follows:

(a) Background information shall be collected about the physical characteristics of the target housing or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to one or more children under six years of age.

(b) A visual inspection shall be conducted to determine the presence of any deteriorated paint and locate at least two dust sampling locations.

(c) If deteriorated paint is present, each deteriorated paint surface determined, using documented methodologies, to be in poor condition and to have a distinct painting history shall be tested for the presence of lead.

(d) In residential dwellings, two composite dust samples shall be collected, one from the floors and the other from the windows, in rooms, hallways or stairwells where one or more children under six years of age are likely to come in contact with dust.

(e) In multi-family dwellings and child-occupied facilities, floor and window composite dust sampling shall be conducted as specified in OAR 333-069-0070(3)(d). In addition, composite dust samples shall be collected



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in common areas where one or more children under six years of age are likely to come in contact with dust.

(f) All dust samples shall be collected using documented methodologies that incorporate sample quality control procedures and analyzed by a laboratory accredited under the National Lead Laboratory Accreditation Program to determine detectable lead.

(g) A lead hazard screen report shall be prepared by the risk assessor and include:

(A) Information in a risk assessment report as specified in section (4) of this rule, including paragraphs (4)(i)(A) through (4)(i)(N) and excluding paragraphs (4)(i)(O) through (4)(i)(R) of this rule. Additionally, any background information collected pursuant to the lead hazard screen shall be included.

(B) Any recommendations for follow-up risk assessment and other further actions.

(4) Risk assessment. A risk assessment of target housing or child-occupied facility shall be conducted only by a person certified by the Authority and licensed by the CCB as a risk assessor. Persons exempt from CCB licensing requirements shall be certified by the Authority. Employees of public agencies who conduct 'in-house' lead-based paint activities are exempt from licensing by the CCB. A risk assessment shall be conducted as follows:

(a) A visual inspection shall be conducted to locate the existence of deteriorated paint, assess the extent and cause of deterioration, and other potential lead-based hazards.

(b) Background information shall be collected regarding the physical characteristics and occupant use patterns that may cause lead-based paint exposure to one or more children under six years of age.

(c) The following surfaces which are determined, using documented methodologies, to have a distinct painting history, shall be tested for the presence of lead:

(A) Each friction surface or impact surface with visibly deteriorated paint.

(B) All other surfaces with visibly deteriorated paint.

(d) In residential dwellings, dust samples (either composite or single-surface samples) from the interior window sill(s) and floor shall be collected and analyzed for lead concentration in all living areas where one or more children under six years of age are most likely to come in contact with dust.

(e) For multi-family dwellings and child-occupied facilities, the samples required in subsection (4)(d) of this rule shall be taken. In addition, interior window sill and floor dust samples (either composite or single-surface samples) shall be collected and analyzed for lead concentration in the following locations:

(A) Common areas adjacent to sampled target house or child-occupied facility; and

(B) Other common areas in the building where the risk assessor determines that one or more children under six years of age are likely to come in contact with dust.

(f) For child-occupied facilities, interior window sill and floor dust samples (either composite or single-surface samples) shall be collected and analyzed in each room, hallway or stairwell utilized by one or more children under six years of age, and in other common areas in the child-occupied facility where the risk assessor determines one or more children under six years of age are likely to come in contact with dust.

(g) Soil samples shall be collected and analyzed for lead concentrations from the following locations:

(A) Exterior play areas where bare soil is present; and

(B) The remainder of the yard (i.e., non-play areas) where bare soil is present.

(h) Any paint, dust or soil sampling or testing shall be conducted using documented methodologies that incorporate sample quality control procedures and analyzed by a laboratory accredited under the National Lead Laboratory Accreditation Program to determine detectable lead.

(i) The certified risk assessor shall prepare a risk assessment report which shall include at a minimum the following information:

(A) Assessment date;

(B) Address of each building;

(C) Date of construction of buildings;

(D) Apartment identification (numbers, letters, names if applicable);

(E) Name, address and telephone number of each owner of each building;

(F) Name, signature, and certification number of each risk assessor conducting the assessment;

(G) Name, address and telephone number of the certified firm employing each risk assessor;

(H) Name, address and telephone number of each laboratory conducting analysis of collected samples;

(I) Results of the visual inspection;

(J) Testing method and sampling procedure employed for paint analysis;

(K) Specific locations of each painted component tested for the presence of lead;

(L) All data collected from on-site testing, including quality control data, and if used, the serial number of any X-ray fluorescence (XRF) device;

(M) All results of laboratory analysis on collected paint, soil, and dust samples;

(N) Any other sampling results;

(O) Any background information collected pursuant to subsection (4)(b) of this rule;

(P) To the extent used as part of the lead-based paint hazard determination, the results of any previous inspections or analyses for the presence of lead-based paint, or other assessments of lead-based paint related hazards;

(Q) A description of the location, type, and severity of identified lead-based paint hazards and any other potential lead hazards; and

(R) A description of interim controls and/or abatement options for each identified lead-based paint hazard and a recommended prioritization for addressing each hazard. If the use of an encapsulant or enclosure is recommended, the report shall recommend a maintenance and monitoring schedule for the encapsulant or enclosure.

(5) Abatement. An abatement shall be conducted only by a person certified by the Authority and licensed by the CCB. Persons exempt from CCB licensing requirements shall be certified by the Authority. Employees of public agencies who conduct 'in-house' lead-based paint activities are exempt from licensing by the CCB. Abatement shall be conducted as follows:

(a) A certified and licensed supervisor or project designer is required for each abatement project and shall be onsite during all work site preparation and during post-abatement cleanup of work areas. At all other times, the certified supervisor or project designer shall be onsite or available by telephone, pager, or answering service, and be able to be present at the work site in no more than two hours.

(b) A certified and licensed project designer is required for each abatement project that:

(A) Consists of 10 or more target housing units built prior to 1960;

(B) Consists of 20 or more target housing units built during or after 1960; or

(C) Consists of 25,000 square feet or more of target housing.

(c) The certified and licensed supervisor or project designer, as well as, the certified and licensed firm employing that supervisor shall ensure that all abatement activities are conducted according to the requirements of these rules and all federal, state and local requirements.

(d) A certified and licensed project designer may replace and assume the responsibilities of a certified and licensed supervisor required for an abatement project. If a certified and licensed project designer provides supervision on an abatement project, the project designer shall be responsible for preparing the occupant protection plan and the abatement report.

(e) Any firm or individual conducting lead-based paint abatement activities in target housing or child-occupied facilities must notify the Authority at least seven business days before the start date of the project by completing and submitting a notice of abatement form available from the Authority.

(A) The notice of abatement shall specify the time of day that abatement activities will start and the date on which abatement activities will be completed.

(B) Amendments to or cancellations of the original notice of abatement, including completion-date changes must be submitted 24 hours prior to the original start date.

(C) In the event of an emergency, an original or amended notice of abatement describing the emergency must be submitted. Notification for lead-based paint abatement activities required in response to an elevated blood lead level (EBLL) determination, or federal, state, tribal, or local emergency abatement order should be received by the Authority as early as possible before, but must be received no later than the start date of the lead-based paint abatement activities. Should the start date and/or location provided to the Authority change, an updated notification must be received by the Authority on or before the start date provided in the notice of abatement to the Authority. Documentation showing evidence of an EBLL determination or a copy of the federal, state, tribal, or local emergency abatement

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order must be included in the written notification to take advantage of this abbreviated notification period.

(D) A request for waiver of the seven-business day advance notice requirement must be submitted in writing and granted in writing by the Authority before work under the waiver can start.

(E) The Authority may reject a notice of abatement form that has not been completed in full and signed by the applicant.

(f) A written occupant protection plan shall be developed prior to all abatement projects, be prepared by a certified and licensed supervisor or project designer, be unique to each target housing or child-occupied facility, describe the measures and management procedures that will be taken during the abatement to protect the building occupants from exposure to any lead-based paint hazards. The written occupant protection plan shall be present at the project site and must be made available on demand for inspection.

(g) A scope of work for the abatement project shall be present at the project site and must be made available on demand for inspection.

(h) These work practices shall be restricted during abatement:

(A) Open-flame burning or torching of lead-based paint is prohibited;

(B) Uncontained hydro blasting or high-pressure washing of lead-based paint is prohibited;

(C) Machine sanding or grinding or abrasive blasting or sandblasting of lead-based paint is prohibited unless used with High Efficiency Particulate Air (HEPA) exhaust control which removes particles of 0.3 microns or larger from the air at 99.97 percent or greater efficiency;

(D) Dry scraping of lead-based paint is permitted only in conjunction with heat guns or around electrical outlets or when treating defective paint spots totaling no more than two square feet in any room, hallway or stairwell or totaling no more than 20 square feet on exterior surfaces; and

(E) Operating a heat gun on lead-based paint is permitted only at temperatures below 1100 degrees Fahrenheit.

(i) When soil abatement is conducted:

(A) If the soil is removed:

(i) The soil shall be replaced by soil with a lead concentration as close to local background as practicable, but no greater than 400 ppm.

(ii) The soil that is removed shall not be used as top soil at another residential property or child-occupied facility.

(B) If the soil is not removed, the soil shall be permanently covered as defined in these rules.

(j) The following clearance procedures shall be performed only by a certified and licensed inspector or risk assessor and according to the following procedures:

(A) A visual inspection shall be performed to determine if deteriorated painted surfaces and/or visible amounts of dust, debris or residue are still present. If deteriorated painted surfaces or visible amounts of dust, debris or residue are present, these conditions must be eliminated prior to the continuation of the clearance procedures.

(B) If exterior work on a project cannot be completed due to inclement weather or other factors, the project supervisor may apply in writing to the Authority for authorization of a preliminary clearance.

(i) The application must include the following:

(I) The project address;

(II) The name and certification number of the abatement project supervisor or project designer;

(III) A description of the conditions that justify issuance of a waiver;

(IV) A description of the abatement work that remains to be done on the project;

(V) A schedule for completion of the abatement work that remains to be done; and

(VI) A plan for monitoring and controlling potential lead-based paint contamination until work can be completed.

(ii) At the conclusion of all work on a project for which preliminary clearance examination has been authorized, the project supervisor shall present the Authority with documentation that clearance testing has been performed on exterior and interior areas according to these rules and that all results are below clearance examination standards.

(C) Following the visual inspection and any post-abatement clean up required by paragraph (5)(j)(A) of this rule, clearance testing for lead in dust and/or soil shall be conducted. Clearance testing may be conducted by employing single-surface sampling techniques.

(D) Clearance testing shall be performed using documented methodologies that incorporate sample quality control procedures and shall be taken a minimum of one hour after completion of final cleanup activities.

(E) Post-abatement clearance examination activities shall be conducted based upon the extent or manner of work activities conducted in or on the target housing or child-occupied facility as follows:

(i) After conducting an abatement with containment between containment and non-containment areas, one dust sample shall be taken from one interior window sill and from one window trough (if present) and one dust sample shall be taken from the floors of no less than four rooms, hallways or stairwells within the containment area. In addition, one dust sample shall be taken from the floor outside the containment area. If a room containment consists of more than one critical barrier, one dust sample shall be taken outside each critical barrier. If there are fewer than four rooms, hallways or stairwells within the containment area, then all rooms, hallways or stairwells shall be sampled.

(ii) After conducting an abatement with no containment, two dust samples shall be taken from no fewer than four rooms, hallways or stairwells in the residential dwelling or child-occupied facility. One dust sample shall be taken from one interior window sill and from one window trough (if present) and one dust sample shall be taken from the floor of each room, hallway or stairwell selected. If there are fewer than four rooms, hallways or stairwells within the target housing or child-occupied facility then all rooms, hallways or stairwells shall be sampled.

(iii) Following exterior paint abatement, a visual inspection shall be conducted. All horizontal surfaces in the outdoor living area closest to the abated surfaces shall be found to be cleaned of visible dust and debris. The surfaces shall be recleaned when visible dust and debris is present. The visual inspection shall be conducted to determine the presence of paint chips on the dripline or next to the foundation below any exterior abated surface. Paint chips, if present, shall be removed from the site and disposed of according to federal, state and local requirements.

(F) The rooms, hallways or stairwells selected for sampling shall be selected according to documented methodologies.

(G) The certified and licensed inspector or risk assessor shall compare residual lead levels (as determined by laboratory analysis) from each single surface dust sample with clearance examination standards as defined in these rules for lead in dust on floors and interior window sills, and window troughs, divided by half the number of subsamples in the composite sample. If the residual lead level in a single surface dust sample equals or exceeds the applicable clearance examination standard or if the residual lead level in a composite dust sample equals or exceeds the applicable clearance examination standard divided by half the number of subsamples in the composite sample, the components represented by the failed sample shall be recleaned and retested until clearance examination standards are met.

(k) In a multi-family dwelling with similarly constructed and maintained residential dwellings, random sampling for the purposes of clearance examination may be conducted provided:

(A) The certified individuals who work on or clean the residential dwellings do not know which residential dwelling will be selected for the random sample.

(B) The randomly selected residential dwellings shall be sampled and evaluated according to subsection (5)(j) of this rule.

(C) A sufficient number of residential dwellings are selected for dust sampling to provide a 95 percent level of confidence that no more than five percent or 50 of the residential dwellings (whichever is smaller) in the randomly sampled population exceeds the appropriate clearance examination standards.

(l) An abatement report shall be prepared by a certified and licensed supervisor or project designer and shall include as a minimum the following information:

(A) Start and completion dates of abatement;

(B) The name, address and telephone number of each certified firm conducting the abatement and the name of each supervisor or project designer assigned to the abatement project;

(C) The occupant protection plan;

(D) The name, address and signature of each certified and licensed inspector or risk assessor conducting the clearance examination and the date(s) that the clearance examination was performed;

(E) The results of the clearance examination and all soil analyses and the name of each laboratory conducting analysis of collected samples; and

(F) A detailed written description of the abatement, including abatement methods, location of rooms and/or components where abatement occurred, reason for selecting particular abatement methods for each component, and any suggested monitoring of encapsulants or enclosures.

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(m) A clearance examination report shall be prepared by a certified inspector or risk assessor. The clearance examination report shall include the following information:

- (A) The property address where the clearance examination occurred;
- (B) The abatement cleanup completion date and time;
- (C) The date and time of the clearance examination;
- (D) Name and certification number of each inspector or risk assessor conducting the clearance;
- (E) The signature of the inspector or risk assessor conducting the clearance;
- (F) Name, address, telephone number, and certification number of the certified firm employing the inspector or risk assessor;
- (G) Results of the visual inspection;
- (H) Identification of containment or non-containment applications;
- (I) Identification of location(s) where the clearance examination sample(s) were collected;
- (J) Name, address, and telephone number of the laboratory analyzing the collected samples;
- (K) All results of laboratory analysis on collected samples, including quality control results; and
- (L) Documented methodology used for sampling.

(6) Sampling. Any paint chip, dust, or soil samples collected pursuant to these work practice standards shall be collected by a certified and licensed inspector or risk assessor. Persons exempt from CCB licensing requirements shall be certified by the Authority. Employees of public agencies who conduct 'in-house' lead-based paint activities are exempt from licensing by the CCB. Such samples shall be analyzed by a laboratory accredited under the National Lead Laboratory Accreditation Program.

(7) Composite sample. Composite dust sampling may only be conducted when conducting a lead hazard screen, risk assessment, or post abatement activities. If conducted, the composite dust samples shall consist of at least two subsamples, every component that is being tested shall be included in the sampling, and shall not consist of subsamples from more than one type of component.

(8) Reports or plans. All lead-based paint activity reports or plans shall be maintained by the certified firm or individual who prepared the report for no fewer than three years and six months. Also, the certified firm or individual shall provide copies of these reports to the building owner or client who contracted for the services, unless otherwise specified by contract, within 30 days of the lead-based paint activity, or within 15 days if a child under six years of age with a confirmed EBLL  $\geq 10 \mu\text{g}/\text{dL}$  is an occupant of the building.

(9) Certified individuals and firms shall, upon request, make available to the Authority records and documents regarding regulated lead-based paint activities so that the Authority may inspect said records and documents for the purposes of monitoring compliance with these rules. The Authority shall respect the proprietary nature of business records.

(10) Signage. Every work site where lead-based paint abatement is being conducted shall bear signage warning of lead-based paint hazards.

(a) The text on warning signage shall warn of "Lead-Based Paint Hazards" and be readable from 30 feet.

(b) If the Authority determines that a paint-lead hazard, dust-lead hazard, or soil-lead hazard exists at target housing or pre-1978 child-occupied facilities, the Authority shall post signage to that effect on the building exterior in one or more visible locations.

(c) Signage posted by the Authority warning of lead hazards must remain in place until the lead hazard or hazards determined by the Authority have been remediated per clearance examination standards.

(11) Determinations.

(a) Lead-based paint is present:

(A) On any surface that is tested and found to contain lead equal to or in excess of 1.0 milligrams per square centimeter or equal to or in excess of 0.5 percent by weight; and

(B) On any surface similar to a surface tested in the same room equivalent that has a similar painting history and is found to be lead-based paint.

(b) A paint-lead hazard is present:

(A) On any friction surface that is subject to abrasion and where the lead dust levels on the nearest horizontal surface (e.g., the window sill or floor) are equal to or greater than the dust hazard levels identified in OAR 333-069-0015(9);

(B) On any chewable lead-based paint surface on which there is evidence of teeth marks;

(C) Where there is any damaged or otherwise deteriorated lead-based paint on an impact surface that is caused by impact from a related building

component (such as a door knob that knocks into a wall or a door that knocks against a door frame); and

(D) If there is any other deteriorated lead-based paint in any residential building or child-occupied facility or on the exterior of any residential building or child-occupied facility.

(c) A dust lead-hazard is present in a residential dwelling or child-occupied facility:

(A) In a residential dwelling on floors and interior window sills when the weighted arithmetic mean lead loading for all surfaces on floors, interior window sills and window troughs is equal to or greater than  $40 \mu\text{g}/\text{ft}^2$  for floors,  $250 \mu\text{g}/\text{ft}^2$  for interior window sills, and  $400 \mu\text{g}/\text{ft}^2$  for window troughs;

(B) On floors or interior window sills in an unsampled residential dwelling in a multi-family dwelling, if a dust-lead hazard is present on floors or interior window sills, respectively, in at least one sampled residential unit on the property; and

(C) On floors or interior window sills in an unsampled common area in a multi-family dwelling, if a dust-lead hazard is present on floors or interior window sills, respectively in at least one sampled common area in the same common area group on the property.

(d) A soil-lead hazard is present in a residential dwelling or child-occupied facility:

(A) In a play area when the soil-lead concentration from a play area sample of bare soil is equal to or greater than 400 ppm; or

(B) When the arithmetic mean lead concentration from a composite sample (or arithmetic mean of composite samples) of bare soil from the remainder of the yard for each residential building on a property is equal to or greater than 1,200 ppm.

Stat. Auth.: ORS 431.920

Stats. Implemented: ORS 431.920

Hist.: HD 6-1997, f. 4-25-97, cert. ef. 5-1-97; OHD 12-1998, f. & cert. ef. 10-27-98; OHD 11-2000, f. & cert. ef. 12-8-00; PH 8-2003, f. & cert. ef. 6-20-03; PH 4-2011, f. & cert. ef. 6-16-11

### 333-069-0080

#### Denial, Suspension or Revocation of Certification

(1) The Authority may deny issuance of, suspend, or revoke certification for an individual or a firm for circumstances including but not limited to the following:

(a) Performing work requiring certification at a job site without having a current valid certificate identification card available at the job site for inspection;

(b) Permitting the duplication or use of the individual's own certificate by another;

(c) Performing work for which appropriate certification has not been received from the Authority;

(d) Having been subject to a final administrative order imposing a civil penalty or a criminal conviction for engaging in a prohibited act under Authority or CCB rules;

(e) Failing to comply with relevant local, state, or federal statutes or regulations including execution of a consent agreement in settlement of an enforcement action;

(f) Failing to comply with work practices and standards set forth in these rules and other generally accepted work practices;

(g) Obtaining certification through fraudulent representation of documentation satisfying eligibility requirements;

(h) Failing to renew certification or to recertify in a timely manner;

(i) Gaining admission to and completing education through fraudulent representation of initial or previous education documentation;

(j) Obtaining certification through fraudulent representation of certification requirements such as education, training, professional registration, or experience;

(k) Performing work requiring certification at a job site with individuals who are not certified;

(l) Failing to maintain required records; and

(m) Failing to comply with these rules including execution of a consent agreement in settlement of an enforcement action.

(2) The Authority may deny issuance of, suspend, or revoke certification for an individual for circumstances including but not limited to the following:

(a) Obtaining training documentation through fraudulent means, and/or;

(b) Gaining admission to and completing education through fraudulent representation of initial or previous education documentation.

(3) The Authority may deny issuance of, suspend, or revoke certification for a firm for circumstances including but not limited to the following:



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- (a) Performing work requiring certification at a job site with individuals who are not certified;
- (b) Failing to maintain required records.
- (4) Hearings on the denial, suspension or revocation of a certificate shall be conducted as a contested case in accordance with ORS 183.310 through 183.540.

Stat. Auth.: ORS 431.920  
Stats. Implemented: ORS 431.920  
Hist.: HD 6-1997, f. 4-25-97, cert. ef. 5-1-97; OHD 12-1998, f. & cert. ef. 10-27-98; PH 8-2003, f. & cert. ef. 6-20-03; PH 4-2011, f. & cert. ef. 6-16-11

## 333-069-0085

### Schedule of Penalties

The Authority may assess penalties, not to exceed the actions or amount shown in the following guidelines:

(1) A level one violation includes, but is not limited to, the following violations:

(a) Offering to perform or performing lead-based paint activities without Authority certification and CCB licensing, unless specifically exempted by these rules.

(b) Clearance examination inconsistencies including, but not limited to, the following:

- (A) Failure to conduct clearance examination;
- (B) Allowing rehabilitation before clearance has been achieved;
- (C) Allowing rehabilitation when lead hazard levels exceed the standard;

(c) The collection of samples as described in these rules by a non-certified individual or firm;

(d) Obtaining certification via fraud or duplication of certification documents;

(e) Conducting lead-based paint activities with a revoked, suspended or expired certification;

(f) Employing uncertified individuals to conduct lead-based paint activities;

(g) Failure to comply with a consent agreement or an administrative order;

(h) Falsification of results of lead-hazard sampling;

(i) Removing paint from target housing or child-occupied facilities without a permit;

(j) Use of prohibited abatement methods.

(2) A level two violation includes, but is not limited to, the following violations:

(a) Failure to comply with prescribed work practice standards;

(b) Improper collection or handling of samples or sampling information collected for an inspection, risk assessment, clearance, or lead-hazard screen;

(c) Failure to use a National Lead Laboratory Accreditation Program laboratory for analysis of samples referred to in subsection (2)(b) of this rule;

(d) Incomplete, missing or late reports;

(e) Failure to provide notice of abatement, or notice given in a manner that obstructs proper oversight;

(f) Failure to provide client with report of lead-based paint activity in a timely manner, as specified for in these rules;

(g) Failure to maintain or to provide for Authority inspection lead-based paint activities reports and documents;

(h) Performance by a certified individual of lead-based paint activity outside of the scope of that individual's certification;

(3) A level three violation includes, but is not limited to, the following violations:

(a) Conducting lead-based paint activities without a valid certification badge;

(b) Conducting in-house lead-based paint activities by a public agency without having submitted a letter of compliance to the Authority;

(c) Conducting lead-based paint activities that have been contracted for by a non-certified firm or agency, without the firm or agency having submitted a letter of compliance to the Authority;

(d) Conducting lead-based paint abatement without an occupant protection plan;

(4) The penalties for levels one, two and three as described in this rule will be assessed according to the following schedule:

(a) Level one:

(A) First offense: notice of noncompliance and up to \$1,000.

(B) Second offense: notice of noncompliance, a fine of up to \$3,000 and suspension of certification for up to 90 days.

(C) Third offense: notice of noncompliance, a fine of up to \$5000 and either suspension of certification for up to 180 days or revocation of certification.

(b) Level two:

(A) First offense: notice of noncompliance and a fine of up to \$500.

(B) Second offense: notice of noncompliance and a fine of up to \$2,000.

(C) Third offense: notice of noncompliance, a fine of up to \$5,000 and suspension of certification for up to 30 days.

(c) Level three:

(A) First offense: notice of noncompliance.

(B) Second offense: notice of noncompliance and/or a letter of warning.

(C) Third offense: notice of noncompliance and/or a letter of warning and a fine of up to \$100.

(5) Violations that are not specifically addressed in sections (1) through (4) of this rule, such as in the case of serial violations of different levels, shall be assessed appropriate penalties by the Authority in accordance with the hazard to public health produced by the activity and the compliance history of the violator.

(6) Removal of signage. It shall be a violation to remove a sign posted by the Authority to warn the public of lead hazards, and such action shall be punishable by a fine of \$100 per day.

(7) The Authority may revoke, suspend, or refuse to issue or reissue the certification or permit of any individual or firm who fails to pay on demand a civil penalty that has become due and payable.

(8) Procedures, including a hearing, pursuant to the assessment of a civil penalty shall be conducted according to ORS 183.745.

Stat. Auth.: ORS 431.920, 701.992

Stats. Implemented: ORS 431.920, 701.992

Hist.: PH 8-2003, f. & cert. ef. 6-20-03; PH 22-2010(Temp), f. & cert. ef. 9-24-10 thru 3-22-11; Administrative correction 4-25-11; PH 4-2011, f. & cert. ef. 6-16-11

## 333-069-0090

### Fees

The following fees are established:

(1) Firms shall pay a non-refundable certification or recertification application fee of \$85 for a one-year certification.

(2) Inspectors, risk assessors, supervisors, and project designers shall pay a non-refundable certification or recertification fee of \$85 for a one year certification.

(3) Workers shall pay a non-refundable certification or recertification fee of \$50 for a one-year certification.

(4) The fee for applications for certification received by the Authority between April 1 and June 30 shall be as follows: Worker, \$25; all other disciplines, \$45.

(5) The application fee for a permit for painting shall be \$5.

Stat. Auth.: ORS 431.920

Stats. Implemented: ORS 431.920

Hist.: HD 6-1997, f. 4-25-97, cert. ef. 5-1-97; OHD 12-1998, f. & cert. ef. 10-27-98; PH 8-2003, f. & cert. ef. 6-20-03; PH 22-2010(Temp), f. & cert. ef. 9-24-10 thru 3-22-11; Administrative correction 4-25-11; PH 4-2011, f. & cert. ef. 6-16-11

## 333-070-0075

### Authority, Purpose, Applicability

(1) Authority. These rules are promulgated in accordance with and under the authority of ORS 431.920.

(2) Purpose:

(a) The purpose of these rules is to address Oregon's need for a qualified and properly trained workforce to perform renovation, repair and painting of target housing and child-occupied facilities, and to safeguard the environment and protect the health of building occupants from lead-based paint hazards.

(b) These rules prescribe the requirements for certification of individuals and firms who perform for compensation renovation, repair and painting in target housing and child occupied facilities.

(c) These rules will establish work practice standards for the performance of renovation, repair and painting activities for certified individuals and certified renovation firms and will require that activities be performed only by certified individuals and certified renovation firms.

(d) These rules prescribe the requirements to ensure that owners and occupants of target housing and child-occupied facilities receive information on lead-based paint hazards before these renovations begin.

(3) Applicability:

(a) These rules apply to all certified individuals and certified renovation firms who perform for compensation renovation, repair and painting activities in target housing and child-occupied facilities as defined in OAR 333-070-0085, except for the following:

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(A) Renovations in target housing or child-occupied facilities in which a written determination from a State of Oregon certified lead inspector or risk assessor that the components affected by the renovation are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams per square centimeter (mg/cm<sup>2</sup>) or 0.5 percent by weight.

(B) Renovations in target housing or child-occupied facilities in which a certified renovator tests each component affected by the renovation using an Environmental Protection Agency (EPA) recognized test kit as defined in OAR 333-070-0085. The renovator must follow the kit manufacturer's instructions. This determines that the components are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 mg/cm<sup>2</sup> or 0.5 percent by weight. If the components make up an integrated whole, such as the individual stair treads and risers of a single staircase, the renovator is required to test only one of the individual components, unless the individual components appear to have been repainted or refinished separately.

(b) The information distribution requirements in OAR 333-070-0095 do not apply to emergency renovation operations. Emergency renovations other than interim controls are also exempt from the warning sign, containment, waste handling, training, and certification requirements in OAR 333-070-0105 to the extent necessary to respond to the emergency. Emergency renovations are not exempt from the cleaning requirements of OAR 333-070-0090, which must be performed by certified renovators or individuals trained in accordance with OAR 333-070-0100, the cleaning verification requirements of OAR 333-070-0090, which must be performed by certified renovators, and the recordkeeping requirements of OAR 333-070-0110. Once the immediate emergency is over, lead safe work practices and all the requirements of these rules shall be in effect.

(c) These rules:

(A) Require that renovation, repair and painting activities must be performed by certified renovators and individuals who have on the job training by a certified renovator working for a certified renovation firm.

(B) Prescribe the requirements for, and the manner of, certifying competency of applicants for certification as a certified individual and of the certified renovation firms employing such individuals.

(C) Determine the work practice standards for renovation, repair and painting activities, and those actions or circumstances that constitute failure to achieve or maintain competency, or that otherwise are contrary to the public interest, for which the Authority may deny, suspend, or revoke certification.

(D) Establish the fees to the extent necessary to defray costs of those activities prescribed herein.

(d) A certified renovation firm who is licensed by the Construction Contractors Board (CCB) is not required to be certified by the Authority under these rules, but is subject to the work practice standards in these rules.

Stat. Auth.: ORS 431.920

Stats. Implemented: ORS 431.920 & 431.922

Hist.: PH 8-2010, f. & cert. ef. 4-26-10; PH 23-2010(Temp), f. & cert. ef. 9-24-10 thru 3-22-11; Administrative correction 4-25-11; PH 4-2011, f. & cert. ef. 6-16-11

## 333-070-0085

### Definitions

As used in these rules unless otherwise required by context:

(1) "Accredited training program" means a training program accredited or provisionally accredited by the Authority, EPA, or an EPA-authorized state or tribal program to provide training for individuals engaged in renovation, repair and painting activities.

(2) "Accreditation" means the process whereby the Authority has reviewed and approved a training program's written application with associated materials for accreditation, and has conducted an onsite audit finding the training program in compliance as specified in these rules.

(3) "Approved" means approved in writing by the Authority.

(4) "Audit" means a classroom evaluation of ongoing training. An audit involves verifying the course content, specific time requirements for each subject, hands-on training, classroom conditions, attendance size and other measures of the adequacy of the training provided.

(5) "Authority" means the Oregon Health Authority.

(6) "Certificate of mailing" means a United States Postal Service document that indicates when a piece of mail was presented to the Postal Service for mailing.

(7) "Certified dust sampling technician" means a technician who has successfully completed a dust sampling course accredited by the Authority, EPA, or an EPA-authorized state or tribal program.

(8) "Certified individual" means an individual certified by the Authority as a renovator or dust sampling technician.

(9) "Certified renovation firm" means a company, partnership, corporation, sole proprietorship, association, or other entity that has been certified by the Authority to conduct renovation under ORS 431.920 or licensed by the CCB under ORS 701.515.

(10) "Certified renovator" means a renovator who has successfully completed a renovator course accredited by the Authority, EPA, or an EPA-authorized state or tribal program.

(11) "Child-occupied facility" means a building, or a portion of a building, constructed prior to 1978, visited regularly by the same child, under age six, on at least two different days within any week (Sunday through Saturday), provided that each day's visit lasts at least three hours and the combined weekly visit lasts at least six hours, and the combined annual visits last at least sixty hours. Child-occupied facilities may include, but are not limited to, day-care centers, preschools and kindergarten classrooms. Child-occupied facilities may be located in target housing or in public or commercial buildings. With respect to common areas in public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only those common areas that are routinely used by children under age six, such as restrooms and cafeterias. In addition, with respect to exteriors of public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only the exterior sides of the building that are immediately adjacent to the child-occupied facility or the common areas routinely used by children under age six.

(12) "Cleaning verification card" means a card developed and distributed, or otherwise approved, by EPA for the purpose of determining, through comparison of wet and dry disposable cleaning cloths with the card, whether post-renovation cleaning has been properly completed.

(13) "Clearance examination standards" means values that indicate the maximum amount of lead permitted in dust on a surface or in soil following completion of a renovation activity. Standards for lead in dust are 40 micrograms per square foot ( $\mu\text{g}/\text{ft}^2$ ) on floors, 250  $\mu\text{g}/\text{ft}^2$  on interior window sills, and 400  $\mu\text{g}/\text{ft}^2$  on window troughs. The values for lead in soil are 400 parts per million (ppm) in play areas and 1,200 ppm in the remainder of the yard.

(14) "Common areas" means portion(s) of a building that are generally accessible to all occupants. This may include, but is not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, garages, and boundary fences. With respect to common areas in public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only those common areas that are routinely used by children under age six, such as restrooms and cafeterias. Common areas that children under age six only pass through, such as hallways, stairways, and garages are not common areas.

(15) "Component or building component" means specific design or structural elements or fixtures of a building or residential dwelling that are distinguished from each other by form, function, and location. These include, but are not limited to: interior components such as ceilings, crown molding, walls, chair rails, doors, door trim, floors, fireplaces, radiators and other heating units, shelves, shelf supports, stair treads, stair risers, stair stringers, newel posts, railing caps, balustrades, windows and trim (including sashes, window heads, jambs, sills or stools and troughs), built-in cabinets, columns, beams, bathroom vanities, counter tops, and air conditioners; and exterior components such as painted roofing, chimneys, flashing, gutters and downspouts, ceilings, soffits, fascias, rake boards, corner boards, bulkheads, doors and door trim, fences, floors, joists, lattice work, railings and railing caps, siding, handrails, stair risers and treads, stair stringers, columns, balustrades, windowsills or stools and troughs, casings, sashes and wells, and air conditioners.

(16) "Concentration" means the relative content of a specific substance contained within a larger mass, such as the amount of lead (in micrograms per gram or parts per million by weight) in a sample of dust or soil.

(17) "Containment" means a process or arrangement of materials to protect workers, occupants, the public, and the environment by controlling exposure to the lead-contaminated dust and debris created during renovation activities.

(18) "Course completion certificate" means documentation issued by an accredited training program to an individual as proof of successful completion of a Authority-accredited renovator or dust sampling technician training course or refresher training course.

(19) "Course completion date" means the final date of classroom instruction and/or student examination of an accredited renovator or dust sampling technician training course.

(20) "Critical barrier" means a containment structure that allows for the passage of persons or materials while maintaining containment.

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(21) "Demonstration testing" means the observation and scoring of a student's job task and equipment use skills taught during a course or refresher training course.

(22) "Desk audit" means an audit of the training program to document proper records keeping, filing procedures and notifications required by the Authority.

(23) "Deteriorated paint" means any interior or exterior paint or other coating that is peeling, chipping, chalking, cracking, flaking, or any paint or coating located on an interior or exterior surface or fixture that is otherwise damaged or separated from the substrate.

(24) "Distinct painting history" means the application history, as indicated by the visual appearance or a record of application, over time, of paint or other surface coatings to a component or room.

(25) "Documented methodologies" are written methods or protocols used to sample for the presence of lead in paint, dust, and soil as recommended in U.S. Department of Housing and Urban Development "Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing" and "EPA's Residential Sampling for Lead: Protocols for Dust and Soil Sampling".

(26) "Dripline" means the area within three feet surrounding the perimeter of a building.

(27) "Dry disposable cleaning cloth" means a commercially available dry, electro-statically charged, white disposable cloth designed to be used for cleaning hard surfaces such as uncarpeted floors or counter tops.

(28) "Dust-lead hazard" means surface dust in a residential dwelling or child-occupied facility that contains a mass-per-area concentration of lead equal to or exceeding 40 µg/ft<sup>2</sup> on floors, 250 µg/ft<sup>2</sup> on interior window sills, and 400 µg/ft<sup>2</sup> in window troughs based on wipe samples.

(29) "Emergency" means a situation in which failure to act promptly would likely result in immediate harm to persons or property.

(30) "Emergency renovation operations" means renovation activities, such as operations necessitated by non-routine failures of equipment, that were not planned but result from a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard, or threatens equipment or property with significant damage. Interim controls performed in response to an elevated blood lead level in a resident child are also emergency renovations.

(31) "EPA" means the United States Environmental Protection Agency.

(32) "EPA-authorized program" means a state or tribal program authorized by EPA to administer and enforce the provisions of 40 CFR § 745.324 and 40 CFR § 745.326.

(33) "Friction surface" means an interior or exterior surface that is subject to abrasion or friction, including, but not limited to, certain window, floor, and stair surfaces.

(34) "Guest instructor" means an individual who is responsible for providing less than 30 percent of training in any course.

(35) "Hands-on training" means training during which students practice skills that they will be expected to perform at the worksite.

(36) "HEPA vacuum" means a vacuum cleaner which has been designed with a high-efficiency particulate air (HEPA) filter as the last filtration stage. A HEPA filter is a filter that is capable of capturing particles of 0.3 microns with 99.97 percent efficiency. The vacuum cleaner must be designed so that all the air drawn into the machine is expelled through the HEPA filter with none of the air leaking past it.

(37) "Impact surface" means an interior or exterior surface that is subject to damage by repeated sudden force such as certain parts of door frames.

(38) "Inspection" means a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report, in writing, explaining the results of the investigation.

(39) "Interim controls" means a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

(40) "Interactive/participatory teaching methods" mean instruction which consists of active participation of the students, such as brainstorming, hands-on training, demonstration and practice, small group problem-solving, learning games, discussions, risk mapping, field visits, walk-throughs, problem-posing, group work assignments, homework review sessions, question-and-answer periods, skits, or role-playing sessions. Lecture is not considered an interactive/participatory teaching method.

(41) "Job tasks" mean the specific activities performed in the context of work.

(42) "Lead-based paint" means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.

(43) "Lead-based paint hazard" means deteriorated lead-based paint, dust-lead hazard or soil-lead hazard as identified in these rules.

(44) "Lead-contaminated dust" means surface dust in residential dwellings or child-occupied facilities that contains an area or mass concentration of lead in excess of levels determined by the appropriate federal agency to pose a threat of adverse health effects in pregnant women or young children.

(45) "Minor repair and maintenance activities" means activities, including minor heating, ventilation or air conditioning work, electrical work, and plumbing, that disrupts six square feet or less of painted surface per room for interior activities, or 20 square feet or less of painted surface for exterior activities where none of the work practices prohibited or restricted by OAR 333-070-0090 are used and where the work does not involve window replacement or demolition of painted surface areas. When removing painted components, or portions of painted components, the entire surface area removed is the amount of painted surface disturbed. Jobs, other than emergency renovations, performed in the same room within the same 30 days are the same job for the purpose of determining whether the job is a minor repair and maintenance activity.

(46) "Multi-family housing" means a housing property consisting of more than four dwelling units.

(47) "Paint in poor condition" means more than 10 square feet of deteriorated paint on exterior components with large surface areas; or more than two square feet of deteriorated paint on interior components with large surface areas (e.g., walls, ceilings, floors, doors); or more than 10 percent of the total surface area of the component is deteriorated on interior or exterior components with small surface areas (e.g., window sills, baseboards, soffits, trim).

(48) "Paint-lead hazard" means any of the following:

(a) Any lead-based paint on a friction surface that is subject to abrasion and where the lead dust levels on the nearest horizontal surface underneath the friction surface (e.g., the window sill, or floor) are equal to or greater than the dust-lead hazard levels identified in these rules.

(b) Any damaged or otherwise deteriorated lead-based paint on an impact surface that is caused by impact from a related building component (such as a door knob that knocks into a wall or a door that knocks against its door frame).

(c) Any chewable lead-based painted surface on which there is evidence of teeth marks. (d) Any other deteriorated lead-based paint in any residential building or child-occupied facility or on the exterior of any residential building or child-occupied facility.

(49) "Paint stabilization" means repairing any physical defect in the substrate of a painted surface that is causing paint deterioration, removing loose paint and other material from the surface to be treated, and applying a new protective coating or paint.

(50) "Pamphlet" means the EPA pamphlet titled *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools* or any state pamphlet approved by EPA pursuant to 40 CFR 745.326 that is developed for the same purpose. This includes reproductions of the pamphlet when copied in full and without revision or deletion of material from the pamphlet (except for the addition or revision of state or local sources of information).

(51) "Permanent" means having an expected design life of 20 years.

(52) "Principal instructor" means the individual who has the primary responsibility for organizing and teaching a particular course.

(53) "Proficiency test" means any alternative to a conventional written examination that is used to measure a trainee's mastery of course content. An oral examination offered to a trainee with a disability is an example of a proficiency test.

(54) "Provisional accreditation" means the Authority has reviewed and finds acceptable a training program's written application for accreditation, but has not conducted an on-site audit as specified in these rules.

(55) "Public agency" means an entity that functions as part of a governmental body or organization at the local, state, or federal level.

(56) "Recognized test kit" means a commercially available kit recognized by EPA under 40 CFR 745.88 as being capable of allowing a user to determine the presence of lead at levels equal to or in excess of 1.0 milligrams per square centimeter, or more than 0.5 percent lead by weight, in a paint chip, paint powder, or painted surface.



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(57) “Refresher renovator of dust sampling technician training course” means a minimum training program accredited by the Authority to update an individual’s knowledge and skills so that they can effectively and safely continue to practice in the field.

(58) “Renovation” means the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined by these rules. The term renovation includes, but is not limited to, the removal or modification of painted surfaces or painted components (e.g., modification of painted doors, surface preparation activity such as sanding, scraping, or other such activities that may generate paint dust); the removal of large structures (e.g., walls, ceiling, large surface re-plastering, major re-plumbing); and window replacement, weatherization projects (e.g., cutting holes in painted surfaces to install blown-in insulation or to gain access to attics, planning thresholds to install weather-stripping), and interim controls that disturb painted surfaces. A renovation performed for the purpose of converting a building, or part of a building, into target housing or a child-occupied facility is a renovation under this subpart. The term renovation does not include minor repair and maintenance activities.

(59) “Residential building” means a building containing one or more residential dwellings.

(60) “Residential dwelling” means:

(a) A detached single family dwelling unit, including attached structures such as porches and stoops; or

(b) A single family dwelling unit in a structure that contains more than one separate residential dwelling unit, which is used or occupied, or intended to be occupied, in whole or in part, as the home or residence of one or more persons.

(61) “Room” means a separate part of the inside of a building, such as a bedroom, living room, dining room, kitchen, bathroom, laundry room, or utility room. To be considered a separate room, the room must be separated from adjoining rooms by built-in walls or archways that extend at least six inches from an intersecting wall. Half walls or bookcases count as room separators if built-in. Movable or collapsible partitions or partitions consisting solely of shelves or cabinets are not considered built-in walls. A screened in porch that is used as a living area is a room.

(62) “RRP” means the U.S. EPA Renovation Repair and Painting Rule under 40 CFR § 745 Subpart E-Residential Property Renovation.

(63) “Site Visit” means a visit by the Authority to audit a training program and includes but is not limited to a review of: records, including course completion forms and attendance records; facilities; instructional curriculum; examination design, administration and security procedures and results, including those of demonstration testing; classroom instruction; audio-visual materials; course content; and coverage.

(64) “Soil lead hazard” means bare soil on residential property or on the property of a child-occupied facility that contains total lead equal to or exceeding 400 ppm in a play area or 1,200 ppm in the remainder of the yard based on soil samples.

(65) “Target housing” means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless one or more children under age six resides or is expected to reside in such housing for the elderly or persons with disabilities) or any zero-bedroom dwelling.

(66) “These rules” mean OAR 333-070-0075 through 333-070-0160.

(67) “Training hour” means 60 minutes of lead-based paint related training which may include a break of not more than 10 minutes.

(68) “Training instructor” means the individual responsible for organization of the course and oversight of the teaching of all course material, and who teaches at least 70 percent of the course.

(69) “Training manager” means the individual responsible for administering a training program and monitoring the performance of principal instructors and guest instructors.

(70) “Visual inspection” means:

(a) For interiors, that a certified renovator determines whether dust, debris, or residue is still present.

(b) For exteriors, that a certified renovator determines whether dust or debris is still present in and below the work area, including windowsills and the ground.

(71) “Wet disposable cleaning cloth” means a commercially available, pre-moistened white disposable cloth designed to be used for cleaning hard surfaces such as uncarpeted floors or counter tops.

(72) “Wet mopping system” means a device with the following characteristics: A long handle, a mop head designed to be used with disposable absorbent cleaning pads, a reservoir for cleaning solution, and a built-in mechanism for distributing or spraying the cleaning solution onto a floor, or a method of equivalent efficacy.

(73) “Work area” means the area that the certified renovator establishes to contain the dust and debris generated by a renovation.

Stat. Auth.: ORS 431.920

Stats. Implemented: ORS 431.918

Hist.: PH 8-2010, f. & cert. ef. 4-26-10; PH 4-2011, f. & cert. ef. 6-16-11

## 333-070-0090

### Work Practice Standards

All renovations must be performed in accordance with the work practice standards in this rule unless the renovation qualifies for one of the exceptions identified in OAR 333-070-0075(3)(a).

(1) Standards for renovation activities.

(a) Renovations must be performed by certified renovation firms using certified renovators as directed in OAR 333-070-0100.

(b) The responsibilities of certified renovation firms are set forth in OAR 333-070-0105.

(c) The responsibilities of certified renovators are set forth in OAR 333-070-0100.

(2) Occupant protection.

(a) A certified renovation firm shall:

(A) Post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area. To the extent practicable, these signs must be in the primary language of the occupants.

(B) Post signs before beginning the renovation and keep them in place and readable until the renovation and the post-renovation cleaning verification has been completed.

(C) Post signs at each entry to the renovation project work area, at a minimum.

(b) If warning signs have been posted in accordance with paragraph (2)(a)(A) of this rule, additional signs are not required.

(3) Containing the work area. A certified renovation firm shall:

(a) Isolate the work area so that no dust or debris leaves the work area while the renovation is being performed, before beginning the renovation;

(b) Maintain the integrity of the containment by ensuring that any plastic or other impermeable materials are not torn or displaced, and taking any other steps necessary to ensure that no dust or debris leaves the work area while the renovation is being performed; and

(c) Ensure that containment is installed in such a manner that it does not interfere with occupant and worker egress in an emergency.

(4) Interior renovations. A certified renovation firm shall:

(a) Remove all objects from the work area, including furniture, rugs, and window coverings, or cover them with plastic sheeting or other impermeable material with all seams and edges taped or otherwise sealed;

(b) Close and cover all ducts opening in the work area with taped-down plastic sheeting or other impermeable material;

(c) Close windows and doors in the work area;

(d) Cover doors with plastic sheeting or other impermeable material. Doors used as an entrance to the work area must be covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area;

(e) Cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area six feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater; and

(f) Use precautions to ensure that all personnel, tools, and other items, including the exteriors of containers of waste, are free of dust and debris before leaving the work area.

(5) Exterior renovations. A certified renovation firm shall:

(a) Close all doors and windows within 20 feet of the renovation. On multi-story buildings, close all doors and windows within 20 feet of the renovation on the same floor as the renovation, and close all doors and windows on all floors below that are the same horizontal distance from the renovation;

(b) Ensure that doors within the work area that will be used while the job is being performed are covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area;

(c) Cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering; and

(d) In adverse weather conditions (e.g. windy conditions), the certified renovation firm must take extra precautions in containing the work area to ensure that dust and debris from the renovation does not contaminate

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other buildings or other areas of the property or migrate to adjacent properties.

(6) Prohibited and restricted practices. The work practices listed below are prohibited during a renovation:

(a) Open-flame burning or torching of lead-based paint;

(b) The use of machines that remove lead-based paint through high speed operation such as sanding, grinding, power planing, needle gun, abrasive blasting, or sandblasting, unless such machines are used with HEPA exhaust control; and

(c) Operating a heat gun on lead-based paint is prohibited unless the temperature is below 1100 degrees Fahrenheit.

(7) Waste from renovations. A certified renovation firm shall:

(a) Contain waste from a renovation to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal. If a chute is used to remove waste from the work area, it must be covered;

(b) Store and contain waste that has been collected from renovation activities in an enclosure, or behind a barrier that prevents release of dust and debris out of the work area and prevents access to dust and debris, at the conclusion of each work day and at the conclusion of the renovation; and

(c) Contain the waste to prevent release of dust and debris when transporting waste from renovation activities.

(8) Cleaning the work area. After a renovation has been completed, the certified renovation firm shall clean the work area until no dust, debris or residue remains.

(9) Interior and exterior renovations. A certified renovation firm shall:

(a) Collect all paint chips and debris and, without dispersing any of it, seal this material in a heavy-duty bag;

(b) Remove the protective sheeting;

(c) Mist the sheeting before folding it, fold the dirty side inward, and either tape shut to seal or seal in heavy-duty bags. Sheeting used to isolate contaminated rooms from non-contaminated rooms must remain in place until after the cleaning and removal of other sheeting; and

(d) Dispose of sheeting as waste.

(10) Additional cleaning for interior renovations. A certified renovation firm shall clean all objects and surfaces in the work area and within two feet of the work area in the following manner, cleaning from higher to lower:

(a) Walls. Clean walls starting at the ceiling and working down to the floor by either vacuuming with a HEPA vacuum or wiping with a damp cloth. Dust bags from HEPA machines must be properly contained and disposed. Changing of vacuum bag must occur in containment and wrapped and taped in plastic for disposal.

(b) Remaining surfaces. Thoroughly vacuum all remaining surfaces and objects in the work area, including furniture and fixtures, with a HEPA vacuum. The HEPA vacuum must be equipped with a beater bar when vacuuming carpets and rugs.

(c) Wipe all remaining surfaces and objects in the work area, except for carpeted or upholstered surfaces, with a damp cloth. Mop uncarpeted floors thoroughly, using a mopping method that keeps the wash water separate from the rinse water, such as the two-bucket mopping method, or using a wet mopping system.

(11) Standards for post-renovation cleaning verification of interiors. A certified renovation firm shall have a certified renovator:

(a) Perform a visual inspection to determine whether dust, debris or residue is still present. If dust, debris or residue is present, these conditions must be removed by re-cleaning and another visual inspection must be performed.

(b) After a successful visual inspection:

(A) Verify that each windowsill in the work area has been adequately cleaned, using the following procedure:

(i) Wipe the windowsill with a wet disposable cleaning cloth that is damp to the touch. If the cloth matches or is lighter than the cleaning verification card, the windowsill has been adequately cleaned.

(ii) If the cloth does not match and is darker than the cleaning verification card, re-clean the windowsill as directed in subparagraph (A)(i) of this subsection, then either use a new cloth or fold the used cloth in such a way that an unused surface is exposed, and wipe the surface again. If the cloth matches or is lighter than the cleaning verification card, that windowsill has been adequately cleaned.

(iii) If the cloth does not match and is darker than the cleaning verification card, wait for one hour or until the surface has dried completely, whichever is longer, and wipe the windowsill with a dry disposable cleaning cloth. After this wipe, the windowsill has been adequately cleaned.

(B) Wipe uncarpeted floors and countertops within the work area with a wet disposable cleaning cloth. Floors must be wiped using an application device with a long handle and a head to which the cloth is attached. The cloth must remain damp at all times while it is being used to wipe the surface for post-renovation cleaning verification. If the surface within the work area is greater than 40 square feet, the surface within the work area must be divided into roughly equal sections that are each less than 40 square feet. Wipe each such section separately with a new wet disposable cleaning cloth. If the cloth used to wipe each section of the surface within the work area matches the cleaning verification card, the surface has been adequately cleaned.

(i) If the cloth used to wipe a particular surface section does not match the cleaning verification card, re-clean that section of the surface as directed in paragraph (b)(B) of this section, then use a new wet disposable cleaning cloth to wipe that section again. If the cloth matches the cleaning verification card, that section of the surface has been adequately cleaned.

(ii) If the cloth used to wipe a particular surface section does not match the cleaning verification card after the surface has been re-cleaned, wait for one hour or until the entire surface within the work area has dried completely, whichever is longer.

(iii) After waiting for the entire surface within the work area to dry, wipe each section of the surface that has not yet achieved post-renovation cleaning verification with a dry disposable cleaning cloth. After this wipe, that section of the surface has been adequately cleaned.

(c) Remove the warning signs when the work area passes the post-renovation cleaning verification.

(12) Standards for post-renovation cleaning verification of exteriors. A certified renovation firm shall have a certified renovator:

(a) Perform a visual inspection to determine whether dust, debris or residue is still present on surfaces in and below the work area, including windowsills and the ground. If dust, debris or residue is present, these conditions must be eliminated and another visual inspection must be performed.

(b) Remove the warning signs when the area passes the visual inspection.

(13) Optional dust clearance testing. Cleaning verification need not be performed if the contract between the certified renovation firm and the person contracting for the renovation or another federal, state or local law or regulation requires:

(a) The certified renovation firm to perform dust clearance sampling at the conclusion of a renovation covered by this rule.

(b) The dust clearance samples are required to be collected by a certified inspector, risk assessor or dust sampling technician.

(c) The certified renovation firm is required to re-clean the work area until the dust clearance sample results are below the dust clearance standards in OAR 333-070-0085.

(14) Activities conducted after post-renovation cleaning verification. Activities that do not disturb paint, such as applying paint to walls that have already been prepared, are not regulated by this rule if they are conducted after post-renovation cleaning verification has been performed.

Stat. Auth.: ORS 431.920

Stats. Implemented: ORS 431.920 & 431.922

Hist.: PH 8-2010, f. & cert. ef. 4-26-10; PH 4-2011, f. & cert. ef. 6-16-11

## 333-070-0095

### Information Distribution Requirements for the Pre-Renovation Notification Rule (406).

(1) Renovations in dwelling units. No more than 60 days before beginning renovation activities in any residential dwelling unit of target housing, a certified renovation firm performing the renovation shall:

(a) Provide the owner of the unit with the pamphlet; and:

(A) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet; or

(B) Obtain a certificate of mailing at least seven days prior to the renovation.

(b) If the owner does not occupy the dwelling unit, in addition to the requirements in subsection (a) of this section, a certified renovation firm shall provide an adult occupant of the unit with the pamphlet; and:

(A) Obtain, from the adult occupant, a written acknowledgment that the occupant has received the pamphlet; or

(B) Certify in writing that a pamphlet has been delivered to the dwelling and that the certified renovation firm performing the renovation has been unsuccessful in obtaining a written acknowledgment from an adult occupant. A certification must include:

(i) The address of the unit undergoing renovation;

(ii) The date and method of delivery of the pamphlet;

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- (iii) The name of the individual delivering the pamphlet;
- (iv) The reason for lack of acknowledgment (e.g., occupant refuses to sign, no adult occupant available);
- (v) The signature of a representative of the certified renovation firm performing the renovation; and
- (vi) The date of signature.

(C) If receipt can not be obtained from the adult occupant, obtain a certificate of mailing at least seven days prior to the renovation.

(2) Renovations in common areas. No more than 60 days before beginning renovation activities in common areas of multi-unit target housing, the certified renovation firm performing the renovation shall:

- (a) Provide the owner with the pamphlet, and:

(A) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet; or

(B) Obtain a certificate of mailing at least seven days prior to the renovation.

- (b) Comply with one of the following:

(A) Notify the affected units in writing of the proposed renovation and make the pamphlet available upon request prior to the start of renovation. Such notification shall be accomplished by distributing written notification to each affected unit. The notice shall:

(i) Describe the general nature and locations of the planned renovation activities;

- (ii) Include the expected starting and ending dates; and

(iii) Contain a statement of how the occupant can obtain the pamphlet and a copy of the records required by OAR 333-070-0110, at no cost to the occupants; or

(B) While the renovation is ongoing, post informational signs describing the general nature and locations of the renovation and the anticipated completion date. These signs must be posted in areas where they are likely to be seen by the occupants of all of the affected units. The signs must be accompanied by a posted copy of the pamphlet or information on how interested occupants can review a copy of the pamphlet or obtain a copy from the certified renovation firm at no cost to occupants. The signs must also include information on how interested occupants can review a copy of the records required by OAR 333-070-0110 or obtain a copy from the renovation firm at no cost to the occupants.

(c) Prepare, sign, and date a statement describing the steps performed to notify all occupants of the intended renovation activities and to provide the pamphlet.

(d) If the scope, locations, or expected starting and ending dates of the planned renovation activities change after the initial notification, and the certified renovation firm provided written initial notification to each affected unit, the certified renovation firm performing the renovation must provide further written notification to the owners and occupants providing revised information on the ongoing or planned activities. This subsequent notification must be provided before the certified renovation firm performing the renovation initiates work beyond that which was described in the original notice.

(3) Renovations in child-occupied facilities. No more than 60 days before beginning renovation activities in any child-occupied facility, the certified renovation firm performing the renovation shall:

- (a) Provide the owner of the building with the pamphlet, and:

(A) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet; or

(B) Obtain a certificate of mailing at least seven days prior to the renovation.

(b) In addition to the requirements in subsection (a) of this section, if the operator of the child-occupied facility is not the owner of the building, provide the operator of the child-occupied facility with the pamphlet, and:

(A) Obtain, from the operator, a written acknowledgment the operator has received the pamphlet;

(B) Certify in writing that a pamphlet has been delivered to the operator and that the certified renovation firm performing the renovation has been unsuccessful in obtaining a written acknowledgment from the operator. Such certification shall comply with the requirements in paragraph (1)(b)(B) of this rule; or

(C) Obtain a certificate of mailing at least seven days prior to the renovation.

(c) Provide the parents and guardians of children using the child-occupied facility with the pamphlet and information describing the general nature and locations of the renovation and the anticipated completion date by:

(A) Mailing or hand-delivering the pamphlet and the renovation information to each parent or guardian of a child using the child-occupied facility; or

(B) While the renovation is ongoing, post informational signs describing the general nature and locations of the renovation and the anticipated completion date. These signs must be posted in areas where they can be seen by the parents or guardians of the children frequenting the child-occupied facility. The signs must be accompanied by a posted copy of the pamphlet or information on how interested parents or guardians of children frequenting the child-occupied facility can review a copy of the pamphlet or obtain a copy from the renovation firm at no cost to the parents or guardians. The signs must also include information on how interested parents or guardians of children frequenting the child-occupied facility can review a copy of the records required by OAR 333-070-0110 or obtain a copy from the renovation firm at no cost to the parents or guardians; and

(C) Prepare, sign, and date a statement describing the steps performed to notify all parents and guardians of the intended renovation activities and to provide the pamphlet.

(4) Written acknowledgment. A written acknowledgment required by paragraphs (1)(a)(A), (1)(b)(A), (2)(a)(A), (4)(a)(A) and (4)(b)(A) of this rule must:

(a) Include the owner or occupant's name and a statement from the owner or occupant acknowledging receipt of the pamphlet prior to the start of renovation, the address of the unit undergoing renovation, the signature of the owner or occupant as applicable, and the date of signature;

(b) Be on a separate sheet of paper or part of any written contract or service agreement for the renovation; and

(c) Be written in the same language as the text of the contract or agreement for the renovation or, in the case of non-owner occupied target housing, in the same language as the lease or rental agreement or the pamphlet.

Stat. Auth.: ORS 431.920

Stats. Implemented: ORS 431.920

Hist.: PH 8-2010, f. & cert. ef. 4-26-10; PH 4-2011, f. & cert. ef. 6-16-11

## 333-070-0100

### Renovator Certification and Dust Sampling Technician Certification and Responsibilities

(1) Renovator certification allows a certified individual to perform renovations covered by these rules.

(2) Dust sampling technician certification allows the individual to perform dust clearance sampling under OAR 333-070-0090. Optional dust sampling, procedures and determinations are contained in OAR 333-069-0070, paragraph (5)(j)(D); and sections (6) and (11).

(3) Renovator certification and dust sampling technician certification.

(a) To become a certified renovator or certified dust sampling technician, an individual must successfully complete the appropriate course accredited by the Authority, EPA, or an EPA-authorized state or tribal program. The course completion certificate serves as proof of certification.

(b) Individuals who have successfully completed an accredited abatement worker or supervisor course, or individuals who have successfully completed an EPA, HUD, or EPA/HUD model renovation training course may take an accredited refresher renovator training course in lieu of the initial renovator training course to become a certified renovator.

(c) To become a certified dust sampling technician, a certified inspector or risk assessor need only to take the dust sampling technician refresher course.

(d) To maintain renovator certification or dust sampling technician certification, an individual must complete a renovator or dust sampling technician refresher course accredited by the Authority, EPA or an EPA-authorized program within five years of the date the individual completed the initial course described in OAR 333-0070-0100. If the individual does not complete a refresher course within this time, the individual must re-take the initial course to become certified again.

(4) Renovator responsibilities. Certified renovators are responsible for ensuring compliance with OAR 333-070-0090 at all renovations to which they are assigned. A certified renovator shall:

(a) Perform all of the tasks described in OAR 333-070-0090 and either perform or direct workers to perform, all of the tasks described in OAR 333-070-0090.

(b) Provide training to workers on the work practices they will be using in performing their assigned tasks.

(c) Be physically present at the work site:

(A) At the time the signs required by OAR 333-070-0090(2) are posted;



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(B) While the work area containment required by OAR 333-070-0090(3) is being established; and

(C) While the work area cleaning required by OAR 333-070-0090(8) is performed.

(d) Regularly direct work being performed by other individuals to ensure that the work practices are being followed, including maintaining the integrity of the containment barriers and ensuring that dust or debris does not spread beyond the work area.

(e) Be available, either on-site or by telephone, at all times that renovations are being conducted.

(f) Use an EPA recognized test kit when requested by the party contracting for renovation services to determine whether components to be affected by the renovation contain lead-based paint. If the components make up an integrated whole, such as the individual stair treads and risers of a single staircase, the renovator is required to test only one of the individual components, unless the individual components appear to have been repainted or refinished separately.

(g) Have, at the work site, copies of their initial course completion certificate and their most recent refresher course completion certificate.

(h) Prepare the records required by OAR 333-070-0110.

(5) Dust sampling technician responsibilities. When performing optional dust clearance sampling as referenced in OAR 333-069-0070, paragraph (5)(j)(D); and sections (6) and (11) a certified dust sampling technician shall:

(a) Collect dust samples in accordance with 40 CFR § 745.227(e)(8), send the collected samples to a laboratory recognized by the EPA under § 405(b) of the Toxic Substances Control Act, National Lead Laboratory Accreditation Program, and compare the results to the clearance levels in accordance with 40 CFR § 745.227(e)(8)(C)(vii); and

(b) Have, at the work site, copies of their initial course completion certificate and their most recent refresher course completion certificate.

Stat. Auth.: ORS 431.920

Stats. Implemented: ORS 431.920

Hist.: PH 8-2010, f. & cert. ef. 4-26-10; PH 4-2011, f. & cert. ef. 6-16-11

## 333-070-0105

### Certified Renovation Firm Certification and Responsibilities

(1) Initial certification.

(a) Firms that perform renovations for compensation shall:

(A) Apply to the Authority for certification to perform renovations or dust sampling by submitting a completed "Application for Certified Renovation Firms," signed by an authorized agent of the firm; and

(B) Pay the correct amount of fees.

(b) An application will be considered complete if it contains all of the information requested on the form and includes the correct amount of fees.

(c) If the Authority receives an incomplete application, it will request that the applicant submit the missing information or fee within 30 days. If an applicant fails to submit the requested information or the fee, the application will be returned to the applicant. An applicant who has had its application returned may reapply at any time.

(d) Within 30 days of declaring an application complete, the Authority shall:

(A) Approve the application if the Authority determines that the environmental compliance history of the applicant, its principals, or its key employees shows a willingness and ability to maintain compliance with environmental statutes or regulations; or

(B) Deny the application if the Authority determines that the environmental compliance history of the applicant, its principals, or its key employees demonstrates an unwillingness or inability to maintain compliance with environmental statutes or regulations.

(e) If the Authority approves the application, the Authority shall issue the applicant a certificate with an expiration date not more than five years from the date the application is approved.

(f) If the Authority denies the application it shall send the applicant a letter giving the reason for denying the application.

(2) Recertification.

(a) To maintain its certification, a certified renovation firm shall apply for recertification every five years, by submitting a timely and complete "Application for Certified Renovation Firms" with the required fee to the Authority.

(A) An application for recertification is timely if it is postmarked 60 days or more before the date the certified renovation firm's current certification expires. If the certified renovation firm's application is complete and timely, the certified renovation firm's current certification will remain in effect until its expiration date or until the Authority has made a final decision to approve or deny the recertification application, whichever is later.

(B) If the certified renovation firm submits a complete recertification application less than 60 days before its current certification expires, and the Authority does not approve the application before the expiration date, the certified renovation firm's current certification will expire and the certified renovation firm will not be able to conduct renovations until the Authority approves its recertification application.

(C) If the certified renovation firm fails to obtain recertification before the certified renovation firm's current certification expires, the certified renovation firm may not perform renovations or dust sampling and must apply for initial certification under section (1) of this rule.

(b) A recertification application will be considered complete if it contains all of the information requested on the form and includes the correct amount of fees.

(c) If the Authority receives an incomplete application, it will request a certified renovation firm to submit the missing information or fee within 30 days. If an applicant fails to submit the requested information or the fee, the application will be returned to the applicant.

(d) Within 60 days of declaring an application for recertification complete, the Authority shall:

(A) Approve a certified renovation firm's recertification application if the Authority determines that the environmental compliance history of the certified renovation firm, its principals, or its key employees shows a willingness and ability to maintain compliance with environmental statutes or regulations; or

(B) Deny a certified renovation firm's recertification application if the Authority determines that the environmental compliance history of the certified renovation firm, its principals, or its key employees demonstrates an unwillingness or inability to maintain compliance with environmental statutes or regulations.

(e) If the Authority approves a certified renovation firm's recertification application, the Authority shall issue the certified renovation firm a certificate with an expiration date not more than five years from the date the application is approved.

(f) If the Authority denies the recertification application it shall send the certified renovation firm a letter giving the reason for denying the application.

(3) Amendment of certification.

(a) A certified renovation firm shall amend its application for certification within 30 days of the date a change occurs to information included in the certified renovation firm's most recent application.

(b) If the certified renovation firm fails to amend its certification within 30 days of the date the change occurs, the certified renovation firm may not perform renovations or dust sampling until its certification is amended.

(c) To amend a certification, a certified renovation firm must submit a completed "Application for Certified Renovation Firms," signed by an authorized agent of the certified renovation firm, noting on the form that it is submitted as an amendment and indicating the information that has changed.

(d) If additional information is needed to process the amendment, the Authority will request the certified renovation firm to submit the necessary information. The certified renovation firm's certification is not amended until the certified renovation firm submits all the required information and the Authority has approved the amendment.

(e) Amending a certification does not affect the certification expiration date.

(4) The Authority will not refund the application fees if a certified renovation firm's application for initial or recertification is denied.

(5) A certified renovation firm that is denied initial certification or recertification shall have the right to a contested case hearing under ORS chapter 183.

(6) A certified renovation firm that is denied initial or recertification may reapply for certification at any time by filing a new, complete application that includes the correct amount of fees.

(7) Certified renovation firm responsibilities. Certified renovation firms performing renovations shall ensure that:

(a) All individuals performing renovation activities on behalf of the certified renovation firm are either certified renovators or have been trained by a certified renovator as described in OAR 333-070-0100;

(b) A certified renovator is assigned to each renovation performed by the certified renovation firm and discharges all of the certified renovator responsibilities identified in OAR 333-070-0100;

(c) All renovations performed by the certified renovation firm are performed in accordance with the work practice standards as described in OAR 333-070-0090;

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(d) The pre-renovation education requirements of OAR 333-070-0095 have been performed;

(e) The recordkeeping requirements of OAR 333-070-0110 are met; and

(f) The certified renovator is in compliance with the responsibilities as identified in OAR 333-070-0100 and 333-070-0090.

Stat. Auth.: ORS 431.920

Stats. Implemented: ORS 431.920

Hist.: PH 8-2010, f. & cert. ef. 4-26-10; PH 4-2011, f. & cert. ef. 6-16-11

## 333-070-0110

### Certified Renovation Firm Recordkeeping and Reporting Requirements

(1) A certified renovation firm performing renovations must retain and, if requested, make available to the Authority all records required by these rules necessary to demonstrate compliance with these rules for a period of three years following completion of the renovation.

The three-year retention requirement does not supersede longer obligations required by other provisions for retaining the same documentation.

(2) Records that must be retained pursuant to this rule shall include (where applicable):

(a) Records or reports certifying that a determination had been made by an inspector or risk assessor that lead-based paint is not present on the components affected by the renovation. These records or reports include:

(A) Reports prepared by a certified inspector or certified risk assessor (certified by the Authority, EPA, or an EPA-authorized state or tribal program);

(B) Records prepared by a certified renovator after using EPA-recognized test kits, including an identification of the manufacturer and model of any test kits used, a description of the components that were tested including their locations, and the result of each test kit used.

(b) Signed and dated acknowledgments of receipts;

(c) Certifications of attempted delivery as described;

(d) Certificates of mailing;

(e) Records of notification activities performed regarding common area renovations and renovations in child-occupied facilities;

(f) Documentation of compliance with OAR chapter 333, division 70, including documentation that a certified renovator was assigned to the project, that the certified renovator provided on-the-job training for workers used on the project, that the certified renovator performed or directed workers who performed all of the tasks as described in this rule and that the certified renovator performed the post-renovation cleaning verification. If the certified renovation firm was unable to comply with all of the requirements of this rule due to an emergency, the certified renovation firm must document the nature of the emergency and the provisions of the rule that were not followed. This documentation must include a copy of the certified renovator's training certificate, and a certification by the certified renovator assigned to the project that:

(A) Training was provided to workers (topics must be identified for each worker);

(B) Warning signs were posted at the entrances to the work area;

(C) If test kits were used, that the specified brand of kits was used at the specified locations and that the results were as specified;

(D) The work area was contained by:

(i) Removing or covering all objects in the work area (interiors);

(ii) Closing and covering all HVAC ducts in the work area (interiors);

(iii) Closing all windows in the work area (interiors) or closing all windows in and within 20 feet of the work area (exteriors);

(iv) Closing and sealing all doors in the work area (interiors) or closing and sealing all doors in and within 20 feet of the work area (exteriors);

(v) Covering doors in the work area that were being used to allow passage but prevent spread of dust;

(vi) Covering the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area six feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater (interiors) or covering the ground with plastic sheeting or other disposable impermeable material anchored to the building extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering, weighted down by heavy objects (exteriors);

(vii) Installing (if necessary) vertical containment to prevent migration of dust and debris to adjacent property (exteriors);

(viii) Waste was contained on-site and while being transported off-site.

(E) The work area was properly cleaned after the renovation by:

(i) Picking up all chips and debris, misting protective sheeting, folding it dirty side inward, and taping it for removal;

(ii) Cleaning the work area surfaces and objects using a HEPA vacuum and/or wet cloths or mops (interiors);

(iii) The certified renovator performed the post-renovation cleaning verification (the results of which must be briefly described, including the number of wet and dry cloths used).

(3) When the final invoice for the renovation is delivered or within 30 days of the completion of the renovation, whichever is earlier, the renovation firm must provide information pertaining to compliance with this subpart to the following persons:

(a) The owner of the building; and

(b) An adult occupant of the residential dwelling, if the renovation took place within a residential dwelling, or an adult representative of the child-occupied facility, if the renovation took place within a child-occupied facility.

(4) When performing renovations in common areas of multi-unit target housing, renovation firms must post the information required by this subpart or instructions on how interested occupants can obtain a copy of this information. This information must be posted in areas where it is likely to be seen by the occupants of all of the affected units.

(5) The information required to be provided by OAR 333-070-0110(2) may be provided by completing the sample form titled "Sample Renovation Recordkeeping Checklist" or a similar form containing the test kit information required by OAR 333-070-0075(3)(a)(B) and the training and work practice compliance information required by OAR 333-070-0090 and 333-070-0100.

(6) If dust clearance sampling is performed in lieu of cleaning verification as permitted by OAR 333-070-0090(13), the renovation firm must provide, when the final invoice for the renovation is delivered or within 30 days of completion of the renovation, whichever is earlier, a copy of the dust sampling report to:

(a) The owner of the building; and

(b) An adult occupant of the residential dwelling, if the renovation took place within a residential dwelling, or an adult representative of the child-occupied facility, if the renovation took place within a child-occupied facility.

(7) When performing renovations in common areas of multi-unit target housing, renovation firms must post these dust sampling reports or information on how interested occupants of the housing being renovated can obtain a copy of the report. This information must be posted in areas where they are likely to be seen by the occupants of all of the affected units.

Stat. Auth.: ORS 431.920

Stats. Implemented: ORS 431.920

Hist.: PH 8-2010, f. & cert. ef. 4-26-10; PH 4-2011, f. & cert. ef. 6-16-11

## 333-070-0115

### Inspections and Enforcement

(1) The Authority may:

(a) Enter private or public property at any reasonable time with consent of the owner or custodian of the property to inspect, investigate, evaluate or conduct tests or take specimens or samples for testing, as necessary to determine compliance with ORS 431.920;

(b) Issue subpoenas to determine compliance with ORS 431.920;

(c) Suspend, revoke or modify a certification to perform lead-based paint activities or renovation if the holder of the certification fails to comply with state or federal statutes or regulations related to lead-based paint;

(d) Suspend, revoke or modify a certified renovator's certification if the renovator fails to comply with state or federal statutes or regulations related to lead-based paint; and

(e) Issue civil penalties not to exceed \$5,000 per violation for a violation of ORS 431.920, or any of these rules, including failure or refusal to permit entry or inspection in accordance with this rule.

(A) In issuing civil penalties the Authority shall consider whether:

(i) The Authority made repeated attempts to obtain compliance;

(ii) The certified firm or individual has a history of noncompliance with environmental statutes or regulations;

(iii) The violation poses a serious risk to the public's health;

(iv) The certified firm or individual gained financially from the non-compliance; and

(v) There are mitigating factors, such as a certified firm's or individual's cooperation with an investigation or actions to come into compliance.

(B) The Authority shall document its consideration of the factors in paragraph (1)(e)(A) of this rule.

(C) Each day a violation continues is an additional violation.

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(D) A civil penalty imposed under this rule shall comply with ORS 183.745.

(2) An individual who is issued a notice of suspension, revocation or modification shall have the right to a contested case hearing under ORS chapter 183.

(3) The Authority shall maintain a publicly available list of individuals whose certification has been suspended, revoked, modified, or reinstated.

(4) Unless a final order specifies otherwise:

(a) An individual whose certification has been suspended must take a refresher training course (renovator or dust sampling technician) prior to certification being reinstated.

(b) An individual whose certification has been revoked shall take an initial renovator or dust sampling technician course in order to become certified again.

(c) A certified renovation firm whose certification has been revoked may reapply for certification after one year from the date of revocation.

(d) If the certified renovation firm's certification has been suspended and the suspension ends less than five years after the certified renovation firm was initially certified or re-certified, the certified renovation firm does not need to do anything to re-activate its certification once the period of suspension has expired.

Stat. Auth.: ORS 183.310-183.540, 183.745, 431.920, 431.922, 431.994

Stats. Implemented: ORS 183.310-183.540, 183.745, 431.920, 431.922, 431.994

Hist.: PH 8-2010, f. & cert. ef. 4-26-10; PH 4-2011, f. & cert. ef. 6-16-11

## 333-070-0120

### Certification Fees and Refunds

(1) Fees for the certification of certified renovation firms.

(a) Certification: \$250

(b) Recertification: \$250

(2) Fee Waivers. A renovation firm that has applied to EPA for certification or is certified by the EPA may request a waiver of the certification fee if the firm:

(a) Is required to be certified by the Authority; and

(b) Provides documentation that the date of application to EPA for certification or the date of certification is prior to May 3, 2010.

(3) Refund policy.

(a) An incomplete application shall be returned with the application fee minus a \$50 administration fee.

(b) If an applicant requests that a complete application be withdrawn within 30 days of its receipt by the Authority, the Authority shall refund the applicant \$200 minus a \$50 administration fee.

(c) No fees will be refunded if the Authority has begun to process an application.

(4) Lost certificate. A \$15 fee will be charged for the replacement of a certified renovation firm certificate.

(5) Certificate replacement. Certified renovation firms seeking certificate replacement must submit the replacement application form and a payment of \$15 in accordance with the instructions provided with the application package.

Stat. Auth.: ORS 431.920

Stats. Implemented: ORS 431.920

Hist.: PH 8-2010, f. & cert. ef. 4-26-10; PH 4-2011, f. & cert. ef. 6-16-11

## 333-070-0125

### Training Program Accreditation Required

(1) A training program may seek accreditation to offer courses in either of the following disciplines: renovator or dust sampling technician. A training program may also seek accreditation to offer refresher courses for each of the above listed disciplines.

(2) Application process. The following are procedures a training program must follow to receive Authority accreditation to offer renovator courses or dust sampling technician courses:

(a) A training program seeking accreditation shall submit a written application with the appropriate fee to the Authority containing the following information:

(A) The training program's name, address, and telephone number;

(B) A list of courses for which it is applying for accreditation. For the purposes of this section, courses taught in different languages are considered different courses, and each must independently meet the accreditation requirements; and

(C) A statement signed by the training program manager certifying that the training program meets the requirements established in OAR 333-070-0130 and 333-070-0135. If a training program uses EPA model training materials, or training materials approved by an EPA-authorized pro-

gram, the training program manager shall include a statement certifying that as well.

(b) If a training program does not use EPA model training materials or training materials approved by an EPA-authorized program, its application for accreditation shall also include:

(A) A copy of the student and instructor manuals, or other materials to be used for each course;

(B) A copy of the course agenda for each course; and

(C) When applying for accreditation of a course in a language other than English, a signed statement from a qualified, independent translator that they have compared the course to the English language version and found the translation to be accurate.

(c) All training programs shall include in their application for accreditation the following:

(A) A description of the facilities and equipment to be used for lecture and hands-on training;

(B) A copy of the course test blueprint for each course;

(C) A description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course; and

(D) A copy of the quality control plan as described in section (4) of OAR 333-070-0135.

(d) If the Authority receives an incomplete application, it will request that the applicant submit the missing information or fee within 30 days. If an applicant fails to submit the requested information or the fee, the application will be returned to the applicant. An applicant who has had its application returned may reapply at any time.

(e) If a training program meets the requirements in OAR 333-070-0130 and 333-070-0135, then the Authority will approve the application for accreditation no more than 60 days after receiving a complete application from the training program. In the case of approval, a certificate of accreditation shall be sent to the applicant.

(f) If the Authority denies the application it shall send the applicant a letter giving the reason for denying the application. An individual whose application is denied shall have the right to a contested case hearing under ORS chapter 183.

(g) If the applicant's application is denied, the program may reapply for accreditation at any time.

(3) A training program may apply for accreditation to offer courses or refresher courses in as many disciplines as it chooses. A training program may seek accreditation for additional courses at any time as long as the program can demonstrate that it meets the requirements of OAR 333-070-0130 and 333-070-0135.

(4) A training program must not provide, offer, or claim to provide renovator or dust sampling technician courses without applying for and receiving accreditation from the Authority.

(5) Refresher courses only.

(a) A training program seeking accreditation to offer refresher training courses only shall submit a written application to the Authority containing the following information:

(A) The refresher training program's name, address, and telephone number;

(B) A list of courses for which it is applying for accreditation;

(C) A statement signed by the training program manager certifying that:

(i) The refresher training program meets the minimum requirements established by section (18) of OAR 333-070-0135; and

(ii) The training program uses EPA-developed model training materials, or training materials approved by a state or Indian tribe that has been authorized by the EPA under 40 CFR §745.324 to develop its refresher training course materials, if applicable.

(D) If the refresher training course materials are not based on EPA-developed model training materials or training materials approved by an authorized state or Indian tribe:

(i) A copy of the student and instructor manuals to be used for each course; and

(ii) A copy of the course agenda for each course.

(E) A description of the facilities and equipment to be used for lecture and hands-on training;

(F) A copy of the course test blueprint for each course;

(G) A description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course (if applicable); and

(H) A copy of the quality control plan as described in section (4) of OAR 333-070-0135.



# ADMINISTRATIVE RULES

(b) If the Authority receives an incomplete application, it will request that the applicant submit the missing information or fee within 30 days. If an applicant fails to submit the requested information or the fee, the application will be returned to the applicant. An applicant who has had its application returned may reapply at any time.

(c) If a refresher training program meets the requirements in section (5) of this rule, then the Authority will approve the application for accreditation no more than 60 days after receiving a complete application from the training program. In the case of approval, a certificate of accreditation shall be sent to the applicant.

(d) If the Authority denies the application it shall send the applicant a letter giving the reason for denying the application. An applicant who receives a denial shall have the right to a contested case hearing under ORS chapter 183.

(6) Accreditation shall be valid for four years and shall not be transferable.

(7) The Authority may accredit a training program that has been accredited by the EPA or an EPA-authorized state or tribal program upon receiving evidence of that accreditation and that the training program has:

(a) Completed any additional requirements established by the Authority; and

(b) The training manager has read and understands the accreditation standards as described in these rules.

(8) Accreditation based on a valid accreditation issued by EPA or an EPA-authorized state or tribal program shall be issued with an expiration date not to exceed the date of expiration listed on the EPA or EPA-authorized state or tribal accreditation.

Stat. Auth.: ORS 183.745, 431.920

Stats. Implemented: ORS 431.920

Hist.: PH 8-2010, f. & cert. ef. 4-26-10; PH 4-2011, f. & cert. ef. 6-16-11

## 333-070-0130

### Minimum Personnel Requirements for Training Program Accreditation

For a training program to obtain accreditation from the Authority to offer renovator courses or dust sampling technician courses, the program shall:

(1) Employ a training manager who has:

(a) At least two years of experience, education, or training in teaching workers or adults; or

(b) A bachelor's or graduate degree in building construction technology, engineering, industrial hygiene, safety, public health, education, business administration or program management or a related field; or

(c) Two years of experience in managing a training program specializing in environmental hazards; and

(d) Demonstrated experience, education, or training in the construction industry including: lead or asbestos abatement, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene.

(2) Designate a qualified principal instructor for each course who has:

(a) Demonstrated experience, education, or training in teaching workers or adults;

(b) Successfully completed at least 16 hours of any EPA-accredited or EPA-authorized Lead-Based Paint Activities or Lead Renovation, Repair and Painting training program; and

(c) Demonstrated experience, education, or training in lead or asbestos abatement, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene.

(3) Have a principal instructor responsible for the organization of the course and oversight of the teaching of all course material. The training manager may designate guest instructors as needed to provide instruction specific to the lecture, hands-on activities, or work practice components of a course.

(4) Have documents that serve as evidence that training managers and principal instructors have the education, work experience, training requirements or demonstrated experience, specifically listed in sections (1) and (2) of this rule. This documentation need not be submitted with the accreditation application, but, if not submitted, shall be retained by the training program as required by the recordkeeping requirements contained in OAR 333-070-0150. Those documents include the following:

(a) Official academic transcripts or diploma as evidence of meeting the education requirements.

(b) Resumes, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements.

(c) Certificates from lead-specific training courses, as evidence of meeting the training requirements.

(5) Ensure the availability of, and provide adequate facilities for, the delivery of the lecture, course test, hands-on training, and assessment activities. This includes providing training equipment that reflects current work practices and maintaining or updating the equipment and facilities as needed.

Stat. Auth.: ORS 431.920

Stats. Implemented: ORS 431.920

Hist.: PH 8-2010, f. & cert. ef. 4-26-10; PH 4-2011, f. & cert. ef. 6-16-11

## 333-070-0135

### Minimum Curriculum Requirements for Training Program Accreditation

(1) In order to become accredited in the following disciplines a training program shall provide training courses that meet the following training hour requirements:

(a) The renovator course must provide a minimum of eight training hours, with a minimum of two hours devoted to hands-on training activities. Hands-on training activities must cover renovation methods that minimize the creation of dust and lead-based paint hazards, interior and exterior containment and cleanup methods, and post-renovation cleaning verification.

(b) The dust sampling technician course shall provide a minimum of eight training hours, with a minimum of two hours devoted to hands-on training activities. Hands-on training activities must cover dust sampling methodologies.

(2) A student shall be required to pass a course test or a proficiency test and a hands-on-skill assessment for each course offered.

(a) The training manager is responsible for maintaining the validity and integrity of the hands-on skills assessment or proficiency test to ensure that it accurately evaluates the trainees' performance of the work practices and procedures associated with the course topics contained in sections (16), (17) and (18) of this rule.

(b) The training manager is responsible for maintaining the validity and integrity of the course test to ensure that it accurately evaluates the trainees' knowledge and retention of the course topics.

(c) The course test shall be developed in accordance with the test blueprint submitted with the training accreditation application.

(3) The training program shall issue unique course completion certificates to each individual who passes the training course. The course completion certificate shall include:

(a) The name, a unique identification number, and address of the individual;

(b) The name of the particular course that the individual completed;

(c) Dates of course completion/test passage; and

(d) For renovator and dust sampling technician course completion certificates, a photograph of the individual.

(4) The training manager shall develop and implement a quality control plan. The plan shall be used to maintain and improve the quality of the training program over time. This plan shall contain at least the following elements:

(a) Procedures for periodic revision of training materials and the course test to reflect innovations in the field.

(b) Procedures for the training manager's annual review of principal instructor competency.

(5) Courses offered by the training program must teach the work practice standards contained in OAR 333-070-0090, in such a manner that trainees are provided with the knowledge needed to perform the renovations they will be responsible for conducting.

(6) The training manager shall be responsible for ensuring that the training program complies at all times with all of the requirements in this rule.

(7) The Authority may audit the training program to verify the contents of the application for accreditation as described in OAR 333-070-0130 and OAR 333-070-0135.

(8) The training manager shall provide the Authority with notification of all renovator or dust sampling technician courses offered. The original notification must be received by the Authority at least seven business days prior to the start date of any renovator or dust sampling technician course.

(9) The training manager shall provide the Authority updated notification when renovator or dust sampling technician courses will begin on a date other than the start date specified in the notification, as follows:

(a) For renovator or dust sampling technician courses beginning prior to the start date provided to the Authority, an updated notification must be received by the Authority at least seven business days before the new start date.

# ADMINISTRATIVE RULES

(b) For renovator or dust sampling technician courses beginning after the start date provided to the Authority, an updated notification must be received by the Authority at least two business days before the start date.

(10) The training manager shall update the Authority of any change in location of renovator or dust sampling technician courses at least seven business days prior to the start date.

(11) The training manager shall update the Authority regarding any course cancellations, or any other change to the original notification. Updated notifications must be received by the Authority at least two business days prior to the start date.

(12) Each notification required by sections (8) through (11) of this rule, including updates shall include the following:

- (a) Notification type (original, update, cancellation);
- (b) Training program name, the Authority accreditation number, address, and telephone number;
- (c) Course discipline, type (initial/ refresher), and the language in which instruction will be given;
- (d) Date(s) and time(s) of training;
- (e) Training location(s), telephone number, and address;
- (f) Principal instructor's name; and
- (g) Training manager's name and signature.

(13) Renovator or dust sampling training courses may not begin on a date, or at a location other than that specified in the original notification unless an updated notification identifying a new start date or location is submitted, in which case the course must begin on the new start date and/or location specified in the updated notification.

(14) The training manager shall provide the Authority notification after the completion of any renovator or dust sampling technician course. This notice must be received by the Authority no later than 10 business days following course completion. The notification shall include the following:

- (a) Training program name, accreditation number, address, and telephone number;
- (b) Course discipline and type (initial/refresher);
- (c) Date(s) of training;
- (d) The following information for each student who took the course:
  - (A) Name;
  - (B) Address;
  - (C) Date of birth;
  - (D) Course completion certificate number;
  - (E) Course test score; and
  - (F) A digital photograph of the student;
- (e) Training manager's name and signature.

(15) Notifications required by this rule can be accomplished by using an Authority approved form or can be provided in writing with the information.

- (a) All notifications shall be in writing and submitted to the Authority:
  - (A) By mail through the U.S. Postal Service or other commercial delivery service;
  - (B) By facsimile;
  - (C) In person; or
  - (D) Electronically via electronic mail or through the Authority's web-based system if one is established.

(b) A training program providing notifications through the U.S. Postal Service should allow three additional business days for delivery in order to ensure that the Authority receives the notification by the required date.

(c) Instructions for notifications and sample forms can be obtained from the Authority's website at [www.healthoregon.org/lead](http://www.healthoregon.org/lead).

(16) Renovator Training Course. A renovator training course shall include the following subjects:

- (a) Role and responsibility of a renovator;
- (b) Background information on lead and its adverse health effects;
- (c) Background information on, HUD, OSHA, and other federal, state, and local regulations and guidance that pertains to lead-based paint and renovation activities;
- (d) Procedures for using EPA recognized test kits to determine whether paint is lead-based paint;
- (e) Renovation methods to minimize the creation of dust and lead-based paint hazards;
- (f) Interior and exterior containment and cleanup methods;
- (g) Methods to ensure that the renovation has been properly completed, including cleaning verification, and clearance testing;
- (h) Waste handling and disposal;
- (i) Providing on-the-job training to other workers; and
- (j) Record preparation.

(17) Dust sampling technician. A dust sampling technician course shall include the following subjects:

- (a) Role and responsibility of a dust sampling technician;
- (b) Background information on lead and its adverse health effects;
- (c) Background information on federal, state, and local regulations and guidance that pertains to lead-based paint and renovation activities;
- (d) Dust sampling methodologies;
- (e) Clearance standards and testing; and
- (f) Report preparation.

(18) Requirements for the accreditation of refresher training programs. A training program may seek accreditation to offer refresher training courses in either of the following disciplines: renovator and dust sampling technician. To obtain the Authority accreditation to offer refresher training, a training program shall meet the following minimum requirements:

(a) Each refresher course shall review the curriculum topics of the full-length courses listed under sections (16) and (17) of this rule, as appropriate. In addition, to become accredited to offer refresher training courses, training programs shall ensure that their courses of study include, at a minimum, the following:

(A) An overview of current safety practices relating to lead-based paint in general, as well as specific information pertaining to the appropriate discipline.

(B) Current laws and regulations relating to lead-based paint in general, as well as specific information pertaining to the appropriate discipline.

(C) Current technologies relating to lead-based paint in general, as well as specific information pertaining to the appropriate discipline.

(D) Refresher courses for renovator and dust sampling technician must last a minimum of four training hours.

(E) For each course offered, the training program shall conduct a hands-on assessment (if applicable), and at the completion of the course, a course test.

(19) A training program may apply for accreditation of a refresher course concurrently with its application for accreditation of a corresponding training course as described in OAR 333-070-0135(1).

Stat. Auth.: ORS 431.920  
Stats. Implemented: ORS 431.920  
Hist.: PH 8-2010, f. & cert. ef. 4-26-10; PH 4-2011, f. & cert. ef. 6-16-11

## 333-070-0140

### Re-Accreditation of Training Programs

(1) Unless reaccredited, a training program's accreditation (including refresher training accreditation) shall expire four years after the date of issuance. If a training program meets the requirements of this rule, the training program shall be reaccredited.

(2) A training program seeking reaccreditation shall submit an application to the Authority no later than 60 days before its accreditation expires. If a training program does not submit its application for reaccreditation by that date, the Authority cannot guarantee that the program will be reaccredited before the end of the accreditation period.

(3) The training program's application for reaccreditation shall contain:

- (a) The training program's name, address, and telephone number.
- (b) A list of courses for which it is applying for reaccreditation.
- (c) A description of any changes to the training facility, equipment or course materials since its last application was approved that adversely affects the student's ability to learn.
- (d) A statement signed by the program manager stating:

(A) That the training program complies at all times with all requirements in OAR 333-070-0130 and OAR 333-070-0135 as applicable; and

(B) The recordkeeping and reporting requirements of OAR 333-070-0150 shall be followed.

(e) A payment of appropriate fees in accordance with these rules.

(4) The Authority may audit the training program to verify the contents of the application for reaccreditation as described in OAR 333-070-0140.

(5) If the Authority receives an incomplete application, it will request that the applicant submit the missing information or fee within 30 days. If an applicant fails to submit the requested information or the fee, the application will be returned to the applicant. An applicant who has had its application returned may reapply at any time.

(6) If a training program meets the requirements in section (2) of this rule, then the Authority will approve the application for reaccreditation no more than 60 days after receiving a complete application from the training program. In the case of approval, a certificate of accreditation shall be sent to the applicant.

# ADMINISTRATIVE RULES

(7) If the Authority denies the application it shall send the applicant a letter giving the reason for denying the application. An applicant whose application is denied shall have the right to a contested case hearing under ORS chapter 183.

Stat. Auth.: ORS 431.920  
Stats. Implemented: ORS 431.920  
Hist.: PH 8-2010, f. & cert. ef. 4-26-10; PH 4-2011, f. & cert. ef. 6-16-11

## 333-070-0145

### Suspending, Revoking, or Denying a Training Program's Accreditation; Civil Penalties

(1) The Authority may:

(a) Enter private or public property at any reasonable time with consent of the owner or custodian of the property to inspect or investigate as necessary to determine compliance with ORS 431.920;

(b) Issue subpoenas to determine compliance with ORS 431.920;

(c) Suspend, revoke, or deny an accreditation if the holder of the accreditation fails to comply with state or federal statutes or regulations related to lead-based paint; and

(d) Issue civil penalties not to exceed \$5,000 per violation for a violation of ORS 431.920, or any of these rules, including failure or refusal to permit entry or inspection in accordance with this rule.

(A) In issuing civil penalties the Authority shall consider whether:

(i) The Authority made repeated attempts to obtain compliance;

(ii) The training program has a history of noncompliance with environmental statutes or regulations;

(iii) The violation poses a serious risk to the public's health;

(iv) The training program gained financially from the noncompliance; and

(v) There are mitigating factors, such as the training program's cooperation with an investigation or actions to come into compliance.

(B) The Authority shall document its consideration of the factors in paragraph (1)(d)(A) of this rule.

(C) Each day a violation continues is an additional violation.

(D) A civil penalty imposed under this rule shall comply with ORS 183.745.

(2) An accredited training program that is issued a notice of suspension, revocation or denial shall have the right to a contested case hearing under ORS chapter 183.

(3) The Authority shall maintain a publicly available list of training programs whose accreditation has been suspended, revoked, denied, or reinstated.

(4) Unless a final order specifies otherwise:

(a) An accredited training program whose accreditation has been revoked may reapply for reaccreditation after one year from the date of revocation.

(b) If the training program's accreditation has been suspended and the suspension ends less than four years after the training program was initially accredited or reaccredited, the training program does not need to do anything to reactivate its accreditation once the period of suspension has expired.

Stat. Auth.: ORS 431.920  
Stats. Implemented: ORS 431.920  
Hist.: PH 8-2010, f. & cert. ef. 4-26-10; PH 4-2011, f. & cert. ef. 6-16-11

## 333-070-0160

### Accreditation Fees

The following fees are established:

(1) Course Fee Schedule:

(a) Course — Accreditation Fee — Reaccreditation fee:

(b) Renovator Initial — \$560 — \$340:

(c) Dust Sampling Technician Initial — \$560 — \$340:

(d) Renovator Refresher — \$400 — \$310:

(e) Dust Sampling Technician Refresher — \$400 — \$310

(2) Student Fee Schedule:

(a) Course — Fee:

(b) Renovator Initial — \$17:

(c) Renovator Refresher — \$17:

(d) Dust Sampling Technician Initial — \$17:

(e) Dust Sampling Refresher — \$17.

(f) The student fee is to be paid by the training program at the completion of each training course. The \$17 fee is per student that successfully completes the course. The fee shall be paid by the training program to the Authority within 10 days after completion of the training course.

(3) Fee Waivers. A training program, that has applied for accreditation by the EPA to provide Renovator or Dust Sampling Technician training may request a waiver of the accreditation fees if the training program pro-

vides documentation that the date of application for accreditation by EPA or date of accreditation is prior to May 3, 2010.

(4) Firms with current accreditation by EPA or an EPA-authorized state or tribal program shall pay a prorated fee of the appropriate fee listed above, divided by 48, times the number of months remaining in the current accreditation, beginning with the month following application to the Authority.

Stat. Auth.: ORS 431.920  
Stats. Implemented: ORS 431.920  
Hist.: PH 8-2010, f. & cert. ef. 4-26-10; PH 4-2011, f. & cert. ef. 6-16-11

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**Rule Caption:** Change of agency name and definition as a result of HB 2009 (2009).

**Adm. Order No.:** PH 5-2011(Temp)

**Filed with Sec. of State:** 7-1-2011

**Certified to be Effective:** 7-1-11 thru 12-27-11

**Notice Publication Date:**

**Rules Amended:** 333-003-0010, 333-003-0065, 333-004-0010, 333-008-0010, 333-008-0070, 333-009-0000, 333-010-0105, 333-010-0205, 333-012-0050, 333-015-0030, 333-015-0100, 333-020-0125, 333-025-0100, 333-027-0005, 333-030-0015, 333-048-0010, 333-052-0040, 333-053-0040, 333-054-0010, 333-061-0020, 333-100-0005, 333-102-0203, 333-106-0005, 333-106-0101, 333-119-0010, 333-175-0021, 333-536-0005, 333-700-0005

**Subject:** The Oregon Health Authority, Public Health Division is temporarily amending rules throughout all of chapter 333. The amendments are mainly in the "definitions" rules of the chapter, and change the name of the agency and the subsequent definition of that name.

These amendments are necessary due to legislation passed by the 75th Legislative Assembly during the 2009 regular session. HB 2009 created the Oregon Health Authority and transferred to the Authority the Department of Human Services' (Department) Divisions with respect to health and health care. Consequently, the Public Health Division is now in the Oregon Health Authority and is no longer a part of the Department of Human Services as defined in statute. Amendments need to be made to the chapter 333 rules to change references of "Department" to "Authority" and "Authority" must be defined. Most other changes of the agency name from "Department" to "Authority" throughout the chapter 333 rules have been made by housekeeping changes as allowed by ORS 183.335(7)(a) and are therefore not a part of this rulemaking.

**Rules Coordinator:** Brittany Sande—(971) 673-1291

## 333-003-0010

### Definitions

For purposes of OAR 333-003-0020 through 333-003-0080, the following definitions apply:

(1) "Authority" means the Oregon Health Authority.

(2) "Bioterrorism" has the meaning given that term in ORS 433.442.

(3) "Communicable disease" has the meaning given that term in ORS 431.260.

(4) "Condition of public health importance" has the meaning given that term in ORS 431.260.

(5) "Health care provider" has the meaning given that term in ORS 433.443.

(6) "HIPAA" means the Health Insurance Portability and Accountability Act of 1996 and regulations adopted there under by the United States Department of Health and Human Services.

(7) "Individually identifiable health information" has the meaning given that term in ORS 433.443.

(8) "Local public health administrator" has the meaning given that term in ORS 431.260.

(9) "Local public health authority" has the meaning given that term in ORS 431.260.

(10) "Public health emergency" has the meaning given that term in ORS 433.442.

(11) "Public health law" has the meaning given that term in ORS 431.260.

(12) "Reportable disease" has the meaning given that term in ORS 431.260.



# ADMINISTRATIVE RULES

(13) "State Public Health Director" is the person appointed by the Director of the Oregon Health Authority under ORS 431.035(3) or his or her designee.

(14) "Strategic National Stockpile (SNS)" means the national repository of antibiotics, chemical antidotes, antitoxins, life-support medications, IV administration, airway maintenance supplies, and medical/surgical items, designed to supplement and re-supply state and local public health agencies in the event of a national emergency anywhere and at anytime within the U.S. or its territories.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 431.264 & 433.441 - 433.452

Hist.: PH 25-2004, f. & cert. ef. 7-16-04; PH 8-2008, f. & cert. ef. 5-5-08; PH 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 333-003-0065

### Civil Penalties

(1) Any person or entity that fails to comply with a protocol, order, other requirement imposed by the Public Health Director under ORS 431.262, 431.264, or 433.443 or these rules is subject to the imposition of civil penalties not to exceed \$500 per day per violation.

(2) In determining the amount of a civil penalty the Authority shall consider whether:

(a) The Authority made repeated attempts to obtain compliance;

(b) The person or entity has a history of noncompliance with public health laws; and

(c) The violation poses a serious risk to the public's health.

(3) Each day a violation continues will be considered an additional violation.

(4) A notice of imposition of civil penalties shall comply with ORS 183.745.

Stat. Auth.: ORS 413.042, 433.441 - 433.452

Stats. Implemented: ORS 433.441 - 433.452

Hist.: PH 8-2008, f. & cert. ef. 5-5-08; PH 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 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) "Authority" means the Oregon Health Authority.

(4) "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.

(5) "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.

(6) "Client" means a person of any age or gender who is enrolled in and receives contraceptive management services from the Family Planning Expansion Project.

(7) "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.

(8) "CMS" means the Centers for Medicare and Medicaid Services, located within the federal Department of Health and Human Services.

(9) "Contraceptive management" means a limited scope of family planning services as described in OAR 333-004-0040.

(10) "DMAP" means the Division of Medical Assistance Programs, within the Oregon Health Authority.

(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 Oregon Health Authority.

(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.

(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 Oregon Health Authority, 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 413.042

Stats. Implemented: ORS 413.042

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; PH 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 333-008-0010

### Definitions

For the purposes of OAR 333-008-0000 through 333-008-0120, the following definitions apply:

(1) "Act" means the Oregon Medical Marijuana Act.

(2) "Applicant" means a person applying for an Oregon Medical Marijuana registry identification card on a form prescribed by the Authority.

(3) "Attending physician" means a Doctor of Medicine (MD) or Doctor of Osteopathy (DO), licensed under ORS chapter 677, who has primary responsibility for the care and treatment of a person diagnosed with a debilitating medical condition.

(4) "Authority" means the Oregon Health Authority.

(5) "Debilitating medical condition" means:

(a) Cancer, glaucoma, agitation due to Alzheimer's disease, positive status for human immunodeficiency virus or acquired immune deficiency syndrome, or treatment for these conditions;

(b) A medical condition or treatment for a medical condition that produces, for a specific patient, one or more of the following:

(A) Cachexia;

(B) Severe pain;

(C) Severe nausea;

(D) Seizures, including but not limited to seizures caused by epilepsy; or

(E) Persistent muscle spasms, including but not limited to spasms caused by multiple sclerosis; or

(c) Any other medical condition or treatment for a medical condition adopted by the Authority by rule or approved by the Authority pursuant to a petition submitted under OAR 333-008-0090.

(6) "Delivery" means the actual, constructive or attempted transfer, other than by administering or dispensing, from one person to another of a controlled substance, whether or not there is an agency relationship, but does not include transfer of marijuana from one patient to another patient if no consideration is paid for the transfer.

(7) "Designated primary caregiver" means an individual 18 years of age or older who has significant responsibility for managing the well-being of a person who has been diagnosed with a debilitating medical condition and who is designated as such on that person's application for a registry identification card or in other written notification to the Authority. "Designated primary caregiver" does not include the person's attending physician.

(8) "Grow site registration card" means the card issued to the patient and displayed at the grow site.

(9) "Grower" has the same meaning as "person responsible for a marijuana grow site".

(10) "Immature plant" has the same meaning as "seedling or start".

# ADMINISTRATIVE RULES

(11) "Marijuana" means all parts of the plant Cannabis family Moraceae, whether growing or not; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

(12) "Mature plant" means a marijuana plant that does not fall within the definition of a seedling or a start.

(13) "Medical use of marijuana" means the production, possession, delivery, or administration of marijuana, or paraphernalia used to administer marijuana, as necessary for the exclusive benefit of a person to mitigate the symptoms or effects of his or her debilitating medical condition.

(14) "Oregon Health Plan (OHP)" means the medical assistance program administered by the Authority under ORS chapter 414.

(15) "OMMP identity card" means a wallet-sized card issued by the Authority in addition to the registry identification card that designates a person as a patient, primary caregiver, or grower.

(16) "Parent or legal guardian" means the custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age.

(17) "Patient" has the same meaning as "registry identification cardholder."

(18) "Person responsible for a marijuana grow site" means a person who has been selected by a patient to produce medical marijuana for the patient, and who has been registered by the Authority for this purpose.

(19) "Primary responsibility" as that term is used in relation to an attending physician means that the physician:

(a) Provides primary health care to the patient; or

(b) Provides medical specialty care and treatment to the patient as recognized by the American Board of Medical Specialties; or

(c) Is a consultant who has been asked to examine and treat the patient by the patient's primary care physician licensed under ORS chapter 677, the patient's physician assistant licensed under ORS chapter 677, or the patient's nurse practitioner licensed under ORS chapter 678; and,

(d) Has reviewed a patient's medical records at the patient's request and has conducted a thorough physical examination of the patient, has provided or planned follow-up care, and has documented these activities in the patient's medical record.

(20) "Production" includes the manufacture, planting, cultivation, growing or harvesting of a controlled substance.

(21) "Registry identification card" means a document issued by the Authority that identifies a person authorized to engage in the medical use of marijuana, and the person's designated primary caregiver, if any.

(22) "Registry identification cardholder" means a person who has been diagnosed by an attending physician with a debilitating medical condition and for whom the use of medical marijuana may mitigate the symptoms or effects of the person's debilitating medical condition, and who has been issued a patient registry identification card by the Authority.

(23) "Seedling or start" means a marijuana plant that has no flowers, is less than 12 inches in height, and less than 12 inches in diameter. A seedling or start that does not meet all three criteria will be considered a mature plant.

(24) "Supplemental Security Income (SSI)" means the monthly benefit assistance program administered by the federal government for persons who are age 65 or older, or blind, or disabled and who have limited income and financial resources.

(25) "Usable marijuana" means the dried leaves and flowers of the plant Cannabis family Moraceae, and any mixture or preparation thereof, that are appropriate for medical use. "Usable marijuana" does not include the seeds, stalks and roots of the plant.

(26) "Written documentation" means a statement signed and dated by the attending physician of a person diagnosed with a debilitating medical condition or copies of the person's relevant medical records, maintained in accordance with standard medical record practices.

Stat. Auth.: ORS 475.338

Stats. Implemented: ORS 475.300 - 475.346

Hist.: OHD 15-1998(Temp), f. & cert. ef. 12-24-98 thru 6-22-99; OHD 3-1999, f. & cert. ef. 4-29-99; OHD 13-2000(Temp), f. & cert. ef. 12-21-00 thru 6-15-01; OHD 18-2001, f. & cert. ef. 8-9-01; OHD 19-2001(Temp), f. & cert. ef. 8-10-01 thru 1-31-02; Administrative correction 3-14-02; OHD 6-2002, f. & cert. ef. 3-25-02; PH 9-2003, f. 6-26-03, cert. ef. 7-1-03; PH 18-2005, f. 12-30-05, cert. ef. 1-1-06; PH 15-2007, f. 12-19-07, cert. ef. 1-1-08; PH 21-2010, f. & cert. ef. 9-13-10; PH 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 333-008-0070

### Suspension and Revocation

(1) The Authority may suspend a registry identification card, and preclude a person from using a registry identification card for a period of up to six months if the Authority obtains evidence that establishes a registry identification cardholder has:

(a) Committed egregious violations of the Act, including obtaining a registry identification card by fraud;

(b) Committed multiple or continuing violations of the Act; or

(c) Been convicted of a marijuana-related offense.

(2) The Authority shall send written notice of a suspension by certified mail. The notice shall comply with ORS 183.415, and shall include the right to request a contested case hearing. The request for hearing must be received within 21-days from the date the notice was mailed.

(3) The Authority shall revoke the registry identification card of a cardholder if a court has issued an order that prohibits the cardholder from participating in the medical use of marijuana or otherwise participating in the OMMP under ORS 475.300 to 475.346. The cardholder shall return the registry identification card to the Authority within seven calendar days.

(4) The cardholder shall return the registry identification card to the Authority within seven calendar days of the final order of suspension being issued. If the cardholder is a patient, the patient shall return his or her card and all other associated OMMP cards.

(5) If, during the period of suspension, a patient's annual renewal date comes due, the patient must apply for renewal at the end of the period of suspension.

Stat. Auth.: ORS 475.338

Stats. Implemented: ORS 475.300 - 475.346

Hist.: OHD 3-1999, f. & cert. ef. 4-29-99; OHD 18-2001, f. & cert. ef. 8-9-01; 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 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 333-009-0000

### Definitions

For the purpose of OAR 333-009-0000 through 333-009-0030, the following definitions apply.

(1) "Act" means the "Oregon Death with Dignity Act" or Measure 16 as adopted by the voters on November 8, 1994.

(2) "Adult" means an individual who is 18 years of age or older.

(3) "Attending Physician" means the physician who has primary responsibility for the care of the patient and treatment of the patient's terminal disease.

(4) "Authority" means the Oregon Health Authority.

(5) "Capable" means that in the opinion of a court or in the opinion of the patient's attending physician or consulting physician, psychiatrist or psychologist, a patient has the ability to make and communicate health care decisions to health care providers, including communication through persons familiar with the patient's manner of communicating, if those persons are available.

(6) "Consulting physician" means a physician who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding the patient's disease.

(7) "Counseling" means one or more consultations as necessary between a state licensed psychiatrist or psychologist and a patient for the purpose of determining that the patient is capable and not suffering from a psychiatric or psychological disorder or depression causing impaired judgment.

(8) "Dispensing Record" means a copy of the pharmacy dispensing record form.

(9) "Health Care Facility" shall have the meaning given in ORS 442.015.

(10) "Health Care Provider" means a person licensed, certified or otherwise authorized or permitted by the law of this state to administer health care or dispense medication in the ordinary course of business or practice of a profession and includes a health care facility.

(11) "Patient" means a person who is under the care of a physician.

(12) "Physician" means a doctor of medicine or osteopathy licensed to practice medicine by the Oregon Medical Board.

(13) "Qualified patient" means a capable adult who is a resident of Oregon and has satisfied the requirements of this Act in order to obtain a prescription for medication to end his or her life in a humane and dignified manner.

Stat. Auth.: ORS 127.865

Stats. Implemented: ORS 127.800-127.995

Hist.: HD 15-1997(Temp), f. & cert. ef. 11-6-97; OHD 4-1998, f. & cert. ef. 5-4-98; OHD 12-1999, f. & cert. ef. 12-28-99; PH 24-2006, f. & cert. ef. 10-19-06; PH 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

# ADMINISTRATIVE RULES

## 333-010-0105

### Definitions

(1) "Ancillary provider" means a provider that performs services beyond the scope of an enrolling provider. Ancillary providers may include laboratories, imaging centers, surgeons and surgical facilities, and hospitals.

(2) "Agency number" means the administrative number assigned to the service provider by the Office of Family Health (OFH) for identification as a BCCP provider.

(3) "Approved medical services agreement" means the completed Breast and Cervical Cancer Program agreement, submitted to and approved by the Office of Family Health.

(4) "Authority" means the Oregon Health Authority.

(5) "BCCM" means the Breast and Cervical Cancer Medical Program. ORS 414.534, 414.536.

(6) "BCCP" means the Oregon Breast and Cervical Cancer Program.

(7) "BCCP Provider Network" means the combination of all contracted BCCP providers, including enrolling and ancillary providers.

(8) "Breast and Cervical Cancer Program" means the program that provides statewide breast and cervical cancer screening and diagnostic services to eligible clients, that is administered by the Office of Family Health within the Oregon Health Authority.

(9) "Care coordination or case management" means that a client is provided with services, results, follow-up recommendations, and active tracking of progress towards follow-up recommendations.

(10) "CLIA" means the federal Clinical Laboratory Improvement Amendments of 1988, 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.

(11) "Client" means a person of any age or gender who is enrolled in and receives screening or diagnostic services from the Breast and Cervical Cancer Program.

(12) "Enrolling provider" means a provider that enrolls a client into the Breast and Cervical Cancer Program, provides care coordination for the BCCP client and timely data submission to the BCCP.

(13) "FPL" means the federal poverty level guidelines established each year by the Department of Health and Human Services, used to determine eligibility for BCCP and other federally funded programs.

(14) "HIPAA" means the Health Insurance Portability and Accountability Act.

(15) "OFH" means the Office of Family Health, the office within the Oregon Health Authority that administers the Breast and Cervical Cancer Program.

(16) "Service provider" or "provider" means a licensed health care provider operating within a scope of practice, who is authorized by OFH to bill for breast and cervical cancer screening and diagnostic services for eligible BCCP clients.

(17) "Site number" means the administrative number assigned to the family planning service provider by OFH for identification of the geographic location of each BCCP provider.

(18) "Underinsured" means that insurance does not pay for preventive health exams that provide breast or cervical screening or diagnostic services, such as a mammogram or Pap smear, or that the deductible is \$500 or more.

Stat. Auth.: ORS 413.042

Stats. Implemented: 413.042

Hist.: PH 9-2008, f. & cert. ef. 6-16-08; PH 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 333-010-0205

### Definitions

(1) "Agency number" means the administrative number assigned to the service provider by the Office of Family Health (OFH) for identification as a BCCP/WW provider.

(2) "Ancillary provider" means an individual or entity that has met the eligibility requirements for enrollment in the WW Program, has executed a medical services agreement with the OFH, has been assigned a BCCP/WW Program agency number, and performs services beyond the scope of an enrolled provider, such as laboratory, imaging, or surgical services.

(3) "Approved medical services agreement" means the completed WW Program agreement, submitted to and approved by the Office of Family Health.

(4) "Authority" means the Oregon Health Authority.

(5) "BCCP" means the Oregon Breast and Cervical Cancer Program.

(6) "Care coordination" or "case management" means that a client is provided with services, results, follow-up recommendations, and active tracking of progress towards follow-up recommendations.

(7) "CLIA" means the federal Clinical Laboratory Improvement Amendments of 1988 (P.L. 100-578, 42 U.S.C. 201 and 263a)

(8) "Client" means a woman 40 to 64 years of age who is enrolled in and receives screening or services from the WW Program.

(9) "Enrolled provider" means an individual or entity that has met the eligibility requirements for enrollment in the WW Program, has executed a medical services agreement with the OFH, has been assigned a BCCP/WW Program agency number, and provides screening, services, or care coordination for WW Program clients.

(10) "FPL" means the federal poverty level guidelines established each year by the United States Department of Health and Human Services, used to determine eligibility for the WW Program and other federally funded programs.

(11) "HIPAA" means the Health Insurance Portability and Accountability Act.

(12) "OFH" means the Office of Family Health, within the Oregon Health Authority, Public Health Division.

(13) "Site number" means the administrative number assigned to the family planning service provider by OFH for identification of the geographic location of each WW provider.

(14) "Underinsured" means that a client's insurance does not pay for heart disease, stroke and diabetes screenings or services, such as cholesterol, triglyceride, A1C, and glucose testing and consultations.

(15) "WISEWOMAN (WW) Program" or "WW Program" means the program that provides statewide heart disease, stroke and diabetes screening and services to eligible clients, that is administered by the OFH.

(16) "WW Program provider network" means the combination of all contracted WW Program providers, including enrolling and ancillary providers.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.042, 431.250

Hist.: PH 1-2009, f. & cert. ef. 2-13-09; PH 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 333-012-0050

### General Rules Applicable to All Programs

(1) The purpose of these rules is to establish standards under which local public health authorities will provide environmental health services to establishments and facilities licensed under ORS chapters 446, 448 and 624.

(2) Definitions:

(a) "Administrative Costs" means those costs that are over the direct costs of providing delegated program services. These include actual departmental, agency or central government charges such as, but not limited to, accounting, purchasing, human resources, data management, legal council and central mail functions;

(b) "Administrator" means the Assistant Director for the Public Health Division of the Oregon Health Authority or an authorized representative;

(c) "Authority" means the Oregon Health Authority.

(d) "Complete Inspection" means the evaluation of a licensed establishment or facility conducted at the election of the local public health authority for compliance with all applicable regulations;

(e) "Consultation Services Remittance" means the biennial assessment of the Authority for consultation services and maintenance of the Foodborne Illness Prevention, Public Swimming Pool and Tourist Facility Programs;

(f) "Direct Costs" mean those costs for salaries and benefits of field and support staff and their associated costs including, but not limited to, rent, vehicles and travel, equipment, data management, training, phone, office supplies and the pro-rated portion of direct costs relating to supervision;

(g) "Fiscal Audit" means a comprehensive audit using standard audit procedures of the financial records of the local public health authority related to licenses and fees;

(h) "Local Public Health Authority" means county governments or health districts established under ORS 431.414 that are responsible for management of local public health services;

(i) "Recheck Inspection" means an inspection to determine whether specified corrections have been made or alternative procedures maintained for violations identified in previous inspections. In food service establishments, a recheck inspection also means an inspection to determine whether specific corrections have been maintained for critical violations creating a



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significantly increased risk for foodborne illness. Recheck inspections may be conducted either on pre-announced dates or unannounced.

Stat. Auth.: ORS 446.425, 448.100 & 624.510  
Stats. Implemented: ORS 446.425, 448.100 & 624.510  
Hist.: HD 105, f. & ef. 2-5-76; HD 1-1979, f. & ef. 1-18-79; HD 9-1994, f. & cert. ef. 4-1-94; HD 16-1995, f. 12-28-95, cert. ef. 1-1-96; HD 4-1996, f. & cert. ef. 9-17-96; PH 13-2004, f. & cert. ef. 4-9-04; PH 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 333-015-0030

### Definitions

For purposes of OAR chapter 333, division 15, the following definitions shall apply:

(1) "Act" means the Oregon Indoor Clean Air Act as it appears in ORS 433.835 through 433.875 and 433.990(5).

(2) "Authority" means the Oregon Health Authority.

(3) "Cigar bar" means a business that:

(a) Has on-site sales of cigars as defined in ORS 323.500;

(b) Has a humidior on the premises;

(c) Allows the smoking of cigars on the premises but prohibits the smoking of all other tobacco products in any form that includes, but is not limited to, loose tobacco, pipe tobacco, cigarettes as defined in ORS 323.010, and cigarillos as defined by OAR 333-015-0030(3);

(d) Has been issued and operates under a full on-premises sales license issued under ORS 471.175;

(e) Prohibits persons under 21 years of age from entering the premises and posts notice of the prohibition;

(f) Does not offer video lottery games as authorized under ORS 461.217;

(g) Has a maximum seating capacity of 40 persons;

(h) Has a ventilation system that is certified by the assistant to the State Fire Marshal described in ORS 476.060 for the jurisdiction in which the cigar bar is located as adequate to remove the cigar smoke in the cigar bar and vents the smoke from the cigar bar in a manner that prevents the smoke from entering any other establishment; and

(i) Requires all employees to read and sign a form approved and published by the Public Health Division, which explains the dangers of exposure to secondhand smoke.

(4) "Cigarillos" means a smoking device wrapped in tobacco leaf, rather than paper, containing less than three grams of tobacco and measuring less than 100 mm in length.

(5) "Employer" means any entity or individual who engages an individual to perform work or services in an enclosed area under the control of said employer.

(6) "Enclosed area" means all space between a floor and a ceiling that is enclosed on three or more sides by permanent or temporary walls or windows, exclusive of doors or passageways, that extend from the floor to the ceiling.

(7) "Entity in charge of a public place" means any person or organization that has responsibility because of ownership, proprietorship, management, or oversight of a place that is open to the public. An entity in charge of a public place is used to refer to those instances where the person or organization in charge is not an employer.

(8) "Entrance" means any point of entry to premises whereby a person gains access to the interior of enclosed space from the exterior of outdoor space.

(9) "Exit" means any point on a premises whereby a person gains access to the exterior of an enclosed space from the interior of an indoor space.

(10) "Gross revenue" means all receipts from the sale of product(s) less the amount of any rebates, refunds, or credits.

(11) "Humidor" means a storage container designed to allow controlled airflow and equipped with a device that maintains the internal humidity in the range of 70 to 75 percent and an internal temperature in the range of 68 to 70 degrees Fahrenheit.

(12) "Local Public Health Authority" means the county government unless a health district has been formed under ORS 431.414, the county has contracted with a person or agency to act as the public health authority, or the county has relinquished its authority to the state.

(13) "Maximum seating capacity" means the total number of seats available to patrons including bar stools, seating at cocktail tables, seats at buddy-bar tables, banquette seating, and dining seating.

(14) "Noncommercial tobacco products" means unprocessed tobacco plants or tobacco by-products used for ceremonial or spiritual purposes by American Indians.

(15) "PHD" means the Public Health Division of the Oregon Health Authority.

(16) "Place of employment" means every enclosed area under the control of a public or private employer that employees frequent during the course of employment that includes, but is not limited to, work areas, employee lounges, rest rooms, conference rooms, classrooms, cafeterias, hallways, and work vehicles that are not operated exclusively by one employee. Place of employment does not include a private residence unless it is used as a child care facility as defined in ORS 657A.250 or a facility providing adult day care as defined in 410.490.

(17) "Private residence" means a residence or part of a residence that is not used as a place of business where clients or customers use the premises. A residence that is considered a place of employment or public place is subject to ORS 433.835 through 433.875 during its hours of operation. Only that part of a residence used as a place of business will be subject to 433.835 through 433.875.

(18) "Public place" means any enclosed area open to the public.

(19) "Temporary walls" means walls not intended to be permanent including walls constructed of non-permanent material that includes, but is not limited to, plastic, mesh or other screening materials, slats, louvered blinds, fabric, or blankets.

(20) "Rooms designated by the owner or entity in charge of a hotel or motel as rooms in which smoking is permitted" means sleeping rooms or suites in that hotel or motel.

(21) "Smoking instrument" means any cigar, cigarette, pipe, or other smoking equipment.

(22) "Smoke shop" means a business that:

(a) Is primarily engaged in the sale of tobacco with at least 75 percent of gross revenues resulting from tobacco sales in every fiscal year;

(b) Prohibits persons under 18 years of age from entering the premises;

(c) Does not offer video lottery games as authorized under ORS 461.217, social gaming, or betting on the premises;

(d) Does not sell or offer on-premises consumption of alcoholic beverages; and

(e) Is a stand-alone business with no other businesses or residential property attached to the premises.

(23) "Wall" means any architectural partition with a height and length greater than its thickness, used to divide or enclose an area or to support another structure.

Stat. Auth.: ORS 433.855

Stats. Implemented: ORS 433.835

Hist.: HD 10-1983, f. & ef. 7-1-83; OHD 8-2002(Temp), f. & cert. ef. 5-28-02 thru 11-22-02; OHD 12-2002, f. & cert. ef. 8-27-02; PH 18-2004(Temp), f. & cert. ef. 5-7-04 thru 10-27-04; PH 27-2004, f. & cert. ef. 8-19-04; PH 12-2008, f. 8-15-08, cert. ef. 1-1-09; PH 18-2008, f. 11-14-08, cert. ef. 1-1-09; PH 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 333-015-0100

### Authority and Purpose

(1) These rules are adopted pursuant to the authority granted the Oregon Health Authority, Public Health Division in ORS 616.575.

(2) The purpose of the Oregon Menu Labeling Act is to provide consumers with basic nutrition information about prepared food sold at chain restaurants.

Stat. Auth.: ORS 616.575

Stats. Implemented: ORS 616.575

Hist.: PH 17-2009, f. 12-29-09, cert. ef. 1-1-10; PH 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 333-020-0125

### Definitions

As used in these rules:

(1) "Advisory Committee" means the Newborn Hearing Advisory Committee appointed by the Director of the Oregon Health Authority to advise the Authority and the legislature on the implementation and evaluation of universal newborn hearing screening in Oregon and the state newborn hearing screening test registry, tracking and recall system.

(2) "Authority" means the Oregon Health Authority.

(3) "Automated auditory brainstem response" means a specific test method that elicits an objective electro-physiological measurement of the brainstem's response to acoustic stimulation of the ear, obtained with equipment that automatically provides a pass/refer outcome.

(4) "Birthing Center" means any health facility licensed by the State of Oregon for the primary purpose of performing low risk deliveries, as defined in ORS 442.015(14)(f).

(5) "Birthing Facility" means the location of a child's birth, including hospital, birthing center (or) in the case of a home or out-of-facility birth, the child's birthing attendant.

(6) "Child" (or plural "children") means any individual (or individuals) who is (are) less than 36 months of age.

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(7) "Diagnostic Facility" means any facility or person, including hospitals, private audiology practices, licensed health care providers and educational facilities that conduct newborn hearing diagnostic testing.

(8) "Diagnostic Testing" means the performance of physiologically-based testing on children to determine the presence or absence and extent of a hearing loss, using procedures specified by the Authority, for the purposes of establishing a diagnosis and serving as a basis for initiating therapy and/or intervention.

(9) "Director" means the Assistant Director of the Oregon Health Authority, Public Health Division.

(10) "Early intervention services" means services for children with disabilities from birth until three years of age that are designed to meet the developmental needs of children with disabilities and the needs of the family related to enhancing the child's development, and that are selected in collaboration with the parents and caregivers.

(11) "Early intervention facility" is any public or private educational institution providing early intervention services.

(12) "EI" (or, alternately, "EI/ECSE") means the Early Intervention/Early Childhood Special Education Program of the Office of Special Education of the Oregon Department of Education. EI/ECSE provides early intervention services under public supervision by personnel qualified in accordance with criteria established by rules of the State Board of Education and in conformity with an individualized family service plan, as defined in ORS 343.035(6).

(13) "Follow-up Hearing Test" means any hearing screening or diagnostic test procedure that is conducted on a child who is enrolled in the Tracking and Recall System.

(14) "Hospital" means any health care facility licensed by the State of Oregon and meeting the definition of "hospital" in ORS 442.015(14)(a).

(15) "Newborn" means a child less than one month of age.

(16) "Newborn Hearing Screening Test" means a physiologically-based test procedure utilizing either otoacoustic emissions or automated auditory brainstem response technologies, or other technologies as approved by the Authority. If a newborn achieves a 'pass' on the first screening test, screening is completed. If a newborn does not pass, a second screening test is carried out immediately using a different technology or, after an interval of 12 hours, using the same technology.

(17) "Newborn hearing screening test registry" means a listing of newborn children and information related to their newborn hearing screening tests.

(18) "Otoacoustic emissions" means a specific test method that elicits a physiologic response from the cochlea, and may include Transient Evoked Otoacoustic Emissions and Distortion Product Otoacoustic Emissions.

(19) "Pass" means a newborn hearing screening result that indicates that a child's hearing is most likely within normal limits.

(20) "Private educational institution" means any private institution providing early intervention services as defined in ORS 343.035(6) or the equivalent and which have been accepted for the Office of Special Education of the Oregon Department of Education's "Approved Private Schools" list.

(21) "Public educational institution" means any public educational institution providing early intervention services, as defined in ORS 343.035(6).

(22) "Refer" means a newborn hearing screening test result that indicates that a child needs a follow-up hearing test.

(23) "Regional Program" means any one of the Low Incidence Regional Programs for the Deaf and Hard-of-Hearing.

(24) "Screening Facility" means any facility or person, including hospitals, birthing centers, private audiology practices, licensed health care providers and educational facilities that conduct newborn hearing screening tests.

(25) "Tracking and recall system" means a system attached to the newborn hearing test registry designed to identify and contact the parent or guardian of a newborn child listed in the newborn hearing screening test registry for the purposes of assisting in testing and in enrollment of the child in early intervention services in a timely manner.

Stat. Auth.: ORS 433.323

Stat. Implemented: ORS 433.321-433.327

Hist.: OHD 8-2000, f. & cert. ef. 7-20-00, PH 21-2003, f. & cert. ef. 12-16-03; PH 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 333-025-0100

### Definitions

As used in these rules:

(1) "Anonymous research" means scientific or medical genetic research conducted in such a manner that any DNA sample or genetic information used in the research is unidentified. "Anonymous research" does not include research conducted in such a manner that the identity of such an individual, or the identity of the individual's blood relatives, can be determined by use of a code, encryption key or other means of linking the information to a specific individual.

(2) "Biological sample" means any human biological specimen that may be used as a DNA sample.

(3) "Blanket informed consent" means that the individual has consented to the use of that individual's DNA sample or health information for any future research, but has not been provided with a description of or consented to the use of the sample in genetic research or any specific genetic research project.

(4) "Blood relative" means a person who is:

(a) Related by blood to an individual; and

(b) A parent, sibling, son, daughter, grandparent, grandchild, aunt, uncle, first cousin, niece or nephew of the individual.

(5) "Clinical" means relating to or obtained through the actual observation, diagnosis, or treatment of patients and not through research.

(6) "Coded" means identifiable only through the use of a system of encryption that links a DNA sample or genetic information to an individual or the individual's blood relative. A coded DNA sample or genetic information is supplied by a repository to an investigator with a system of encryption.

(7) "Covered entity," as applied to a health care provider, means a health care provider that transmits any health information in electronic form to carry out financial or administrative activities in connection with a transaction covered by ORS 192.518 to 192.524.

(8) "Deidentified" means lacking, or having had removed, the identifiers or system of encryption that would make it possible for a person to link a biological sample or health information to an individual or the individual's blood relative, and neither the investigator nor the repository can reconstruct the identity of the individual from whom the sample or information was obtained. DNA samples and genetic information will be considered deidentified only if they meet the following standards provided in the Federal Privacy Rule:

(a) A person with appropriate knowledge of and experience with generally accepted statistical and scientific principles and methods for rendering information not individually identifiable:

(A) Applying such principles and methods, determines that the risk is very small that the information could be used, alone or in combination with other reasonably available information, by an anticipated recipient to identify an individual who is a subject of the information; and

(B) Documents the methods and results of the analysis that justify such determination; or

(b) The following identifiers of the individual or of relatives, employers, or household members of the individual, are removed:

(A) Names;

(B) All geographic subdivisions smaller than a state, including street address, city, county, precinct, zip code, and their equivalent geocodes, except for the initial three digits of a zip code if, according to the current publicly available data from the Bureau of the Census:

(i) The geographic unit formed by combining all zip codes with the same three initial digits contains more than 20,000 people; and

(ii) The initial three digits of a zip code for all such geographic units containing 20,000 or fewer people is changed to 000.

(C) All elements of dates (except year) for dates directly related to an individual, including birth date, admission date, discharge date, date of death; and all ages over 89 and all elements of dates (including year) indicative of such age, except that such ages and elements may be aggregated into a single category of age 90 or older;

(D) Telephone numbers;

(E) Fax numbers;

(F) Electronic mail addresses;

(G) Social security numbers;

(H) Medical record numbers;

(I) Health plan beneficiary numbers;

(J) Account numbers;

(K) Certificate/license numbers;

(L) Vehicle identifiers and serial numbers, including license plate numbers;

(M) Device identifiers and serial numbers;

(N) Web Universal Resource Locators (URLs);

(O) Internet Protocol (IP) address numbers;

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(P) Biometric identifiers, including finger and voice prints;  
(Q) Full face photographic images and any comparable images; and  
(R) Any other unique identifying number, characteristic, or code; and  
(c) The investigator and repository do not have actual knowledge that the information could be used alone or in combination with other information to identify an individual who is a subject of the information.

(9) "Direct provider" means a health care provider that is not an indirect treatment provider.

(10) "Disclose" means to release, publish, or otherwise make known to a third party a biological sample or health information.

(11) "DNA" means deoxyribonucleic acid.

(12) "DNA sample" means any human biological specimen that is obtained or retained for the purpose of extracting and analyzing the individual's DNA to perform a genetic test. "DNA sample" includes DNA extracted from the specimen.

(13) "Federal Common Rule" means the Federal Policy for the Protection of Human Subjects, as adopted by the following federal agencies and as revised through November 13, 2001: 7 CFR Part 1c, Department of Agriculture; 10 CFR Part 745, Department of Energy; 14 CFR Part 1230, National Aeronautics and Space Administration; 15 CFR Part 27, Department of Commerce; 16 CFR Part 1028, Consumer Product Safety Commission; 21 CFR Parts 50 and 56, Food and Drug Administration; 22 CFR Part 225, International Development Cooperation Agency, Agency for International Development; 24 CFR Part 60, Department of Housing and Urban Development; 28 CFR Part 46, Department of Justice; 32 CFR Part 219, Department of Defense; 34 CFR Part 97, Department of Education; 38 CFR Part 16, Department of Veterans Affairs; 40 CFR Part 26, Environmental Protection Agency; 45 CFR Part 690, National Science Foundation; 45 CFR Part 46, Department of Health and Human Services; 49 CFR Part 11, Department of Transportation. In the case of research not subject to federal regulation under one of these provisions, "Federal Common Rule" means 45 CFR Part 46.

(14) "Federal Privacy Rule" means the federal regulations under the Health Insurance Portability and Accountability Act, 45 CFR parts 160 and 164.

(15) "Genetic characteristic" includes a gene, chromosome or alteration thereof that may be tested to determine the existence or risk of a disease, disorder, trait, propensity or syndrome or to identify an individual or a blood relative. "Genetic characteristic" does not include family history or a genetically transmitted characteristic whose existence or identity is determined other than through a genetic test.

(16) "Genetic information" means information about an individual or the individual's blood relatives obtained from a genetic test.

(17) "Genetic research" means research using human DNA samples, genetic testing or genetic information.

(18) "Genetic test" means a test for determining the presence or absence of genetic characteristics in a human individual or the individual's blood relatives, including tests of nucleic acids such as DNA, RNA, and mitochondrial DNA, chromosomes or proteins in order to diagnose or determine a genetic characteristic.

(19) "Health care facility" means a hospital, long term care facility, an ambulatory surgical center, a freestanding birthing center or an outpatient dialysis center. "Health care facility" does not mean:

(a) An establishment furnishing residential care or treatment not meeting federal intermediate care standards, not following a primarily medical model of treatment, prohibited from admitting persons requiring 24-hour nursing care and licensed or approved under the rules of the Oregon Health Authority, Department of Human Services or the Department of Corrections; or  
(b) An establishment furnishing primarily domiciliary care.

(20) "Health care provider" has the meaning given in ORS 192.519(5).

(21) "Health information" means any information in any form or medium that:

(a) Is created or received by a health care provider, a state health plan, a health insurer, a healthcare clearinghouse, a public health authority, an employer, a life insurer, a school, or a university; and

(b) Relates to:

(A) The past, present or future physical or mental health or condition of an individual;

(B) The provision of health care to an individual; or

(C) The past, present or future payment for the provision of health care to an individual.

(22) "Human biological specimen" means any material derived from human subjects, such as blood, urine, tissues, organs, hair, nail clippings, or

any other cells or fluids, whether collected for research purposes or as residual specimens from diagnostic, therapeutic, or surgical procedures.

(23) "Identifiable" or "Individually identifiable" means capable of being linked to the individual or a blood relative of the individual from whom the biological sample or health information was obtained, including demographic information that identifies the individual, or for which there is a reasonable basis to believe the information can be used to identify an individual.

(24) "Identified" means having an identifier that links, or that could readily allow the recipient to link, a DNA sample or genetic information directly to the individual or a blood relative of the individual from whom the sample or information was obtained.

(25) "Identifier" means data elements that directly link a DNA sample or genetic information to the individual or a blood relative of the individual from whom the sample or information was obtained. Identifiers include, but are not limited to, names, telephone numbers, electronic mail addresses, Social Security numbers, driver license numbers and fingerprints.

(26) "Indirect provider" means a health care provider having a relationship with an individual in which:

(a) The health care provider delivers health care to the individual based on the orders of another health care provider; and

(b) The health care provider typically provides services or products, or reports the diagnosis or results associated with the health care, directly to another health care provider, who provides the services or products or reports to the individual.

(27) "Institutional Review Board" or "IRB" means an Institutional Review Board established in accord with and for the purposes expressed in the Federal Common Rule.

(28) "IRB approval" means the determination of the IRB that the research has been reviewed and may be conducted within the constraints set forth by the IRB and by other institutional and Federal and State requirements.

(29) "Limited data set" means protected health information that, in accordance with the Federal Privacy Rule, excludes the following direct identifiers of the individual or of relatives, employers, or household members of the individual:

(a) Names;

(b) Postal address information, other than town or city, state, and zip code;

(c) Telephone numbers;

(d) Fax numbers;

(e) Electronic mail addresses;

(f) Social security numbers;

(g) Medical record numbers;

(h) Health plan beneficiary numbers;

(i) Account numbers;

(j) Certificate/license numbers;

(k) Vehicle identifiers and serial numbers, including license plate numbers;

(l) Device identifiers and serial numbers;

(m) Web Universal Resource Locators (URLs);

(n) Internet Protocol (IP) address numbers;

(o) Biometric identifiers, including finger and voice prints; and

(p) Full face photographic images and any comparable images.

(30) "Obtain genetic information" means performing or getting the results of a genetic test.

(31) "Opt-out statement" means a written expression of an individual's desire to withhold his or her own biological specimen or clinical individually identifiable health information from use and disclosure for the purpose of anonymous research or coded research.

(32) "Person" includes but is not limited to any health care provider, health care facility, clinical laboratory, blood or sperm bank, insurer, insurance agent, insurance-support organization, as defined in ORS 746.600, government agency, employer, research organization or agent of any of them.

(33) "Personal representative" includes but is not limited to:

(a) A person appointed as a guardian under ORS 125.305, 419B.370, 419C.481 or 419C.555 with authority to make medical and health care decisions;

(b) A person appointed as a health care representative under ORS 127.505 to 127.660 or a representative under ORS 127.700 to 127.737 to make health care decisions or mental health treatment decisions; and

(c) A person appointed as a personal representative under ORS Chapter 113.



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(34) "Recontact" means disclosure of genetic research findings to a research subject or the subject's physician through use of personal identifiers.

(35) "Research" means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalized knowledge.

(36) "Retain a DNA sample" means the act of storing the DNA sample.

(37) "Retain genetic information" means making a record of the genetic information.

(38) "Specific informed consent for genetic research" means the individual or the individual's representative has consented to the use of that individual's DNA sample or genetic information for genetic research or for a specified genetic research project.

(39) "Unidentified" means deidentified or not identifiable.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 192.531

Stats. Implemented: ORS 192.531

Hist.: OHD 14-2002, f. & cert. ef. 9-27-02; PH 16-2003(Temp), f. & cert. ef. 10-27-03 thru 4-16-04; PH 9-2004, f. & cert. ef. 3-23-04; PH 21-2005, f. 12-30-05, cert. ef. 1-1-06; PH 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 333-027-0005

### Definitions

The following definitions shall apply in OAR 333-027-0000 through 333-027-0170:

(1) "Admission" means acceptance of a patient for the provision of services by an agency.

(2) "Authority" means the Oregon Health Authority.

(3) "Branch Office" means a location or site from which a home health agency provides services to patients within a portion of the total geographic area served by the parent agency; generally, not to exceed one hour's travel time from the parent agency.

(4) "Clinical Note" means a dated, written, and signed notation by a member of the home health agency team of a contact with the patient that describes care rendered, signs and symptoms, treatment and/or drugs given, patient's reaction, and any changes in patient's physical or mental condition.

(5) "Clinical Record" means all information and documentation pertaining to the care of a patient.

(6) "Critical/fluctuating condition" means a situation where the patient's clinical and/or behavioral state is of a serious nature, expected to rapidly change, and in need of continuous reassessment and evaluation.

(7) "Governing Body" means the designated person(s) having ultimate responsibility for the home health agency.

(8) "Home Health Agency" ("Agency") means a public or private entity providing coordinated home health services on a home visiting basis.

(9) "Home Health Aide" means a person certified as such by the Oregon State Board of Nursing who assists licensed nursing personnel in providing home health services.

(10) "Home Health Service" means items and services furnished to an individual by a home health agency, or by others under arrangement with such agency, on a visiting basis in a place of temporary or permanent residence used as the individual's home for the purpose of maintaining that individual at home.

(11) "Licensed Physical Therapist Assistant" means a person licensed as such by the Oregon Physical Therapist Licensing Board.

(12) "Licensed Practical Nurse" means a person licensed as such by the Oregon State Board of Nursing.

(13) "Nurse Practitioner" means a registered nurse who has been certified by the Oregon State Board of Nursing as qualified to practice in an expanded specialty role within the practice of nursing.

(14) "Occupational Therapist" means a person who is licensed as such by the Oregon Occupational Therapy Licensing Board.

(15) "Occupational Therapy Assistant" means a person licensed as such by the Oregon Occupational Therapy Licensing Board.

(16) "Parent Home Health Agency" ("Parent Agency") means an agency that has branches and/or subunits.

(17) "Physical Therapist" means a person licensed as such by the Oregon Physical Therapist Licensing Board.

(18) "Physician" means a person who holds a degree of Doctor of Medicine or Doctor of Osteopathy and who is authorized to practice medicine or surgery by the state in which such function or action is performed.

(19) "Podiatrist" means a podiatric physician and surgeon whose practice is limited to treating the ailments of the human foot and is authorized to practice by the state in which such function or action is performed.

(20) "Primary Agency" means the agency that admits the patient for the provision of curative, rehabilitative, and/or preventive services in the patient's home by home health professionals.

(21) "Professional Policy-Making Committee" (Committee) means a group of individuals who are appointed by the governing body of an agency, and who has authority and responsibility for the development and monitoring of all professional policies pertaining to the home health agency.

(22) "Progress Note" means a written summary of a patient's response to care provided during a specific period of time.

(23) "Registered Nurse" means a person licensed as such by the Oregon State Board of Nursing.

(24) "Skilled Nursing" means the patient care services pertaining to the curative, rehabilitative, and/or preventive aspects of nursing performed by, or under the supervision of, a registered nurse pursuant to the plan of treatment.

(25) "Social Worker" means a person who has a master's degree from a school of social work accredited by the Council of Social Work Education and has one year of social work experience in a health care setting.

(26) "Social Work Assistant" means a person who has a baccalaureate degree in social work, psychology, or another field related to social work and has at least one year of social work experience in a health care setting.

(27) "Speech Pathologist" means a person who is licensed as such by the Oregon Board of Examiners for Speech Pathology and Audiology and has a Certificate of Clinical Competence in speech pathology or audiology from the American Speech and Hearing Association.

(28) "Stable/predictable condition" means a situation where the patient's clinical and/or behavioral state is known, not characterized by rapid changes, and does not require continuous reassessment and evaluation.

(29) "Subunit" means an agency that provides services for a parent agency in a geographic area different from that of the parent agency and at a distance generally exceeding one hour's travel time from the parent agency.

(30) "Therapeutic services" means services provided for curative, rehabilitative, and/or preventive purposes.

Stat. Auth.: ORS 443.085

Stats. Implemented: ORS 443.005 & 443.085

Hist.: HD 151, f. & ef. 12-30-77; HD 1-1982, f. & ef. 2-4-82; HD 19-1987, f. 11-10-87, ef. 12-1-87; HD 22-1988, f. & cert. ef. 9-16-88; HD 20-1993, f. & cert. ef. 10-28-93; OHD 13-1998, f. & cert. ef. 11-6-98; OHD 9-2002, f. & cert. ef. 7-2-02; PH 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 333-030-0015

### Definitions

As used in these rules unless otherwise required by context:

(1) "Administrator" means the Public Health Director of the Oregon Health Authority or designee.

(2) "Activity Leader or Supervisor" means the staff member providing direct onsite supervision for a camp program or activity.

(3) "Ancillary Activity" means an individual or group using the camp facilities in a manner unrelated to the camp's mission or programs. An example might include a wedding party or a business group using a Boy Scout Camp for a reception or meeting. Such activities may require the camp to maintain a food service or traveler's accommodation license in addition to the organization camp license.

(4) "Approved" means approved in writing by the Oregon Health Authority, Public Health Division.

(5) "Aquatic Director" means a person over 18 years of age who is employed by or within the organizational camp and is a currently certified Red Cross Water Safety Instructor, Boy Scouts of America National Aquatic Instructor or having equivalent certification as determined by the Oregon Health Authority, Public Health Division.

(6) "Camp Director" means the person on-site who has the overall responsibility for all camp activities and functions.

(7) "Camp Staff" include paid and volunteer leaders working directly for the camp operator and may include contract or rental (user group) individuals.

(8) "Contract groups" or "Rental groups" are organized groups that are not participating in ancillary activities or the normal camp activities, but that use the camp facilities under contracted arrangement with the camp

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operator whether or not a fee is paid. These groups may or may not use all of the camp's facilities or staff.

(9) "Day Camp" means an organizational camp facility that campers attend for an established period of time, leaving at the end of the camping day. It provides creative and recreational opportunities in the out-of-doors utilizing trained leadership and the resources of the natural surroundings to contribute to the camper's mental, physical and spiritual growth. It is oriented to providing such programming for children between the ages of 5-13 when school is not in session.

(10) "Delegated County" means a county delegated to administer the Organizational Camp Program under ORS 446.425.

(11) "Division" means the Public Health Division of the Oregon Health Authority or delegated county.

(12) "Family Camp" means sessions operated or staffed by the camp or user group for parents and children as family groups. Parents and guardians are on-site and have frequent contact with and make decisions on behalf of their children.

(13) "Health History" means an up-to-date record of the camper's or staff's past and present health status. It should be as accurate and complete as possible and list immunizations, past medical treatment, allergies, medications currently being taken, date of the last tetanus shot, health problems and other health issues of concern.

(14) "Health Services" means the services provided to campers and staff including first aid, medication management, provision of prescribed medical treatment and health practices.

(15) "Lifeguard" means a currently certified Red Cross Lifeguard (with waterfront module where applicable), YMCA Lifeguard, Boy Scout Lifeguard, National Pool and Waterpark Lifeguard, or a person having equivalent certification as determined by the Oregon Health Authority, Public Health Division.

(16) "On-Site" means within the boundaries of the camp facility.

(17) "Organizational Camp" means any facility operating for recreational use by groups or organizations. Organizational Camps include, but are not limited to, youth camps, scout camps, summer camps, day camps, nature camps, science camps, survival camps, athletic camps, camps operated and maintained under the guidance, supervision or auspices of religious, public and private educational systems and community service organizations or other persons or organizations whether for-profit or non-profit. Organizational camps are distinguished from recreation parks, or hotels and motels by the existence of organized group activities comprising the majority of activities by all participants rather than individual or family recreation. Camps operating less than one week per year are excluded from these rules unless they have permanent structures or operate as a "day camp."

(18) "Outdoor Youth Program" means a program that provides, in an outdoor living setting, treatment services to youth who are enrolled in the program because they have behavioral problems, mental health problems or problems with abuse of alcohol or drugs. "Outdoor Youth Programs" must meet the requirements of OAR 413-215-0901 through 413-215-1031. Licensing with the Department of Human Services is required.

(19) "Permanent Sleeping Unit" means cabins, tents, huts and other shelters that are used for sleeping and remain stationary for more than six nights in an organizational camp.

(20) "Person" means individuals, corporations, associations, firms, partnerships and joint stock companies as well as public entities such as schools, colleges, public or private educational corporations.

(21) "Primitive Camping" means camp activities that take place in a wilderness setting far enough away from the organizational camp to require eating meals or sleeping away from the camp facilities.

(22) "Public Spa Pool" means any public swimming pool or wading pool designed primarily to direct water or air-enriched water under pressure onto the bather's body with the intent of producing a relaxing or therapeutic effect.

(23) "Public Swimming Pool" means an artificial structure, and its appurtenances, that contains water more than two feet deep that is used, or intended to be used, for swimming or recreational bathing and is for the use of any segment of the public. A "public swimming pool" includes, but is not limited to, swimming pools owned or operated by organizational camps.

(24) "Public Wading Pool" means an artificial structure, and its appurtenances, that contains water less than two feet deep that is expressly designated or is used with the knowledge and consent of the owner or operator for wading or recreational bathing and is for the use of any segment of the public, whether limited to patrons of a companion facility or not.

(25) "Recreation Park" means any area designated by the person establishing, operating, managing or maintaining the same for picnicking or

overnight camping by the general public or any segment of the public. Recreation park includes, but is not limited to, areas open to use free of charge or through payment of a tax or fee or by virtue of rental, lease, license, membership, association or common ownership and further includes, but is not limited to, those areas divided into two or more lots, parcels, units or other interests for purposes of such use.

(26) "These Rules" means OAR 333-030-0005 through 333-030-0130.

(27) "Trip Camping" means camp activities that involve travel. Such travel may include eating meals or sleeping away from the organizational camp.

(28) "Unregulated Small Drinking Water System" means a facility licensed under the authority of these rules that is not regulated under OAR 333-061, (Public Water Systems). These systems must comply with the requirements of OAR 333-030-0080.

(29) "Waterfront Program" means those activities occurring in or on bodies of water other than public swimming and spa pools.

(30) "Wilderness Camping" means camp activities that take place in a wilderness setting far enough away from the organizational camp to require eating meals or sleeping away from the camp facilities.

Stat. Auth.: ORS 446.330

Stats. Implemented: ORS 445.310 - 446.350

Hist.: HD 25-1981, f. & ef. 11-25-81; HD 7-1996, f. & cert. ef. 12-10-96; PH 1-2005, f. & cert. ef. 1-14-05; PH 9-2007, f. & cert. ef. 7-13-07; PH 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

### 333-048-0010

#### Definitions

As used in OAR 333-048-0010 through 333-048-0030:

(1) "Division" means the Public Health Division of the Oregon Health Authority.

(2) "Local Public Health Authority" means the district or county Board of Health, Public Health Officer, Public Health Administrator or health department having jurisdiction within the area.

(3) "Sponsor" means any medical practice, clinic, hospital, local health department, health system, long-term-care facility, home-care agency, occupational health program, pharmacy, or other entity that sponsors the direct provision of vaccination services in Oregon.

(4) "High Risk" means broad categories of people defined by the Advisory Committee on Immunization Practices or the State Public Health Officer as being at increased risk of severe disease or complications from a vaccine-preventable disease for which the State Health Officer has declared a vaccine shortage pursuant to OAR 333-048-0020. Risk categories may be further broken down into prioritized sub-categories.

(5) "Low Risk" means broad categories of people defined by the Advisory Committee on Immunization Practices or the State Public Health Officer as being unlikely to experience severe disease or complications from a vaccine-preventable disease for which the State Health Officer has declared a vaccine shortage pursuant to OAR 333-048-0020. Risk categories may be further broken down into prioritized sub-categories.

(6) "Provider" means any health care practitioner, or other person, who can administer vaccine directly to a patient.

(7) "Vaccine" means any vaccine, any immune product or chemo prophylactic medication.

(8) "Plan" means an Oregon Vaccine Education and Prioritization Plan.

(9) "CD Summary" means the Oregon CD Summary, an Oregon Health Authority publication sent to providers statewide.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 433.040

Stats. Implemented: ORS 433.040

Hist.: OH 27-2001, f. & cert. ef. 12-4-01; PH 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

### 333-052-0040

#### Definitions

(1) "Adequate Participant Access" means there are authorized farmers sufficient for participant need.

(2) "Agreement," means a written legal document binding the market or farmer and the Authority to designated terms and conditions.

(3) "Authority" means the Oregon Health Authority.

(4) "Authorized" or "authorization," means an eligible farmer or farmers' market has met the selection criteria and signed an agreement with the Authority allowing participation in FDNP, and is not currently disqualified.

(5) "Check," means a negotiable financial instrument by which FDNP benefits are provided to participants.

(6) "CMP," means a civil money penalty.

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(7) "Disqualification," means the act of terminating the agreement of an authorized farmers' market, or farmer from the FDNP for noncompliance with program requirements.

(8) "Eligible foods," means fresh, nutritious, unprepared, locally grown fruits and vegetables and culinary herbs for human consumption. Eligible foods may not be processed or prepared beyond their natural state except for usual harvesting and cleaning processes. For example, checks cannot be used for honey, maple syrup, cider, nuts, seeds, plants, eggs, meat, cheese and seafood.

(9) "Farmer," means an individual who owns, leases, rents or share-crops land to grow, cultivate or harvest crops on that land.

(10) "Farm Direct Nutrition Program" or "FDNP," means the Farmers' Market Nutrition Program administered by the United States Department of Agriculture, Food and Nutrition Services and implemented by the State of Oregon.

(11) "Farmers' Market," means a group of five or more farmers who assemble over the course of a year at a defined location for the purpose of selling their eligible produce directly to consumers.

(12) "Farm Stand," means a location at which a farmer sells produce directly to consumers.

(13) "FDNP Participant" or "participant" means a senior participant or a WIC participant receiving FDNP benefits.

(14) "Fine," means a monetary penalty imposed against the farmer for non-compliance of FDNP rules.

(15) "Locally grown," means grown in the state of Oregon or in the following counties of a contiguous state: California — Del Norte, Modoc, Siskiyou; Idaho — Adams, Canyon, Idaho, Owyhee, Payette, Washington; Nevada — Humboldt, Washoe; Washington — Asotin, Benton, Clark, Columbia, Cowlitz, Garfield, Klickitat, Pacific, Skamania, Wahkiakum, Walla Walla.

(16) "Local WIC agency," means the agency or clinic where a participant receives WIC services and FDNP checks.

(17) "Market," means a farmers' market that has a signed agreement with the Authority to participate in the FDNP.

(18) "Market Coordinator," means an individual designated by the farmers' market manager (or market board members) responsible for overseeing the market's participation in the FDNP.

(19) "Market Season" means the time period in which FDNP checks may be transacted as determined by the Authority.

(20) "Senior Participant" means an individual who is over 60 years of age, meets all the eligibility components of the program and who receives FDNP checks.

(21) "Trafficking," means the buying or exchanging of FDNP checks for cash, drugs, firearms or alcohol.

(22) "USDA" means the United States Department of Agriculture.

(23) "Validating," means stamping the FDNP check in the designated box with the farmer identification number using the stamp provided by the Authority.

(24) "Violation," means an activity that is prohibited by OAR 333-052-0030 through 333-052-0090 and classified in 333-052-0080 through 333-052-0130.

(25) "WIC" or "WIC program" means the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) authorized by Section 17 of the Federal Child Nutrition Act of 1966, as amended, 42 U.S.C. §1786.

(26) "WIC participant" means any pregnant, breastfeeding, or post-partum woman, infant, or child who receives WIC benefits.

Stat. Auth.: ORS 409.600

Stats. Implemented: ORS 409.600

Hist.: PH 10-2006, f. & cert. ef. 6-5-06; PH 7-2008, f. & cert. ef. 4-3-08; PH 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 333-053-0040

### Definitions

(1) "Adjunctively income eligible" means an applicant or participant is eligible for WIC if they are:

(a) Certified and fully eligible to receive benefits for the:

(A) Food Distribution Program on Indian Reservations (FDPIR);

(B) Food Stamp Program;

(C) Medicaid/Oregon Health Plan (OHP); or

(D) Temporary Assistance for Needy Families (TANF).

(b) Determined presumptively eligible for either TANF or Medicaid/OHP (pending completion of that program's process); or

(c) A member of a household with:

(A) A food stamp recipient;

(B) A pregnant woman or infant currently on Medicaid/OHP; or

(C) A TANF recipient.

(2) "Applicant" means any pregnant woman, breastfeeding woman, post-partum non-lactating woman, infant or child (through the end of the month he or she turns five years of age) or their guardian or proxy who applies to receive WIC benefits.

(3) "Authority" means the Oregon Health Authority.

(4) "Authorized food" means any supplemental foods listed on the WIC Authorized Food List, the food instrument or the CVV.

(5) "Authorized shopper" means:

(a) The participant or any person designated by the participant who has signed the WIC ID card on the second line (second authorized signer);

(b) A documented proxy;

(c) A participant's caretaker or the caretaker's designee; or

(d) Any Authority representative posing as a participant or participant designee as authorized by the Authority.

(6) "Cash Value Voucher" or "CVV" means a fixed-dollar amount check, voucher, electronic benefit transfer (EBT) card or other document which is used by a participant to obtain WIC authorized fruits and vegetables.

(7) "Certification" means the implementation of criteria and procedures to assess and document each applicant's eligibility for participation in the WIC program.

(8) "CFR" means Code of Federal Regulations.

(9) "Claim" means a demand for repayment for intentional misuse of WIC or FDNP benefits.

(10) "CSFP" means the Commodity Supplemental Food Program.

(11) "Disqualification" means termination of participation in the WIC program and cessation of WIC benefits due to an intentional participant violation for a specific amount of time. Participants may reapply for benefits at any time after the sanction period is over.

(12) "Dual participation" means simultaneous participation in more than one WIC program (more than one state or more than one local agency within Oregon) or participation in the WIC program and in the CSFP at the same time.

(13) "Farm Direct Nutrition Program" or "FDNP" means the Farmers' Market Nutrition Program administered by the United States Department of Agriculture (USDA), Food and Nutrition Services and implemented by the state of Oregon, Oregon Health Authority.

(14) "Food instrument" means a negotiable financial instrument by which WIC benefits are provided to participants. Food instruments are also referred to as "checks" or "vouchers."

(15) "Hearing request" or "request for a hearing" means any clear expression by an individual, or the individual's parent, caretaker or representative, that they want a higher authority to review the adverse action that was taken against them by the local or state WIC program.

(16) "Local agency" means:

(a) A public or private non-profit health or human services agency that provides health services, either directly or through contract with the Authority to provide services, in accordance with 7 CFR § 246.5;

(b) An Indian Health Service unit in contract with the Authority to provide services;

(c) An Indian tribe, band or group recognized by the Department of the Interior that operates a health clinic or is provided health services by an Indian Health Service unit; or

(d) An intertribal council or group that is an authorized representative of Indian tribes, bands or groups recognized by the Department of the Interior that operates a health clinic or is provided health services by an Indian Health Service unit.

(17) "Offense" means any unintentional action of a participant, parent or caretaker of an infant or child participant, or a proxy that violates federal or state statutes, regulations, policies or procedures governing the WIC program.

(18) "Participant" means any pregnant woman, breastfeeding woman, post-partum non-lactating woman, infant or child (through the end of the month he or she turns five years of age) who has been certified to receive benefits from the WIC program.

(19) "Participant's caretaker" means a person who has significant responsibility for providing food to the infant or child. The caretaker is usually part of the family unit, for example the parent or legal guardian of the infant or child.

(20) "Proxy" means a third person (besides the participant or authorized individual whose signature appears on the WIC ID card) temporarily authorized to pick up or shop with WIC food instruments or cash value vouchers on behalf of a participant.



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(21) "Restitution" means reimbursement to the Authority of the cash value of the benefits that were obtained or disposed of improperly as the result of an intentional participant violation.

(22) "Sanction" means a penalty imposed by the state WIC program due to an intentional misuse of program funds or other intentional violation including, but not limited to, misrepresentation of information provided to determine program eligibility.

(23) "Second authorized signer" means the individual who signed the WIC ID card on the second line.

(24) "Service area" means a local program or subdivision of a local program that encompasses a specific geographic area.

(25) "Termination from program" means a participant's file is closed and benefits cease for any reason including, but not limited to, lack of eligibility, no longer breastfeeding, or transferring out of state.

(26) "Trafficking" means the buying or exchanging of WIC food instruments, cash value vouchers or FDNP checks for alcohol, cash, credit, tobacco or any other non-food item.

(27) "Violation" means an intentional action of a participant, parent or caretaker of an infant or child participant, or a proxy that violates federal or state statutes, regulations, policies or procedures governing the WIC program.

(28) "WIC program" or "WIC" means the Special Supplemental Nutrition Program for Women, Infants and Children authorized by Section 17 of the Federal Child Nutrition Act of 1966, as amended, 42 U.S.C. § 1786.

Stat. Auth.: ORS 409.600

Stats. Implemented: ORS 409.600

Hist.: PH 17-2008, f. & cert. ef. 11-5-08; PH 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

### 333-054-0010

#### Definitions

(1) "A50" means an authorized vendor or applicant that derives, or is expected to derive, more than 50 percent of its total annual food sales from WIC food sales. The total food sales do not include alcohol, tobacco, lottery or any other non-food item.

(2) "Abbreviated administrative review" means a hearing that is held at the request of a vendor that has been issued an application denial, civil money penalty, fine, or sanction by the Authority. Abbreviated Reviews are facilitated by the Authority staff other than the staff person that imposed the sanction. A facilitated discussion is held in order to resolve the imposition of a sanction.

(3) "Adequate participant access" means there are authorized vendors sufficient for participant need.

(4) "Annual Food Sales" means sales of all Food Stamp/Supplemental Nutrition Assistance Program (FSP/SNAP) eligible foods intended for home preparation and consumption including meat, fish, and poultry; bread and cereal products; dairy products; fruits and vegetables. Food items such as condiments and spices, coffee, tea, cocoa, and carbonated and non-carbonated drinks may be included in food sales when offered for sale along with foods in the categories identified above. Food sales do not include sales of any items that cannot be purchased with food stamp benefits, such as hot foods or food that will be eaten in the store.

(5) "Applicant" means any person, or person with an interest in the business, making a written request for authorization to participate in the WIC Program, including vendors and farmers that reapply for authorization.

(6) "Authority" means the Oregon Health Authority.

(7) "Authorization" means the process by which the Authority assesses, selects, and enters into agreements with stores and farmers that apply or subsequently reapply to be vendors or authorized farmers allowed to transact CVVs.

(8) "Authorized food" means any supplemental foods listed on the WIC Authorized Food List, food instrument or CVV.

(9) "Authorized shopper" means the participant or any person designated by a participant who has been documented as such at the local agency to act on the participant's behalf and, in the case of an infant or child, the caretaker or the caretaker's designee. This includes any representative posing as a participant or participant designee as authorized by the Authority.

(10) "CFR" means Code of Federal Regulations.

(11) "Change of Ownership" means a change in the ownership or control of ten percent or more of any class of stock in a corporation; a change in, addition of or removal of a partner of any partnership; a change in ownership or control of ten percent or more of the total investment commitment in partnership; or a change in the owner of a sole proprietorship.

(12) "CMP" means civil money penalty.

(13) "Cash Value Voucher" or "CVV" means a fixed-dollar check, voucher, electronic benefit transfer (EBT) card or other document which is used by a participant to obtain WIC authorized fruits and vegetables.

(14) "Compliance buy" means a single covert, on-site visit in which an Authority authorized representative poses as an authorized shopper and attempts to transact, or transacts, one or more food instruments or CVVs.

(15) "Disqualification" means cancelling the WIC program participation of a vendor or farmer, as a punitive action.

(16) "Farmer" means an individual who owns, leases, rents or share-crops land to grow, cultivate or harvest crops on that land.

(17) "Farmer agreement" means a standard written legal contract between the farmer and the Authority that sets forth responsibilities of the parties.

(18) "FNS" means the Food and Nutrition Service of the U. S. Department of Agriculture.

(19) "FSP" means the Food Stamp Program, of the Food and Nutrition Service of the U.S. Department of Agriculture.

(20) "Food instrument" means a WIC Program voucher, check, coupon or other WIC approved document, which is used to obtain authorized foods.

(21) "Full administrative review" means a formal hearing that is held before an assigned administrative law judge from the state Office of Administrative Hearings. Attorneys may be present to represent both parties. Formal procedures are followed as to the presentation of evidence, examination of documentation and cross-examination of witnesses in accordance with 7 CFR § 246.18 and ORS chapter 183.

(22) "Incentive item" means a food or non-food item offered free of charge to WIC shoppers to motivate them to shop at a particular store. Examples of incentive items include, but are not limited to, cash prizes, lottery tickets, transportation, sales/specials such as a buy-one-get one free or free additional ounces offer, and other free food or merchandise.

(23) "Inventory audit" means an examination of food invoices or other proofs of vendor purchases to determine whether a vendor has purchased sufficient quantities of authorized foods to support the vendor's claim for reimbursement for such foods from the Authority during a specific period of time.

(24) "Investigation" means a period of review, beginning with the start of an inventory audit or the first compliance buy and closing when the audit has been completed or a sufficient number of compliance buys have been completed to provide evidence of compliance or non-compliance, not to exceed 24 months, to determine a vendor or farmer's compliance with program rules and procedures.

(25) "Local agency" means:

(a) A public or private non profit health or human services agency that provides health services, either directly or through contract, in accordance with 7 CFR § 246.5;

(b) An Indian Health Service unit;

(c) An Indian tribe, band or group recognized by the Department of the Interior which operates a health clinic or is provided health services by an Indian Health Service unit; or

(d) An intertribal council or group that is an authorized representative of Indian tribes, bands or groups recognized by the Department of the Interior, which operates a health clinic or is provided health services by an Indian Health Service unit.

(26) "Mid-Contract Assessment" means a procedure used by the Authority to evaluate whether WIC authorized vendors/farmers continue to meet selection criteria throughout their agreement term.

(27) "Overcharge" means intentionally or unintentionally charging the Authority more for authorized foods than the actual shelf price or the price charged to other shoppers.

(28) "Participant" means any pregnant woman, breastfeeding woman, post-partum woman, infant or child who receives authorized foods or food instruments or CVVs under the WIC Program, and the breastfed infant of any participating breastfeeding woman.

(29) "Pattern" means three or more of the same rule violation that occurs within a single investigation.

(30) "Peer group" means a group of vendors considered to be in the same category by the Authority based on factors such as store type, store size and geography.

(31) "Person" means a human being, a public or private corporation, an unincorporated association, a partnership, a Limited Liability Corporation, a sole proprietor, a government or a governmental instrumentality.

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(32) "Person with an interest in the business" means an officer, director, partner, or manager of the business or a shareholder with 10 percent interest or more in the business.

(33) "Price adjustment" means an adjustment made by the Authority, in accordance with the vendor/farmer agreement, to the purchase price on a food instrument or CVV, after it has been submitted by a vendor/farmer for redemption to ensure that the payment to the vendor/farmer for the food instrument or CVV complies with the Authority price limitations.

(34) "Prominently displayed" means immediately noticeable by persons entering the vendor location.

(35) "Routine monitoring" means an overt, on-site visit in which the Authority authorized representatives or federal officials identify themselves to vendor or farm personnel.

(36) "Shelf Price Survey" or "SPS" means a tool used by the Authority to collect a sample of a WIC authorized vendor's current shelf prices.

(37) "Stand Alone Pharmacy" means a pharmacy that is operated independently from or is not located in a WIC authorized grocery store. These stores are exempt from the minimum stock requirements set forth for grocery vendors.

(38) "Store Run Pharmacy" means a pharmacy that is located within a WIC authorized grocery store and is affiliated with that business entity.

(39) "Termination" means the cancellation of a vendor or farmer agreement which may or may not be linked to a disqualification.

(40) "Trafficking" means buying or selling food instruments or CVVs for cash.

(41) "U.S.C." means United States Code.

(42) "Unauthorized food item" means foods and/or brands, and/or size not allowed on the WIC Authorized Food List. It also means foods not specified on a food instrument or CVV as eligible for purchase for that participant, with WIC benefits.

(43) "Vendor" means the current owner(s) or any person with an interest in the business, of any retail store location that is currently authorized by the Authority to participate in the WIC Program. Vendor may also refer to the authorized store location.

(44) "Vendor agreement" means a standard written legal contract between the vendor and the Authority that sets forth responsibilities of the parties.

(45) "Vendor Price List" means a comprehensive list of current authorized foods and minimum stock requirements, with current shelf prices completed by the vendor.

(46) "Violation" means an activity that is prohibited by OAR 333-054-0000 through 333-054-0070 and is classified in OAR 333-054-0050 and OAR 333-054-0055.

(47) "WIC Authorized Food List" means the supplemental foods approved by the State of Oregon.

(48) "WIC Program" means the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) authorized by Section 17 of the Federal Child Nutrition Act of 1966, as amended, 42 U.S.C. §1786.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 409.600

Stats. Implemented: ORS 409.600

Hist.: HD 7-1993, f. & cert. ef. 6-11-93; HD 31-1994, f. & cert. ef. 12-22-94; OHD 17-2001, f. 8-02-01, cert. ef. 8-15-01; OHD 22-2002, f. & cert. ef. 12-24-02; PH 19-2003(Temp), f. & cert. ef. 11-14-03 thru 5-12-04; PH 22-2003, f. 12-31-03, cert. ef. 1-5-04; PH 7-2005(Temp), f. & cert. ef. 5-2-05 thru 10-28-05; PH 16-2005, f. & cert. ef. 10-28-05; PH 30-2006, f. & cert. ef. 12-27-06; PH 5-2009, f. & cert. ef. 6-1-09; PH 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 333-061-0020

### Definitions

As used in these rules, unless the context indicates otherwise:

(1) "Act" means the Oregon Drinking Water Quality Act of 1981 (ORS 448.115-448.990 as amended).

(2) "Action Level" means the concentration of lead or copper in water which determines, in some cases, the treatment requirements that a water system is required to complete.

(3) "Administrator" means the Director of the Oregon Health Authority or his/her designee.

(4) "Analytical Run" means the process during which a set of analytical drinking water samples along with an appropriate number of blanks, matrix spikes, or quality control samples are analyzed according to National Environmental Laboratory Accreditation Conference (NELAC) requirements to determine the presence, absence, or concentration of a specific target analyte or analytes. An analytical run is complete when the instrument performing the sample analysis generates a report of the sample analysis.

(5) "Approval" or "Approved" means approved in writing.

(6) "Approved Air Gap (AG)" means a physical separation between the free-flowing discharge end of a potable water supply pipeline and an open or non-pressurized receiving vessel. An "Approved Air Gap" shall be at least twice the diameter of the supply pipe measured vertically above the overflow rim of the vessel and in no case less than 1 inch (2.54 cm), and in accord with Oregon Plumbing Specialty Code.

(7) "Approved Backflow Prevention Assembly" means a Reduced Pressure Principle Backflow Prevention Assembly, Reduced Pressure Principle-Detector Backflow Prevention Assembly, Double Check Valve Backflow Prevention Assembly, Double Check-Detector Backflow Prevention Assembly, Pressure Vacuum Breaker Backsiphonage Prevention Assembly, or Spill-Resistant Pressure Vacuum Breaker Backsiphonage Prevention Assembly, of a make, model, orientation, and size approved by the Authority. Assemblies listed in the currently approved backflow prevention assemblies list developed by the University of Southern California, Foundation for Cross-Connection Control and Hydraulic Research, or other testing laboratories using equivalent testing methods, are considered approved by the Authority.

(8) "Aquifer" means a water saturated and permeable geological formation, group of formations, or part of a formation that is capable of transmitting water in sufficient quantity to supply wells or springs.

(9) "Aquifer Parameter" means a characteristic of an aquifer, such as thickness, porosity or hydraulic conductivity.

(10) "Aquifer Test" means pumping a well in a manner that will provide information regarding the hydraulic characteristics of the aquifer.

(11) "Area of public health concern" means an area of the state with a confirmed presence of groundwater contaminants likely to cause adverse human health effects.

(12) "Atmospheric Vacuum Breaker (AVB)" means a non-testable device consisting of an air inlet valve or float check, a check seat and an air inlet port(s). This device is designed to protect against a non-health hazard or a health hazard under a backsiphonage condition only. Product and material approval is under the Oregon Plumbing Specialty Code.

(13) "Authority" means the Oregon Health Authority.

(14) "Auxiliary Water Supply" means any supply of water used to augment the supply obtained from the public water system, which serves the premise in question.

(15) "Average Groundwater Velocity" means the average velocity at which groundwater moves through the aquifer as a function of hydraulic gradient, hydraulic conductivity and porosity.

(16) "AWWA" means the American Water Works Association.

(17) "Backflow" means the flow of water or other liquids, mixtures, or substances into the distributing pipes of a potable supply of water from any sources other than its intended source, and is caused by backsiphonage or backpressure.

(18) "Backflow Preventer" means a device, assembly or method to prevent backflow into the potable water system.

(19) "Backflow Prevention Assembly" means a backflow prevention assembly such as a Pressure Vacuum Breaker Backsiphonage Prevention Assembly, Spill-Resistant Pressure Vacuum Breaker Backsiphonage Prevention Assembly, Double Check Valve Backflow Prevention Assembly, Double Check-Detector Backflow Prevention Assembly, Reduced Pressure Principle Backflow Prevention Assembly, or Reduced Pressure Principle-Detector Backflow Prevention Assembly and the attached shutoff valves on the inlet and outlet ends of the assembly, assembled as a complete unit.

(20) "Backpressure" means an elevation of pressure downstream of the distribution system that would cause, or tend to cause, water to flow opposite of its intended direction.

(21) "Backsiphonage" means a drop in distribution system pressure below atmospheric pressure (partial vacuum), that would cause, or tend to cause, water to flow opposite of its intended direction.

(22) "Bag filter" means a pressure-driven separation device that removes particulate matter larger than one micrometer using an engineered porous filtration media. It is typically constructed of a non-rigid, fabric filtration media housed in a pressure vessel in which the direction of flow is from the inside of the bag to the outside.

(23) "Bank Filtration" means a water treatment process that uses a horizontal or vertical well to recover surface water that has naturally infiltrated into groundwater through a river bed or bank(s). Infiltration is typically enhanced by the hydraulic gradient imposed by a nearby pumping water supply.

(24) "Best Available Technology" or "BAT" means the best technology, treatment techniques, or other means which the EPA finds, after examination for efficacy under field conditions and not solely under laboratory conditions, are available (taking cost into consideration).

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(25) "Bore-Sighted Drain to Daylight" means an unrestricted straight-line opening in an enclosure that vents to grade, and is sized and constructed to adequately drain the full flow discharge from a reduced pressure principle backflow prevention assembly thus preventing any potential for surmersion of the assembly.

(26) "Bottled Water" means potable water from a source approved by the Authority for domestic use which is placed in small, easily transportable containers.

(27) "Calculated Fixed Radius" means a technique to delineate a well-head protection area, based on the determination of the volume of the aquifer needed to supply groundwater to a well over a given length of time.

(28) "Cartridge filter" means a pressure-driven separation device that removes particulate matter larger than one micrometer using an engineered porous filtration media. It is typically constructed of rigid or semi-rigid, self-supporting filter elements housed in a pressure vessel in which flow is from the outside of the cartridge to the inside.

(29) "Certificate," for the purposes of OAR 333-061-0210 through 0295, means a certificate of competency issued by the Authority stating that the operator meets the requirements for a specific operator classification and level.

(30) "CFR" means the Code of Federal Regulations. Specifically, it refers to those sections of the code which deal with the National Primary and Secondary Drinking Water Regulations.

(31) "Check Valve" means a valve, which allows flow in only one direction.

(32) "Coagulation" means a process using coagulant chemicals and mixing by which colloidal and suspended materials are destabilized and agglomerated into floc.

(33) "Coliform-Positive" means the presence of coliform bacteria in a water sample.

(34) "Combined distribution system" means the interconnected distribution system consisting of the distribution systems of wholesale water systems and of the purchasing water systems that receive finished water.

(35) "Community Water System" means a public water system that has 15 or more service connections used by year-round residents, or that regularly serves 25 or more year-round residents.

(36) "Compliance Cycle" means the nine-year calendar year cycle during which public water systems must monitor. Each compliance cycle consists of three three-year compliance periods. The first calendar year cycle begins January 1, 1993 and ends December 31, 2001.

(37) "Compliance Period" means a three-year calendar year period within a compliance cycle. Each compliance cycle has three three-year compliance periods. Within the first compliance cycle, the first compliance period runs from January 1, 1993 to December 31, 1995; the second from January 1, 1996 to December 31, 1998; and the third from January 1, 1999 to December 31, 2001.

(38) "Comprehensive performance evaluation (CPE)" means a thorough review and analysis of a treatment plant's performance-based capabilities and associated administrative, operation and maintenance practices. It is conducted to identify factors that may be adversely impacting a plant's capability to achieve compliance and emphasizes approaches that can be implemented without significant capital improvements. The CPE must consist of at least the following components: Assessment of plant performance; evaluations of major unit processes; identification and prioritization of performance limiting factors; assessment of the applicability of comprehensive technical assistance; and preparation of a CPE report.

(39) "Conceptual Model" means a three-dimensional representation of the groundwater system, including the location and extent of the hydrogeologic units, areas of recharge and discharge, hydrogeologic boundaries and hydraulic gradient.

(40) "Confined Well" means a well completed in a confined aquifer. More specifically, it is a well which produces water from a formation that is overlain by an impermeable material of extensive area. This well shall be constructed according to OAR chapter 690, division 200 "Well Construction and Maintenance" standards.

(41) "Confluent Growth" means a continuous bacterial growth covering the entire filtration area of a membrane filter, or a portion thereof, in which bacterial colonies are not discrete.

(42) "Constructed Conveyance" means any human-made conduit such as ditches, culverts, waterways, flumes, mine drains, canals or any human-altered natural water bodies or waterways as determined by the Authority.

(43) "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water that creates a health hazard.

(44) "Contingency Plan" means a document setting out an organized, planned and coordinated course of action to be followed in the event of a loss of capacity to supply water to the distribution system or in case of a fire, explosion or release of hazardous waste which could threaten human health or the environment.

(45) "Continuing Education Unit (CEU)" means a nationally recognized unit of measurement for assigning credits for education or training that provides the participant with advanced or post high school learning. One CEU is awarded for every 10 classroom hours of lecture or the equivalent of participation in an organized education experience, conducted under responsible sponsorship, capable direction and qualified instruction as determined by the Authority or its designee.

(46) "Conventional Filtration Treatment Plant" means a water treatment plant using conventional or direct filtration to treat surface water or groundwater under the direct influence of surface water.

(47) "Corrosion Inhibitor" means a substance capable of reducing the corrosivity of water toward metal plumbing materials, especially lead and copper, by forming a protective film on the interior surface of those materials.

(48) "Cross Connection" means any actual or potential unprotected connection or structural arrangement between the public or user's potable water system and any other source or system through which it is possible to introduce into any part of the potable system any used water, industrial fluid, gas, or substances other than the intended potable water with which the system is supplied. Bypass arrangements, jumper connections, removable sections, swivel, or change-over devices, and other temporary or permanent devices through which, or because of which, backflow can occur are considered to be cross connections.

(49) "CT" means the product of the residual disinfectant concentration "C" (measured in mg/l) and disinfectant contact time(s), "T" (measured in minutes).

(50) "Degree of Hazard" means either pollution (non-health hazard) or contamination (health hazard) and is determined by an evaluation of hazardous conditions within a system.

(51) "Delineation" means the determination of the extent, orientation and boundaries of a wellhead protection area using factors such as geology, aquifer characteristics, well pumping rates and time of travel.

(52) "Demonstration Study" means a series of tests performed to prove an overall effective removal and/or inactivation rate of a pathogenic organism through a treatment or disinfection process.

(53) "Direct Responsible Charge (DRC)" means an individual designated by the owner or authorized agent to make decisions regarding the daily operational activities of a public water system, water treatment facility and/or distribution system, that will directly impact the quality or quantity of drinking water.

(54) "Discharge" means the volume rate of loss of groundwater from the aquifer through wells, springs or to surface water.

(55) "Disinfectant Contact Time" means the time in minutes that it takes for water to move from the point of disinfectant application or the previous point of disinfection residual measurement to a point before or at the point where residual disinfectant concentration is measured.

(56) "Disinfectant Residual Maintenance" means a process where public water systems add chlorine (or other chemical oxidant) for the purpose of maintaining a disinfectant residual in the distribution system, when the source(s) is not at risk of microbial contamination.

(57) "Disinfection" means a process which inactivates pathogenic organisms in water by chemical oxidants or equivalent agents.

(58) "Disinfection profile" means a summary of Giardia lamblia inactivation through the treatment plant.

(59) "Distribution System" means the network of pipes and other facilities, which are used to distribute water from the source, treatment, transmission, or storage facilities to the water user.

(60) "Domestic" means provided for human consumption.

(61) "Domestic or other non-distribution system plumbing problem" means a coliform contamination problem in a public water system with more than one service connection that is limited to the specific service connection from which the coliform-positive sample was taken.

(62) "Dose Equivalent" means the product of the absorbed dose from ionizing radiation and such factors as account for differences in biological effectiveness due to the type of radiation and its distribution in the body as specified by the International Commission on Radiological Units and Measurements (ICRU).

(63) "Double Check-Detector Backflow Prevention Assembly (DCDA)" means a specially designed assembly composed of a line size approved double check valve assembly assembled with a bypass containing



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a specific water meter and an approved double check valve assembly. The meter shall register accurately for only very low rates of flow up to three gallons per minute and shall show a registration for all rates of flow. This assembly is designed to protect against a non-health hazard.

(64) "Double Check Valve Backflow Prevention Assembly (DC)" means an assembly of two independently acting approved check valves, including tightly closing resilient seated shutoff valves attached at each end of the assembly and fitted with properly located resilient seated test cocks. This assembly is designed to protect against a non-health hazard.

(65) "Drawdown" means the difference, measured vertically, between the static water level in the well and the water level during pumping.

(66) "Drinking Water Protection" means implementing strategies within a drinking water protection area to minimize the potential impact of contaminant sources on the quality of water being used as a drinking water source by a Public Water System.

(67) "Drinking Water Protection Area (DWPA)" means the source area supplying drinking water to a Public Water System. For a surface water-supplied drinking water source the DWPA is all or a specifically determined part of a lake's, reservoir's or stream's watershed that has been certified by the Department of Environmental Quality. For a groundwater-supplied drinking water source the DWPA is the area on the surface that directly overlies that part of the aquifer that supplies groundwater to a well, well field or spring that has been certified by the Authority.

(68) "Drinking Water Protection Plan" means a plan, certified by the Department of Environmental Quality according to OAR 340-040-0160 to 340-040-0180, which identifies the actions to be taken at the local level to protect a specifically defined and certified drinking water protection area. The plan is developed by the local Responsible Management Authority and/or team and includes a written description of each element, public participation efforts, and an implementation schedule.

(69) "Dual sample set" means a set of two samples collected at the same time and same location, with one sample analyzed for TTHM and the other for HAA5. Dual sample sets are collected for the purposes of conducting an Initial Distribution System Evaluation (IDSE) as prescribed in 333-061-0036(4)(b) of these rules, and for determining compliance with the maximum contaminant levels for TTHM and HAA5 listed in OAR 333-061-0030(2)(b).

(70) "Effective Corrosion Inhibitor Residual" means a concentration sufficient to form a passivating film on the interior walls of a pipe.

(71) "Effective Porosity" means the ratio of the volume of interconnected voids (openings) in a geological formation to the overall volume of the material.

(72) "Element" means one of seven objectives considered by the U.S. EPA as the minimum required components in any state wellhead protection program: specification of duties, delineation of the wellhead protection area, inventory of potential contaminant sources, specification of management approaches, development of contingency plans, addressing new (future) wells, and ensuring public participation.

(73) "Emergency" means a condition resulting from an unusual calamity such as a flood, storm, earthquake, drought, civil disorder, volcanic eruption, an accidental spill of hazardous material, or other occurrence which disrupts water service at a public water system or endangers the quality of water produced by a public water system.

(74) "Emergency Response Plan" means a written document establishing contacts, operating procedures, and actions taken for a public water system to minimize the impact or potential impact of a natural disaster, accident, or intentional act which disrupts or damages, or potentially disrupts or potentially damages the public water system or drinking water supply, and returns the public water system to normal operating condition.

(75) "Enhanced coagulation" means the addition of sufficient coagulant for improved removal of disinfection byproduct precursors by conventional filtration treatment.

(76) "Enhanced softening" means the improved removal of disinfection byproduct precursors by precipitative softening.

(77) "EPA" means the United States Environmental Protection Agency.

(78) "Filter profile" means a graphical representation of individual filter performance, based on continuous turbidity measurements or total particle counts versus time for an entire filter run, from start-up to backwash inclusively, that includes an assessment of filter performance while another filter is being backwashed.

(79) "Filtration" means a process for removing particulate matter from water through porous media.

(a) "Conventional Filtration Treatment" means a series of processes including coagulation (requiring the use of a primary coagulant and rapid

mix), flocculation, sedimentation, and filtration resulting in substantial particulate removal.

(b) "Direct Filtration Treatment" means a series of processes including coagulation (requiring the use of a primary coagulant and rapid mix) and filtration but excluding sedimentation resulting in substantial particulate removal.

(c) "Slow Sand Filtration" means a treatment process involving passage of raw water through a bed of sand at low velocity (generally less than 235 gallons per square foot per day) resulting in substantial particulate removal by physical and biological mechanisms.

(d) "Diatomaceous Earth Filtration" means a process resulting in substantial particulate removal in which:

(A) A precoat cake of diatomaceous earth filter media is deposited on a support membrane (septum); and

(B) While the water is filtered by passing through the cake on the septum, additional filter media, known as body feed, is continuously added to the feed water, in order to maintain the permeability of the filter cake.

(80) "Filtration Endorsement" means a special provision added to a Water Treatment Operator's certification that includes experience in and knowledge of the operational decision making at a Conventional or Direct Filtration Treatment Plant.

(81) "Finished water" means water that is introduced into the distribution system of a public water system and intended for distribution and consumption without further treatment, except as necessary to maintain water quality in the distribution system such as booster disinfection or the addition of corrosion control chemicals.

(82) "First Customer" means the initial service connection or tap on a public water supply after any treatment processes.

(83) "First Draw Sample" means a one-liter sample of tap water that has been standing in plumbing pipes at least 6 hours and is collected without flushing the tap.

(84) "Flocculation" means a process to enhance agglomeration or collection of smaller floc particles into larger, more easily settleable particles through gentle stirring by hydraulic or mechanical means.

(85) "Flowing stream" means a course of running water flowing in a definite channel.

(86) "Future Groundwater Sources" means wells and/or springs that may be required by the public water system in the future to meet the needs of the system.

(87) "GAC 10" means granular activated carbon filter beds with an empty-bed contact time of 10 minutes based on average daily flow and a carbon reactivation frequency of every 180 days, except that the reactivation frequency for GAC10 used as a best available technology for compliance with OAR 333-061-0030(2)(b) shall be 120 days.

(88) "GAC 20" means granular activated carbon filter beds with an empty-bed contact time of 20 minutes based on average daily flow and a carbon reactivation frequency of every 240 days.

(89) "Gross Alpha Particle Activity" means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample.

(90) "Gross Beta Particle Activity" means the total radioactivity due to beta particle emission as inferred from measurements on a dry sample.

(91) "Groundwater" means any water, except capillary moisture, beneath the land surface or beneath the bed of any stream, lake, reservoir or other body of surface water within the boundaries of this state, whatever may be the geologic formation or structure in which such water stands, flows, percolates or otherwise moves.

(92) "Groundwater System" means any public water system that uses groundwater, including purchasing water systems that receive finished groundwater, but excluding public water systems that combine all of their groundwater with surface water or groundwater under the direct influence of surface water prior to treatment.

(93) "Groundwater under the direct influence of surface water (GWUDI)" means any water beneath the surface of the ground with significant occurrence of insects or other macro-organisms, algae or large-diameter pathogens such as *Giardia lamblia* or *Cryptosporidium*, or significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions.

(94) "Haloacetic acids (five) (HAA5)" mean the sum of the concentrations in milligrams per liter of the haloacetic acid compounds (monochloroacetic acid, dichloroacetic acid, trichloroacetic acid, monobromoacetic acid and dibromoacetic acid), rounded to two significant figures after addition.

(95) "Hauled Water" means water for human consumption transported from a Public Water System in a manner approved by the Authority.

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(96) "Health Hazard (Contamination)" means an impairment of the quality of the water that could create an actual hazard to the public health through poisoning or through the spread of disease by sewage, industrial fluids, waste, or other substances.

(97) "Human Consumption" means water used for drinking, personal hygiene bathing, showering, cooking, dishwashing, and maintaining oral hygiene.

(98) "Hydraulic Conductivity" means the capacity of the medium, e.g., soil, aquifer, or any hydrogeological unit of interest, to transmit water.

(99) "Hydraulic Connection" refers to a well, spring or other groundwater collection system in which it has been determined that part of the water supplied by the collection system is derived, either naturally or induced, from a surface water source.

(100) "Hydraulic Gradient" means the slope of the water table or potentiometric surface, calculated by dividing the change in hydraulic head between two points by the horizontal distance between the points in the direction of groundwater flow.

(101) "Hydraulic Head" means the energy possessed by the water mass at a given point, related to the height above the datum plane that water resides in a well drilled to that point. In a groundwater system, the hydraulic head is composed of elevation head and pressure head.

(102) "Hydrogeologic Boundary" means physical features that bound and control direction of groundwater flow in a groundwater system. Boundaries may be in the form of a constant head, e.g. streams, or represent barriers to flow, e.g. groundwater divides and impermeable geologic barriers.

(103) "Hydrogeologic Mapping" means characterizing hydrogeologic features (e.g. hydrogeologic units, hydrogeologic boundaries, etc.) within an area and determining their location, areal extent and relationship to one another.

(104) "Hydrogeologic Unit" means a geologic formation, group of formations, or part of a formation that has consistent and definable hydraulic properties.

(105) "Impermeable Material" means a material that limits the passage of water.

(106) "Impounding Reservoir" means an uncovered body of water formed behind a dam across a river or stream, and in which water is stored.

(107) "Infiltration Gallery" means a system of perforated pipes laid along the banks or under the bed of a stream or lake installed for the purpose of collecting water from the formation beneath the stream or lake.

(108) "Initial Compliance Period" means the 1993-95 three-year compliance period for systems with 150 or more service connections and the 1996-98 three-year compliance period for systems having fewer than 150 service connections for the contaminants prescribed in OAR 333-061-0036(2)(a)(A)(v), 333-061-0036(3)(a)(K) and (3)(b)(O).

(109) "Interfering Wells" means wells that, because of their proximity and pumping characteristics, and as a result of the aquifer's hydraulic properties, produce drawdown cones that overlap during simultaneous pumping. The result is a lowering of the pumping level in each well below what it would be if that well were pumping by itself.

(110) "Inventory of Potential Contaminant Sources" means the reconnaissance level location of land use activities within the Drinking Water Protection Area that as a category have been associated with groundwater or surface water contamination in Oregon and elsewhere in the United States.

(111) "Lake/reservoir" means a natural or man-made basin or hollow on the Earth's surface in which water collects or is stored that may or may not have a current or single direction of flow.

(112) "Lead Free" when used with respect to solders and flux shall mean solders and flux containing not more than 0.2 percent lead, and when used with respect to pipes and fittings shall mean pipes and fittings containing not more than 8.0 percent lead. When used with respect to plumbing fittings and fixtures intended for dispensing water for human consumption shall mean in compliance with standards established in accordance with 42 U.S.C. 300g-6(e) and ANSI/NSF standard 61, section 9.

(113) "Lead Service Line" means a service line made of lead, which connects the water main to the building inlet and any pigtail, gooseneck or other fitting, which is connected to such lead line.

(114) "Legionella" means a genus of bacteria, some species of which have caused a type of pneumonia called Legionnaires Disease.

(115) "Local Administrative Authority" means the individual official, board, department or agency established and authorized by a state, county or city to administer and enforce the provisions of the Oregon State Plumbing Specialty Code adopted under OAR 918-750-0110.

(116) "Locational running annual average (LRAA)" means the arithmetic average of analytical results for samples taken at a specific monitoring location during the previous four calendar quarters.

(117) "Major Additions or Modifications" means changes of considerable extent or complexity including, but not limited to, projects involving water sources, treatment facilities, facilities for continuous disinfection, finished water storage, pumping facilities, transmission mains, and distribution mains, except main replacements of the same length and diameter.

(118) "Man-made Beta Particle and Photon Emitters" means all radionuclides emitting beta particles and/or photons listed in Maximum Permissible Body Burdens and Maximum Permissible Concentration of Radionuclides in Air or Water for Occupational Exposure, NBS Handbook 69, except the daughter products of Thorium-232, Uranium-235 and Uranium-238.

(119) "Master Plan" means an overall plan, which shows the projected development of a distribution system and alternatives for source development.

(120) "Maximum Contaminant Level (MCL)" means the maximum allowable level of a contaminant in water delivered to the user's of a public water system, except in the case of turbidity where the maximum allowable level is measured at the point of entry to the distribution system.

(121) "Maximum Residual Disinfectant Level (MRDL)" means a level of a disinfectant added for water treatment that may not be exceeded at the consumer's tap without an unacceptable possibility of adverse health effects.

(122) "Membrane filtration" means a pressure or vacuum driven separation process in which particulate matter larger than one micrometer is rejected by an engineered barrier, primarily through a size-exclusion mechanism, and which has a measurable removal efficiency of a target organism that can be verified through the application of a direct integrity test. This definition includes the common membrane technologies of microfiltration, ultrafiltration, nanofiltration, and reverse osmosis.

(123) "Multi-purpose Piping System" means a piping system within residential dwellings intended to serve both domestic and fire protection needs. This type of system is considered part of a potable water system.

(124) "New Groundwater Sources" means additional or modified wells and/or springs owned by the Public Water System.

(125) "Non-Health Hazard (Pollution)" means an impairment of the quality of the water to a degree that does not create a hazard to the public health, but does adversely affect the aesthetic qualities of such water for potable use.

(126) "Non-Transient Non-Community Water System (NTNC)" means a public water system that is not a Community Water System and that regularly serves at least 25 of the same persons over 6 months per year.

(127) "Open Interval" means in a cased well, the sum of the length(s) of the screened or perforated zone(s) and in an uncased (open-hole) well, the sum of the thickness(es) of the water-bearing zones or, if undeterminable, 10 percent of the length of the open hole.

(128) "Operating Experience" means the routine performance of duties, tasks, and responsibilities at a drinking water system or in a related field as allowed under OAR 333-061-0245(6)(b).

(129) "Operational Decision Making" means having responsibility for making decisions among the alternatives in the performance of the water treatment plant or the water distribution system regarding water quality or quantity which affect public health.

(130) "Operator," for the purposes of OAR 333-061-0210 through 0295, means an individual with responsibilities that directly impact the quality of drinking water including individuals making process control or system integrity decisions about water quality or quantity that affect public health. This term does not include officials, managers, engineers, directors of public works, or equivalent whose duties do not include the actual "hands-on" operation or supervision on-site of water system facilities or operators.

(131) "Optimal Corrosion Control Treatment" means the corrosion control treatment that minimizes the lead and copper concentrations at users' taps while insuring that the treatment does not cause the water system to violate any national primary drinking water regulations.

(132) "Pathogenic" means a specific agent (bacterium, virus or parasite) causing or capable of causing disease.

(133) "Peak Daily Demand" means the maximum rate of water use, expressed in gallons per day, over the 24-hour period of heaviest consumption.

(134) "Permit" means official permission granted by the Authority for a public water system which exceeds maximum contaminant levels to delay, because of economic or other compelling factors, the installation of

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water treatment facilities which are necessary to produce water which does not exceed maximum contaminant levels.

(135) "Person" means any individual, corporation, association, firm, partnership, municipal, state or federal agency, or joint stock company and includes any receiver, special master, trustee, assignee, or other similar representative thereof.

(136) "Picocurie (pCi)" means that quantity of radioactive material producing 2.22 nuclear transformations per minute.

(137) "Pilot Study" means the construction and operation of a scaled down treatment system during a given period of time to determine the feasibility a full-scale treatment facility.

(138) "Plant intake" means the works or structures at the head of a conduit through which water is diverted from a source, such as a river or lake, into a treatment plant.

(139) "Plug Flow" means movement of water in a pipe such that particles pass through the pipe and are discharged in the same sequence in which they entered.

(140) "Point of Delivery (POD)" means the point of connection between a public water system and the user's water system. Beyond the point of delivery, the Oregon Plumbing Specialty Code applies. See "Service Connection."

(141) "Point of Disinfectant Application" is the point where the disinfectant is applied and water downstream of that point is not subject to recontamination by surface water runoff.

(142) "Point-of-Entry Treatment Device" is a treatment device applied to the drinking water entering a house or building for the purpose of reducing contaminants in the drinking water distributed throughout the house or building.

(143) "Point-of-Use Treatment Device" is a treatment device applied to a single tap used for the purpose of reducing contaminants in drinking water at that one tap.

(144) "Pollutant" means a substance that creates an impairment of the quality of the water to a degree which does not create a hazard to the public health, but which does adversely affect the aesthetic qualities of the water.

(145) "Porous Media Assumption" means the assumption that groundwater moves in the aquifer as if the aquifer were granular in character, i.e. moves directly down-gradient, and the velocity of the groundwater can be described by Darcy's Law.

(146) "Post High School Education" means that education acquired through programs such as short schools, bona fide correspondence courses, trade schools, colleges, universities, formalized workshops or seminars that are acceptable to the Authority and for which college or continuing education credit is issued by the training sponsor.

(147) "Potable Water" See Safe Drinking Water.

(148) "Potential Contaminant Source Inventory" means the determination of the location within the wellhead protection area of activities known to use or produce materials that can contaminate groundwater.

(149) "Potential Cross Connection" means a cross connection that would most likely occur, but may not be taking place at the time of an inspection.

(150) "Potentiometric Surface" means a surface that denotes the variation of hydraulic head in the given aquifer across an area.

(151) "Premise" means real estate and the structures on it.

(152) "Premise Isolation" means the practice of protecting the public water supply from contamination or pollution by installing backflow prevention assemblies at, or near, the point of delivery where the water supply enters the premise. Premise isolation does not guarantee protection to persons on the premise.

(153) "Presedimentation" means a preliminary treatment process used to remove gravel, sand and other particulate material from the source water through settling before the water enters the primary clarification and filtration processes in a treatment plant.

(154) "Pressure Vacuum Breaker Backsiphonage Prevention Assembly (PVB)" means an assembly consisting of an independently operating, internally loaded check valve and an independently operating loaded air inlet valve located on the discharge side of the check valve. This assembly is to be equipped with properly located resilient seated test cocks and tightly closing resilient seated shutoff valves attached at each end of the assembly. This assembly is designed to protect against a non-health hazard or a health hazard under backsiphonage conditions only.

(155) "Provisional Delineation" means approximating the wellhead protection area for a well by using the wellhead protection area from another well in the same hydrogeologic setting or by using generalized values for the aquifer characteristics to generate an approximate wellhead protection

area for the well. Used only for the purpose of evaluating potential siting of new or future groundwater sources. Not an acceptable way to formally delineate a wellhead protection area.

(156) "Public Health Hazard" means a condition, device or practice which is conducive to the introduction of waterborne disease organisms, or harmful chemical, physical, or radioactive substances into a public water system, and which presents an unreasonable risk to health.

(157) "Public Water System" means a system for the provision to the public of piped water for human consumption, if such system has more than three service connections, or supplies water to a public or commercial establishment that operates a total of at least 60 days per year, and that is used by 10 or more individuals per day. Public water system also means a system for the provision to the public of water through constructed conveyances other than pipes to at least 15 service connections or regularly serves at least 25 individuals daily at least 60 days of the year. A public water system is either a "Community Water System," a "Transient Non-Community Water System," a "Non-Transient Non-Community Water System" or a "State Regulated Water System."

(158) "Purchasing Water System" means a public water system which obtains its water in whole or in part from another public water system. Delivery may be through a direct connection or through the distribution system of one or more purchasing water systems.

(159) "Recharge" means the process by which water is added to a zone of saturation, usually by downward infiltration from the surface.

(160) "Recharge Area" means a land area in which water percolates to the zone of saturation through infiltration from the surface.

(161) "Recovery" means the rise in water level in a well from the pumping level towards the original static water level after pumping has been discontinued.

(162) "Reduced Pressure Principle Backflow Prevention Assembly (RP)" means an assembly containing two independently acting approved check valves, together with a hydraulically operating, mechanically independent pressure differential relief valve located between the check valves and at the same time below the first check valve. The unit shall include properly located resilient seated test cocks and tightly closing resilient seated shutoff valves at each end of the assembly. This assembly is designed to protect against a non-health hazard or a health hazard.

(163) "Reduced Pressure Principle-Detector Backflow Prevention Assembly (RPDA)" means a specifically designed assembly composed of a line size approved reduced pressure principle backflow prevention assembly with a bypass containing a specific water meter and an approved reduced pressure principle backflow prevention assembly. The meter shall register accurately for only very low rates of flow up to three gallons per minute and shall show a registration for all rates of flow. This assembly is designed to protect against a non-health hazard or a health hazard.

(164) "Rem" means the unit of dose equivalent from ionizing radiation to the total body or any internal organ or organ system. A "millirem (mrem)" is 1/1000 of a rem.

(165) "Repeat Compliance Period" means any subsequent compliance period after the initial compliance period.

(166) "Residual disinfectant concentration" means the concentration of disinfectant measured in mg/l in a representative sample of water.

(167) "Responsible Management Authority" means the Public Water System whose water supply is being protected and any government entity having management, rule or ordinance-making authority to implement wellhead protection management strategies within the wellhead protection area. The Responsible Management Authority is responsible for implementation of the Wellhead Protection Plan and includes cities, counties, special districts, Indian tribes, state/federal entities as well as public water systems.

(168) "Safe Drinking Water" means water which has sufficiently low concentrations of microbiological, inorganic chemical, organic chemical, radiological or physical substances so that individuals drinking such water at normal levels of consumption, will not be exposed to disease organisms or other substances which may produce harmful physiological effects.

(169) "Sanitary Survey (Water System Survey)" means an on-site review of the water source(s), facilities, equipment, operation, maintenance and monitoring compliance of a public water system to evaluate the adequacy of the water system, its sources and operations in the distribution of safe drinking water. The sanitary survey also identifies sources of contamination by using the results of source water assessments where available.

(170) "Secondary Contaminant" means those contaminants, which, at the levels generally found in drinking water, do not present an unreasonable risk to health, but do:

- (a) Have adverse effects on the taste, odor and color of water;
- (b) Produce undesirable staining of plumbing fixtures; or



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(c) Interfere with treatment processes applied by water suppliers.

(171) "Secondary Maximum Contaminant Level (SMCL)" means the level of a secondary contaminant which when exceeded may adversely affect the aesthetic quality of the drinking water which thereby may deter public acceptance of drinking water provided by public water systems or may interfere with water treatment methods.

(172) "Sedimentation" means a process for removal of solids before filtration by gravity or separation.

(173) "Seller's Designee" means the person assigned by the seller to complete the necessary paperwork and submit the lab results to the Authority and can be the seller's attorney, real estate agent or broker, the person conducting the tests or a private party.

(174) "Sensitivity" means the intrinsic characteristics of a drinking water source such as depth to the aquifer for groundwater or highly erodible soils in a watershed that increase the potential for contamination to take place if a contaminant source is present.

(175) "Service Connection" means the piping connection by means of which water is conveyed from a distribution main of a public water system to a user's premise. For a community water system, the portion of the service connection that conveys water from the distribution main to the user's property line, or to the service meter, where provided, is under the jurisdiction of the water supplier.

(176) "Significant Deficiency" means a defect in design, operation, or maintenance, or a malfunction of the source(s), treatment, storage, or distribution system that has been determined to cause or have the potential for causing the introduction of contamination into the water delivered to consumers.

(177) "Single Connection System" means a public water system serving only one installation, such as a restaurant, campground or place of employment.

(178) "Single Family Structure" means a building constructed as a single-family residence that is currently used as either a residence or a place of business.

(179) "Small Water System," for the purposes of OAR 333-061-0210 through 0295, means a community or non-transient non-community water system serving fewer than 150 connections and either uses groundwater as its only source or purchases its water from another public water system without adding any additional treatment.

(180) "Source Water Assessment" means the information compiled by the Authority and the Department of Environmental Quality (DEQ), consisting of the delineation, inventory and susceptibility analyses of the drinking water source, which enable public water systems to develop and implement drinking water protection plans.

(181) "Specific Ultraviolet Absorption (SUVA) at 254 nanometers" means an indicator of the humic content of water as a calculated parameter obtained by dividing a sample's ultraviolet absorption at a wavelength of 254 nanometers (UV254) by its concentration of dissolved organic carbon (DOC) (in milligrams per liter).

(182) "Spill Resistant Pressure Vacuum Breaker Backsiphonage Prevention Assembly (SVB)" means an assembly containing an independently operating, internally loaded check valve and independently operating loaded air inlet valve located on the discharge side of the check valve. The assembly is to be equipped with a properly located resilient seated test cock, a properly located bleed/vent valve, and tightly closing resilient seated shutoff valves attached at each end of the assembly. This assembly is designed to protect against a non-health hazard or a health hazard under a backsiphonage condition only.

(183) "Spring" means a naturally occurring discharge of flowing water at the ground surface, or into surface water where the flow of water is the result of gravity or artesian pressure. Springs can be derived from groundwater or they can be surface water influenced.

(184) "Stand-alone Fire Suppression System" means a piping system within a premise intended to only serve as a fire protection system separated from the potable water system.

(185) "State Regulated Water System" means a public water system, which serves 4 to 14 service connections or serves 10 to 24 people. Monitoring requirements for these systems are the same as those for Transient Non-Community water systems.

(186) "Static Water Level" means the vertical distance from ground surface to the water level in the well when the well is at rest, i.e., the well has not been pumped recently and the water level is stable. This is the natural level of water in the well.

(187) "Submeter" means a water meter by which a property owner (or association of property owners) meters individual water use after the water passes through a master meter. For the purposes of OAR 333-061-0010,

submetering does not constitute applying a direct charge for water or directly selling water to a person.

(188) "Surface Water" means all water, which is open to the atmosphere and subject to surface runoff.

(189) "Susceptibility" means the potential, as a result of the combination of land use activities and source water sensitivity that contamination of the drinking water source may occur.

(190) "Team" means the local Wellhead Protection team, which includes representatives from the Responsible Management Authorities and various interests and stakeholders potentially affected by the Wellhead Protection Plan.

(191) "Thermal Expansion" means the pressure increase due to a rise in water temperature that occurs in water piping systems when such systems become "closed" by the installation of a backflow prevention assembly or other means, and will not allow for expansion beyond that point of installation.

(192) "These Rules" means the Oregon Administrative Rules encompassed by OAR 333-061-0005 through 333-061-0335.

(193) "Time-of-Travel (TOT)" means the amount of time it takes groundwater to flow to a given well. The criterion that effectively determines the radius in the calculated fixed radius method and the up-gradient distance to be used for the analytical and numerical models during delineation of the wellhead protection area.

(194) "Too Numerous To Count (TNTC)" means that the total number of bacterial colonies exceeds 200 on a 47 mm diameter membrane filter used for coliform bacteria detection.

(195) "Total Organic Carbon (TOC)" means total organic carbon in milligrams per liter measured using heat, oxygen, ultraviolet irradiation, chemical oxidants, or combinations of these oxidants that convert organic carbon to carbon dioxide, rounded to two significant figures.

(196) "Total Trihalomethanes (TTHM)" means the sum of the concentrations in milligrams per liter of the trihalomethane compounds bromodichloromethane, dibromochloromethane, tribromomethane (bromofrom) and trichloromethane (chlorofrom), rounded to two significant figures after addition.

(197) "Transient Non-Community Water System (TNC)" means a public water system that serves a transient population of 25 or more persons.

(198) "Turbidity" means a measure of the cloudiness of water caused by suspended particles. The units of measure for turbidity are nephelometric turbidity units (NTU).

(199) "Two-stage lime softening" means a process in which a chemical addition and hardness precipitation occur in each of two distinct unit clarification processes in series prior to filtration.

(200) "Unconfined Well" means a well completed in an unconfined aquifer. More specifically, a well which produces water from a formation that is not overlying by impermeable material. This well shall be constructed according to OAR chapter 690, division 200 "Well Construction and Maintenance" standards.

(201) "Uncovered finished water storage facility" means a tank, reservoir, or other facility used to store water that will undergo no further treatment to reduce microbial pathogens except residual disinfection and is directly open to the atmosphere.

(202) "University of Southern California, Foundation for Cross-Connection Control and Hydraulic Research (USC FCCCHR)" is an agency that conducts laboratory and field tests to evaluate and grant "Certificates of Approval" to backflow prevention assemblies meeting approved standards.

(203) "Vadose Zone" means the zone between the ground surface and the water table where the available open spaces between soil and sediment particles, in rock fractures, etc., are most filled with air.

(204) "Variance" means official permission granted by the Authority for public water systems to exceed maximum contaminant levels because the quality of the raw water is such that the best available treatment techniques are not capable of treating the water so that it complies with maximum contaminant levels, and there is no unreasonable risk to health.

(205) "Vault" means an approved enclosure above or below ground to house a backflow prevention assembly that complies with the local administrative authority having jurisdiction.

(206) "Virus" means a virus of fecal origin, which is infectious to humans by waterborne transmission.

(207) "Waiver" means official permission from the Authority for a public water system to deviate from the construction standards set forth in these rules.

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(208) "Water-bearing Zone" means that part or parts of the aquifer encountered during drilling that yield(s) water to a well.

(209) "Waterborne disease outbreak" means the significant occurrence of acute infectious illness, epidemiologically associated with the ingestion of water from a public water system which is deficient in treatment, as determined by the Authority.

(210) "Water Source" means any lake, stream, spring, groundwater supply, impoundment or other source of water from which water is obtained for a public water system. In some cases, a public water system can be the source of supply for one or more other public water systems.

(211) "Water Supplier" means a person, group of persons, municipality, district, corporation or other entity, which owns or operates a public potable water system.

(212) "Water System" means a system for the provision of piped water for human consumption.

(213) "Water System Operations Manual" means a written document describing the actions and procedures necessary to operate and maintain the entire water system.

(214) "Water Table" means the upper surface of an unconfined aquifer, the surface of which is at atmospheric pressure and fluctuates seasonally. It is defined by the levels at which water stands in wells that penetrate the aquifer.

(215) "Water Treatment" means a process of altering water quality by physical or chemical means and may include domestic, industrial or commercial applications.

(216) "Well" means an artificial opening or artificially altered natural opening, however made, by which ground water is sought or through which ground water flows under natural pressure or is artificially withdrawn or injected, provided that this definition shall not include a natural spring, or wells drilled for the purpose of exploration or production of oil or gas.

(217) "Wellfield" means two or more drinking water wells, belonging to the same water system that are within 2,500 feet, or as determined by the Authority, and produce from the same and no other aquifer.

(218) "Wellhead Protection." See Drinking Water Protection.

(219) "Wellhead Protection Area (WHPA)." See Drinking Water Protection Area.

(220) "Wellhead Protection Plan." See Drinking Water Protection Plan.

(221) "Wholesale system" means a public water system that treats source water as necessary to produce finished water and then delivers some or all of that finished water to another public water system. Delivery may be through a direct connection or through the distribution system of one or more purchasing water systems.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 448.131

Stats. Implemented: ORS 431.110, 431.150, 448.131, 448.150, 448.273, 448.279

Hist.: HD 106, f. & ef. 2-6-76; HD 4-1980, f. & ef. 3-21-80; HD 10-1981, f. & ef. 6-30-81; HD 17-1981(Temp), f. & ef. 8-28-81; HD 4-1982, f. & ef. 2-26-82; Renumbered from 333-042-0205, HD 2-1983, f. & ef. 2-23-83; HD 21-1983, f. 10-20-83, ef. 11-1-83; HD 11-1985, f. & ef. 7-2-85; HD 30-1985, f. & ef. 12-4-85; HD 3-1987, f. & ef. 2-17-87; HD 3-1988(Temp), f. & cert. ef. 2-12-88; HD 17-1988, f. & cert. ef. 7-27-88; HD 9-1989, f. & cert. ef. 11-13-89; HD 26-1990, f. 12-26-90, cert. ef. 12-29-90; HD 7-1992, f. & cert. ef. 6-9-92; HD 12-1992, f. & cert. ef. 12-7-92; HD 3-1994, f. & cert. ef. 1-14-94; HD 1-1996, f. 1-2-96, cert. ef. 1-5-96; HD 14-1997, f. & cert. ef. 10-31-97; OHD 4-1999, f. 7-14-99, cert. ef. 7-15-99; OHD 3-2000, f. 3-8-00, cert. ef. 3-15-00; OHD 7-2000, f. 7-11-00, cert. ef. 7-15-00; OHD 23-2001, f. & cert. ef. 10-31-01; OHD 17-2002, f. & cert. ef. 10-25-02; PH 16-2004(Temp), f. & cert. ef. 4-9-04 thru 10-5-04; PH 20-2004, f. & cert. ef. 6-18-04; PH 33-2004, f. & cert. ef. 10-21-04; PH 34-2004, f. & cert. ef. 11-2-04; PH 2-2006, f. & cert. ef. 1-31-06; PH 4-2009, f. & cert. ef. 5-18-09; PH 7-2010, f. & cert. ef. 4-19-10; PH 5-2011(Temp), f. & cert. ef. 7-11-11 thru 12-27-11

## 333-100-0005

### Definitions

The following definitions apply to OAR chapter 333 divisions 100, 102, 103, 106, 111, 116, 118, 119, and 120. Additional definitions used only in a certain division will be found in that division.

(1) "Absorbed dose" means the energy imparted by ionizing radiation per unit mass of irradiated material. The units of absorbed dose are the gray (Gy) and the rad.

(2) "Accelerator" means any machine capable of accelerating electrons, protons, deuterons, or other charged particles in a vacuum and of discharging the resultant particulate or other radiation into a medium at energies usually in excess of 1 MeV. For purposes of this definition, "particle accelerator" is an equivalent term.

(3) "Accelerator-produced material" means any material made radioactive by a particle accelerator.

(4) "Act" means Oregon Revised Statutes 453.605 through 453.807.

(5) "Activity" means the rate of disintegration or transformation or decay of radioactive material. The units of activity are the becquerel (Bq),

defined as one disintegration per second, and the curie (Ci), defined as 3.7 x 10<sup>10</sup> disintegrations per second.

(6) "Adult" means an individual 18 or more years of age.

(7) "Agreement State" means any state with which the U.S. Nuclear Regulatory Commission or the U.S. Atomic Energy Commission has entered into an effective agreement under subsection 274b. of the Atomic Energy Act of 1954, as amended (73 Stat. 689).

(8) "Airborne radioactive material" means any radioactive material dispersed in the air in the form of dusts, fumes, particulates, mists, vapors, or gases.

(9) "Airborne radioactivity area" means a room, enclosure, or area in which airborne radioactive material, composed wholly or partly of licensed material, exist in concentrations:

(a) In excess of the derived air concentrations (DACs) specified in Appendix B, Table I, to 10 CFR Part 20.1001 to 20.2401; or

(b) To such a degree that an individual present in the area without respiratory protective equipment could exceed, during the hours an individual is present in a week, an intake of 0.6 percent of the annual limit on intake (ALI) or 12 DAC-hours.

(10) "ALARA" (acronym for "As Low As Reasonably Achievable") means making every reasonable effort to maintain exposures to radiation as far below the dose limits in this part as is practical consistent with the purpose for which the licensed activity is undertaken, taking into account the state of technology, the economics of improvements in relation to state of technology, the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to utilization of nuclear energy and licensed materials in the public interest.

(11) "Alert" means events may occur, are in progress, or have occurred that could lead to a release of radioactive material but that the release is not expected to require a response by offsite response organizations to protect persons offsite.

(12) "Annual" means occurring every year or within a consecutive twelve month cycle.

(13) "Annual Limit on Intake" (ALI) means the derived limit for the amount of radioactive material taken into the body of an adult worker by inhalation or ingestion in a year. ALI is the smaller value of intake of a given radionuclide in a year by the Reference Man that would result in a committed effective dose equivalent of 0.05 Sv (5 rem) or a committed dose equivalent of 0.5 Sv (50 rem) to any individual organ or tissue. ALI values for intake by ingestion and by inhalation of selected radionuclides are given in Table I, Columns 1 and 2, of Appendix B to 10 CFR Part 20.1001 to 20.2401.

(14) "As Low As Reasonably Achievable" see "ALARA."

(15) "Authority" means the Oregon Health Authority.

(16) "Background radiation" means radiation from cosmic sources; naturally occurring radioactive materials, including radon, except as a decay product of source or special nuclear material, and including global fallout as it exists in the environment from the testing of nuclear explosive devices or from past nuclear accidents such as Chernobyl that contribute to background radiation and are not under the control of the licensee. "Background radiation" does not include sources of radiation from radioactive or special nuclear materials regulated by the Authority.

(17) "Becquerel" (Bq) means the International System of Units (SI) unit of activity. One becquerel is equal to one disintegration or transformation per second (dps or tps).

(18) "Bioassay" means the determination of kinds, quantities or concentrations, and, in some cases, the locations, of radioactive material in the human body, whether by direct measurement (in vivo counting) or by analysis and evaluation of materials excreted or removed from the human body. For purposes of these rules, "radiobioassay" is an equivalent term.

(19) "Brachytherapy" means a method of radiation therapy in which sealed sources are utilized to deliver dose at a distance of up to a few centimeters, by surface, intracavitary, or interstitial application.

(20) "Byproduct material" means:

(a) Any radioactive material, except special nuclear material, yielded in, or made radioactive by, exposure to the radiation incident to the process of producing or utilizing special nuclear material; and

(b) The tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction process. Underground ore bodies depleted by such solution extraction operations do not constitute "byproduct material" within this definition.

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(21) "Calendar quarter" means not less than 12 consecutive weeks nor more than 14 consecutive weeks. The first calendar quarter of each year must begin in January and subsequent calendar quarters must be so arranged such that no day is included in more than one calendar quarter and no day in any one year is omitted from inclusion within a calendar quarter. No licensee or registrant may change the method observed for determining calendar quarters except at the beginning of a calendar year.

(22) "Calibration" means the determination of:

(a) The response or reading of an instrument relative to a series of known radiation values over the range of the instrument; or

(b) The strength of a source of radiation relative to a standard.

(23) "CFR" means Code of Federal Regulations.

(24) "Chelating agent" means amine polycarboxylic acids, hydroxycarboxylic acids, gluconic acid, and polycarboxylic acids.

(25) "Class" means a classification scheme for inhaled material according to its rate of clearance from the pulmonary region of the lung. For purposes of these rules, "lung class" or "inhalation class" are equivalent terms. Materials are classified as D, W, or Y, which applies to a range of clearance half-times:

(a) For Class D, Days, of less than 10 days;

(b) For Class W, Weeks, from 10 to 100 days; and

(c) For Class Y, Years, of greater than 100 days.

(26) "Clinical laboratory" means a laboratory licensed pursuant to ORS 438.110 through 438.140.

(27) "Collective dose" means the sum of the individual doses received in a given period of time by a specified population from exposure to a specified source of radiation.

(28) "Committed dose equivalent" (HT, 50) means the dose equivalent to organs or tissues of reference (T) that will be received from an intake of radioactive material by an individual during the 50-year period following the intake.

(29) "Committed effective dose equivalent" (HE, 50) is the sum of the products of the weighting factors applicable to each of the body organs or tissues that are irradiated and the committed dose equivalent to each of these organs or tissues (HE, 50 = WT, HT, 50).

(30) "Contamination" (Radioactive) means deposition or presence of radioactive material in any place where it is not desired, and particularly in any place where its presence can be harmful. The harm may be in compromising the validity of an experiment or a procedure, or in being a source of danger to persons. Contamination may be divided into two types: Fixed and removable. Removable contamination may be transferred easily from one object to another by light rubbing or by the use of weak solvents such as water or alcohol. Removable contamination is evaluated and recorded in units of microcuries or dpm. Fixed contamination is not easily transferred from one object to another and requires mechanical or strong chemicals to remove it from its current location. Fixed contamination is evaluated and recorded in units of mR/hr.

(31) "Curie" means a unit of quantity of radioactivity. One curie (Ci) is that quantity of radioactive material that decays at the rate of  $3.7 \times 10^{10}$  disintegrations or transformations per second (dps or tps).

(32) "Declared pregnant woman" means a woman who has voluntarily informed the licensee, in writing, of her pregnancy and the estimated date of conception. The declaration remains in effect until the declared pregnant woman withdraws the declaration in writing or is no longer pregnant.

(33) "Decommission" means to remove (as a facility) safely from service and reduce residual radioactivity to a level that permits:

(a) Release of the property for unrestricted use and termination of license; or

(b) Release of the property under restricted conditions and termination of the license.

(34) "Deep dose equivalent" (Hd) which applies to external whole body exposure, means the dose equivalent at a tissue depth of 1 centimeter (1000 mg/cm<sup>2</sup>).

(35) "Depleted uranium" means source material uranium in which the isotope uranium-235 is less than 0.711 weight percent of the total uranium present. Depleted uranium does not include special nuclear material.

(36) "Derived air concentration" (DAC) means the concentration of a given radionuclide in air which, if breathed by Reference Man for a working year of 2,000 hours under conditions of light work, results in an intake of one ALI. For purposes of these rules, the condition of light work is an inhalation rate of 1.2 cubic meters of air per hour for 2,000 hours in a year. DAC values are given in Table I, Column 3, of Appendix B to 10 CFR Part 20.1001 to 20.2401.

(37) "Derived air concentration-hour" (DAC-hour) means the product of the concentration of radioactive material in air, expressed as a fraction or multiple of the derived air concentration for each radionuclide, and the time of exposure to that radionuclide, in hours. A licensee may take 2,000 DAC-hours to represent one ALI, equivalent to a committed effective dose equivalent of 0.05 Sv (5 rem).

(38) "Dose" is a generic term that means absorbed dose, dose equivalent, effective dose equivalent, committed dose equivalent, committed effective dose equivalent, total organ dose equivalent, or total effective dose equivalent. For purposes of these rules, "radiation dose" is an equivalent term.

(39) "Dose equivalent" (HT) means the product of the absorbed dose in tissue, quality factor, and all other necessary modifying factors at the location of interest. The units of dose equivalent are the sievert (Sv) and rem (see "Rem"). (See OAR 333-100-0070(2) for SI equivalent sievert.)

(40) "Dose limits" means the permissible upper bounds of radiation doses established in accordance with these rules. For purposes of these rules, "limits" is an equivalent term.

(41) "Dosimetry processor" means an individual or an organization that processes and evaluates individual monitoring equipment in order to determine the radiation dose delivered to the equipment.

(42) "Effective dose equivalent" (HE) means the sum of the products of the dose equivalent to the organ or tissue (HT) and the weighting factor (WT) applicable to each of the body organs or tissues that are irradiated (HE = WT HT).

(43) "Electronic product" means any manufactured product or device or component part of such a product or device that is capable of generating or emitting electromagnetic or sonic radiation such as, but not limited to, X-rays, ultrasonic waves, microwaves, laser light or ultraviolet light.

(44) "Embryo/fetus" means the developing human organism from conception until the time of birth.

(45) "Entrance or access point" means any opening through which an individual or extremity of an individual could gain access to radiation areas or to licensed or registered radioactive materials. This includes entry or exit portals of sufficient size to permit human entry, irrespective of their intended use.

(46) "Exclusive use" (also referred to in other regulations as "sole use" or "full load") means the sole use of a conveyance by a single consignor and for which all initial, intermediate, and final loading and unloading are carried out in accordance with the direction of the consignor or consignee.

(47) "Explosive material" means any chemical compound, mixture, or device that produces a substantial instantaneous release of gas and heat spontaneously or by contact with sparks or flame.

(48) "Exposure" means:

(a) The quotient of dQ by dm where "dQ" is the absolute value of the total charge of the ions of one sign produced in air when all the electrons (negatrons and positrons) liberated by photons in a volume element of air having mass "dm" are completely stopped in air. The SI unit of exposure is the coulomb per kilogram.

(b) Being exposed to ionizing radiation or to radioactive material.

(49) "Exposure rate" means the exposure per unit of time, such as roentgen per minute and milliroentgen per hour.

(50) "External dose" means that portion of the dose equivalent received from any source of radiation outside the body.

(51) "Extremity" means hand, elbow, arm below the elbow, foot, knee, or leg below the knee.

(52) "Eye dose equivalent" means the external dose equivalent to the lens of the eye at a tissue depth of 0.3 centimeter (300 mg/cm<sup>2</sup>).

(53) "Fixed gauge" means a measuring or controlling device that is intended to be mounted at a specific location, stationary, not to be moved, and is not portable.

(54) "Former U.S. Atomic Energy Commission (AEC) or U.S. Nuclear Regulatory Commission (NRC) licensed facilities" means nuclear reactors, nuclear fuel reprocessing plants, uranium enrichment plants, or critical mass experimental facilities where AEC or NRC licenses have been terminated.

(55) "General license" means a license granted by rule, in contrast to an issued license, to acquire, own, possess, use, or transfer radioactive material or a device that contains radioactive material.

(56) "Generally applicable environmental radiation standards" means standards issued by the U.S. Environmental Protection Agency (EPA) under the authority of the Atomic Energy Act of 1954, as amended, that impose limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of



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locations under the control of persons possessing or using radioactive material.

(57) "Gray" (Gy) means the International System of Units (SI), unit of absorbed dose. One gray is equal to an absorbed dose of one joule per kilogram (100 rad). (See OAR 333-100-0070(2))

(58) "Hazardous waste" means those wastes designated as hazardous by U.S. Environmental Protection Agency regulations in 40 CFR Part 261.

(59) "Healing arts" means:

(a) The professional disciplines authorized by the laws of this state to use X-rays or radioactive material in the diagnosis or treatment of human or animal disease. For the purposes of this Authority they are Medical Doctors, Osteopaths, Dentists, Veterinarians, Chiropractors, and Podiatrists; or

(b) Any system, treatment, operation, diagnosis, prescription, or practice for the ascertainment, cure, relief, palliation, adjustment, or correction of any human disease, ailment, deformity, injury or unhealthy or abnormal physical or mental condition.

(60) "Human use" means the internal or external administration of radiation or radioactive material to human beings.

(61) "Individual" means any human being.

(62) "Individual monitoring" means:

(a) The assessment of dose equivalent by the use of devices designed to be worn by an individual;

(b) The assessment of committed effective dose equivalent by bioassay (see Bioassay) or by determination of the time-weighted air concentrations to which an individual has been exposed, that is, DAC-hours; or

(c) The assessment of dose equivalent by the use of survey data.

(63) "Individual monitoring devices" means devices designed to be worn by a single individual for the assessment of dose equivalent such as film badges, thermoluminescent dosimeters (TLDs), pocket ionization chambers, and personal ("lapel") air sampling devices.

(64) "Inhalation class" (see "Class").

(65) "Inspection" means an official examination or observation including, but not limited to, tests, surveys, and monitoring to determine compliance with rules, regulations, orders, requirements, and conditions of the Authority.

(66) "Interlock" means a device arranged or connected such that the occurrence of an event or condition is required before a second event or condition can occur or continue to occur.

(67) "Internal dose" means that portion of the dose equivalent received from radioactive material taken into the body.

(68) "Ionizing radiation" means any electromagnetic or particulate radiation capable of producing ions, directly or indirectly, in its passage through matter. It includes any or all of the following: Alpha particles, beta particles, electrons, positrons, gamma rays, X-rays, neutrons, high-speed electrons, high-speed protons, fission fragments and other atomic and subatomic particles; but not sound or radio waves, or visible, infrared, or ultraviolet light.

(69) "Laser" means any device which, when coupled with an appropriate laser energy source, can produce or amplify electromagnetic radiation by the process of controlled stimulated emission.

(70) "License" means a license issued by the Authority in accordance with rules adopted by the Authority.

(71) "Licensed material" means radioactive material received, possessed, used, transferred or disposed of under a general or specific license granted or issued by the Authority. For the purpose of meeting the definition of a Licensing State by the Conference of Radiation Control Program Directors, Inc. (CRCPD), Naturally Occurring and Accelerator Produced Radioactive Material (NARM) refers only to discrete sources of NARM. Diffuse sources of NARM are excluded from consideration by the CRCPD for Licensing State designation purposes.

(72) "Licensee" means any person who is licensed by the Authority in accordance with these rules and the Act.

(73) "Licensing state" means any state with rules or regulations equivalent to the Suggested State Regulations for Control of Radiation relating to, and having an effective program for, the regulatory control of NARM.

(74) "Limits" (dose limits) means the permissible upper bounds of radiation doses.

(75) "Lost or missing licensed or registered source of radiation" means licensed or registered source(s) of radiation whose location is unknown. This definition includes licensed material that has been shipped but has not reached its planned destination and whose location cannot be readily traced in the transportation system.

(76) "Lung class" (see "Class").

(77) "Major processor" means a user processing, handling, or manufacturing radioactive material exceeding Type A quantities as unsealed sources or material, or exceeding four times Type B quantities as sealed sources, but does not include nuclear medicine programs, universities, industrial radiographers, or small industrial programs. Type A and B quantities are defined in division 118 of this chapter.

(78) "Member of the public" means an individual, except when that individual is receiving an occupational dose.

(79) "Minor" means an individual less than 18 years of age.

(80) "Monitoring" means the measurement of radiation, radioactive material concentrations, surface area activities or quantities of radioactive material and the use of the results of these measurements to evaluate potential exposures and doses. For purposes of these rules, "radiation monitoring" and "radiation protection monitoring" are equivalent terms.

(81) "NARM" means any naturally occurring or accelerator-produced radioactive material. It does not include byproduct, source, or special nuclear material.

(82) "Natural radioactivity" means radioactivity of naturally occurring nuclides.

(83) "Naturally-occurring radioactive material" (NORM) means any nuclide that is found in nature as a radioactive material (i.e., not technologically produced).

(84) "Natural thorium" means thorium with the naturally occurring distribution of thorium isotopes (essentially 100 weight percent thorium-232).

(85) "Natural uranium" means a mixture of the uranium isotopes 234, 235 and 238 (approximately 0.7 weight percent uranium-235 and the remainder by weight essentially uranium-238), found in nature, that is neither enriched nor depleted in the isotope uranium 235.

(86) "Nonstochastic effect" means a health effect that varies with the dose and a threshold is believed to exist. Radiation-induced cataract formation is an example of a nonstochastic effect. For purposes of these rules, "deterministic effect" is an equivalent term.

(87) "Normal form radioactive material" means radioactive material that has not been demonstrated to qualify as "special form radioactive material". See "Special form."

(88) "NRC" is the acronym for Nuclear Regulatory Commission.

(89) "Nuclear Regulatory Commission" (NRC) means the U.S. Nuclear Regulatory Commission or its duly authorized representatives.

(90) "Package" means packaging together with its radioactive contents as presented for transport.

(91) "Particle accelerator" means any machine capable of accelerating electrons, protons, deuterons, or other charged particles in a vacuum and of discharging the resultant particulate or other radiation into a medium at energies usually in excess of one MeV.

(92) "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof, and any legal successor, representative, agent, or agency of the foregoing.

(93) "Personnel monitoring equipment" means devices such as film badges, pocket dosimeters, and thermoluminescent dosimeters designed to be worn or carried by an individual for the purpose of estimating the dose received by the individual. See "Individual monitoring devices."

(94) "Pharmacist" means an individual licensed by a state or territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico to practice pharmacy.

(95) "Physician" means an individual licensed by the Oregon State Board of Medical Examiners to dispense drugs in the practice of medicine.

(96) "Planned special exposure" means an infrequent exposure to radiation, separate from and in addition to the annual occupational dose limits.

(97) "Portable gauge" means a measuring or controlling device that is intended to be portable and is not fixed to a specific location. All portable gauges require a specific license (there is no general license granted for portable generally licensed devices in the State of Oregon).

(98) "Program" means the Radiation Protection Services section of the Oregon Health Authority, Public Health Division.

(99) "Pyrophoric liquid" means any liquid that ignites spontaneously in dry or moist air at or below 130 °F (54.4 °C).

(100) "Pyrophoric solid" means any solid material, other than one classed as an explosive, which under normal conditions is liable to cause fires through friction, retained heat from manufacturing or processing, or which can be ignited readily and, when ignited, burns so vigorously and

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persistently as to create a serious transportation, handling, or disposal hazard. Included are spontaneously combustible and water-reactive materials.

(101) "Qualified expert" means an individual, approved by the Authority, who has demonstrated, pursuant to these rules, that he/she possesses the knowledge, skills, and training to measure ionizing radiation, to evaluate radiation parameters, to evaluate safety techniques, and to advise regarding radiation protection needs. The individual must:

(a) Be certified in the appropriate field by the American Board of Radiology, the American Board of Health Physics, the American Board of Medical Physics or the American Board of Nuclear Medicine Science; or

(b) Hold a master's or doctor's degree in physics, biophysics, radiological physics, health physics, or medical physics and have completed one year of documented, full time training in the appropriate field and also one year of documented, full time work experience under the supervision of a qualified expert in the appropriate field. To meet this requirement, the individual must have performed the tasks required of a qualified expert during the year of work experience; or

(c) Receive approval from the Authority for specific activities.

(102) "Quality factor" (Q) means the modifying factor (listed in Tables 1004(b).1 and 1004(b).2 of 10 CFR Part 20.1004 provided at the end of this division) that is used to derive dose equivalent from absorbed dose.

(103) "Quarter" means a period of time equal to one-fourth of the year observed by the licensee, approximately 13 consecutive weeks, providing that the beginning of the first quarter in a year coincides with the starting date of the year and that no day is omitted or duplicated in consecutive quarters.

(104) "Rad" means the special unit of absorbed dose. One rad is equal to an absorbed dose of 100 erg per gram or 0.01 joule per kilogram (0.01 gray). See OAR 333-100-0070(2) for SI equivalent gray.

(105) "Radiation" means:

(a) Ionizing radiation including gamma rays, X-rays, alpha and beta particles, protons, neutrons, and other atomic or nuclear particles or rays;

(b) Any electromagnetic radiation which can be generated during the operations of electronic products and which the Authority has determined to present a biological hazard to the occupational or public health and safety but does not include electromagnetic radiation which can be generated during the operation of an electronic product licensed by the Federal Communications Commission;

(c) Any sonic, ultrasonic or infrasonic waves which are emitted from an electronic product as a result of the operation of an electronic circuit in such product and which the Authority has determined to present a biological hazard to the occupational or public health and safety.

(106) "Radiation area" means any area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.05 mSv (0.005 rem) in one hour at 30 centimeters from the source of radiation or from any surface that the radiation penetrates.

(107) "Radiation machine" means any device capable of producing radiation except those which produce radiation only from radioactive material.

(108) "Radiation safety officer" means:

(a) An individual who has the knowledge, responsibility, and authority to apply appropriate radiation protection rules; or

(b) The representative of licensee management, authorized by the Authority, and listed on the specific license as the radiation safety officer, who is responsible for the licensee's radiation safety program.

(109) "Radioactive material" means any solid, liquid, or gas that emits radiation spontaneously.

(a) Radioactive material, as used in these rules, includes: byproduct material, naturally occurring radioactive material, accelerator produced material, and source material, as defined in this rule.

(b) Radioactive material, as used in these rules, does not include special nuclear material.

(110) "Radioactive waste" means radioactive material that is unwanted or is unusable, as defined in division 50 of chapter 345. No radioactive material may be disposed of in Oregon except as provided in division 50 of chapter 345.

(111) "Radioactivity" means the transformation of unstable atomic nuclei by the emission of radiation.

(112) "Reference Man" means a hypothetical aggregation of human physical and physiological characteristics determined by international consensus. These characteristics may be used by researchers and public health workers to standardize results of experiments and to relate biological insult to a common base. A description of the Reference Man is contained in the International Commission on Radiological Protection report, ICRP Publication 23, "Report of the Task Group on Reference Man."

(113) "Registrant" means any person who is registered with the Authority and is legally obligated to register with the Authority pursuant to these rules and the Act.

(114) "Registration" means the identification of any material or device emitting radiation, and the owner of such material or device must furnish information to the Authority in accordance with the rules adopted by the Authority.

(115) "Regulations of the U.S. Department of Transportation" means the regulations in 49 CFR Parts 100-189 and Parts 390-397.

(116) "Rem" means the special unit of any of the quantities expressed as dose equivalent. The dose equivalent rem is equal to the absorbed dose in rad multiplied by the quality factor (1 rem = 0.01 sievert).

(117) "Research and development" means:

(a) Theoretical analysis, exploration, or experimentation; or

(b) The extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes. Research and development does not include the internal or external administration of radiation or radioactive material to human beings.

(118) "Respiratory protective equipment" means an apparatus, such as a respirator, used to reduce an individual's intake of airborne radioactive materials.

(119) "Restricted area" means an area to which access is limited by the licensee or registrant for the purpose of protecting individuals against undue risks from exposure to sources of radiation. A restricted area does not include areas used as residential quarters, but separate rooms in a residential building may be set apart as a restricted area.

(120) "Roentgen" means the special unit of exposure. One roentgen (R) equals  $2.58 \times 10^{-4}$  Coulombs/kilogram of air (see "Exposure" and division 120).

(121) "Sanitary sewerage" means a system of public sewers for carrying off waste water and refuse, but excluding sewage treatment facilities, septic tanks, and leach fields owned or operated by the licensee.

(122) "Screening" means the use of a systematic approach to obtain cursory examinations of a person or group of persons without regard to specific clinical indications.

(123) "Sealed source" means radioactive material that is encased in a capsule designed to prevent leakage or escape of the radioactive material.

(124) "Sealed Source and Device Registry" means the national registry that contains all the registration certificates, generated by both the U.S. Nuclear Regulatory Commission and Agreement States, that summarize the radiation safety information for sealed sources and devices and describe the licensing and use conditions approved for the product.

(125) "Shallow dose equivalent" (H<sub>s</sub>), which applies to the external exposure of the skin or an extremity, means the dose equivalent at a tissue depth of 0.007 centimeter (7 mg/cm<sup>2</sup>) averaged over an area of one square centimeter.

(126) "SI" means the abbreviation for the International System of Units.

(127) "Sievert" means the International System of Units (SI), unit of any of the quantities expressed as dose equivalent. The dose equivalent in sievert is equal to the absorbed dose in gray multiplied by the quality factor (1 Sv = 100 rem). (See OAR 333-100-0070(2).)

(128) "Site boundary" means that line beyond which the land or property is not owned, leased, or otherwise controlled by the licensee or registrant.

(129) "Source material" means:

(a) Uranium or thorium or any combination of uranium and thorium in any physical or chemical form; or

(b) Ores that contain by weight one-twentieth of one percent (0.05 percent) or more of uranium, thorium, or any combination thereof. Source material does not include special nuclear material.

(130) "Source material milling" means any activity that results in the production of byproduct material, as defined by this rule.

(131) "Source of radiation" means any radioactive material or any device or equipment emitting, or capable of producing, radiation. Source of radiation, pursuant to this rule, includes, but is not limited to, radiation facilities, radiation producing machines, radiation producing devices, radioactive material sealed and unsealed form (normal form and special form), and radioactive material uses.

(132) "Special form radioactive material" means radioactive material that satisfies the following conditions:

(a) It is either a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule;

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(b) The piece or capsule has at least one dimension not less than five millimeters (0.2 inch); and

(c) It satisfies the test requirements specified by the U.S. Nuclear Regulatory Commission. A special form encapsulation designed in accordance with the U.S. Nuclear Regulatory Commission requirements in effect on June 30, 1983, and constructed prior to July 1, 1985, and a special form encapsulation designed in accordance with the Nuclear Regulatory Commission requirements in effect on March 31, 1996, and constructed prior to April 1, 1998, may continue to be used. Any other special form encapsulation either designed or constructed after April 1, 1998, must meet requirements of this definition applicable at the time of its design or construction.

(133) "Special nuclear material" means:

(a) Plutonium, uranium-233, uranium enriched in the isotope 233 or in the isotope 235, and any other material that the U.S. Nuclear Regulatory Commission, pursuant to the provisions of section 51 of the Atomic Energy Act of 1954, as amended, determines to be special nuclear material, but does not include source material; or

(b) Any material artificially enriched by any of the foregoing but does not include source material.

(134) "Special nuclear material in quantities not sufficient to form a critical mass" means uranium enriched in the isotope U-235 in quantities not exceeding 350 grams of contained U-235; uranium-233 in quantities not exceeding 200 grams; plutonium in quantities not exceeding 200 grams; or any combination of them in accordance with the following formula: For each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material. The sum of such ratios for all of the kinds of special nuclear material in combination must not exceed one. For example, the following quantities in combination would not exceed the limitation and are within the formula: \* \* 175 (grams contained U-235) + 50 (grams U-233) + 50 (grams Pu) = 1 350 200 200

(135) "Specific activity of a radionuclide" means the radioactivity of the radionuclide per unit mass of that nuclide. The specific activity of a material in which the radionuclide is essentially uniformly distributed is the radioactivity per unit mass of the material.

(136) "Stochastic effect" means health effects that occur randomly and for which the probability of the effect occurring, rather than its severity, is assumed to be a linear function of dose without threshold. Hereditary effects and cancer incidence are examples of stochastic effects.

(137) "Supervision" as used in these rules, means the responsibility for, and control of, the application, quality, radiation safety and technical aspects of all sources of radiation possessed, used and stored through authorization granted by the Authority.

(138) "Survey" means an evaluation of the radiological conditions and potential hazards incident to the production, use, transfer, release, disposal, or presence of sources of radiation. When appropriate, such evaluation includes, but is not limited to, tests, physical examinations, and measurements of levels of radiation or concentrations of radioactive material present.

(139) "Termination" means:

(a) The end of employment with the licensee or registrant or, in the case of individuals not employed by the licensee or registrant, the end of work assignment in the licensee's or registrant's restricted area in a given calendar quarter, without expectation or specific scheduling of re-entry into the licensee's or registrant's restricted area during the remainder of that calendar quarter; or

(b) The closure of a registered or licensed facility and conclusion of licensed or registered activities, pursuant to a registration or specific license.

(140) "Test" means the process of verifying compliance with an applicable rule.

(141) "These rules," mean all parts of the Oregon Administrative Rules promulgated under ORS 453.605 through 453.807.

(142) "Total effective dose equivalent" (TEDE) means the sum of the deep dose equivalent for external exposures and the committed effective dose equivalent for internal exposures.

(143) "Total organ dose equivalent" (TODE) means the sum of the deep dose equivalent and the committed dose equivalent to the organ receiving the highest dose as described in OAR 333-120-650(1)(d).

(144) "Transport index" means the dimensionless number (rounded up to the first decimal place) placed on the label of a package to designate the degree of control to be exercised by the carrier during transportation. The transport index is the number expressing the maximum radiation level in millirem per hour at one meter from the external surface of the package.

(145) "U.S. Department of Energy" means the Department of Energy established by Public Law 95-91, August 4, 1977, 91 Stat. 565, 42 U.S.C. 7101 et seq., to the extent that the Department exercises functions formerly vested in the U.S. Atomic Energy Commission, its Chairman, members, officers and components and transferred to the U.S. Energy Research and Development Administration and to the Administrator thereof pursuant to sections 104(b), (c) and (d) of the Energy Reorganization Act of 1974 (Public Law 93-438, October 11, 1974, 88 Stat. 1233 at 1237 42 U.S.C. 5814, effective January 19, 1975) and retransferred to the Secretary of Energy pursuant to section 301(a) of the Department of Energy Organization Act (Public Law 95-91, August 4, 1977, 91 Stat. 565 at 577-578, 42 U.S.C. 7151, effective October 1, 1977).

(146) "Unrefined and unprocessed ore" means ore in its natural form prior to any processing, such as grinding, roasting, beneficiating, or refining.

NOTE: "Ore" refers to fuel cycle materials pursuant to 10 CFR Part 150.

(147) "Unrestricted area" means an area, access to which is neither limited nor controlled by the licensee or registrant. For purposes of these rules, "uncontrolled area" is an equivalent term.

(148) "Uranium — depleted, enriched" means:

(a) "Depleted uranium" means uranium containing less uranium-235 than the naturally occurring distribution of uranium isotopes.

(b) "Enriched uranium" means uranium containing more uranium-235 than the naturally occurring distribution of uranium isotopes.

(149) "Validation certificate" means the official document issued upon payment to the Authority of the appropriate fee listed in division 103 of this chapter. The license or registration is subject and void without the annual validation certificate.

(150) "Waste" means radioactive waste.

(151) "Week" means seven consecutive days starting on Sunday.

(152) "Weighting factor" (WT) for an organ or tissue (T) means:

(a) The proportion of the risk of stochastic effects resulting from irradiation of that organ or tissue to the total risk of stochastic effects when the whole body is irradiated uniformly. For calculating the effective dose equivalent, the values of WT are:

(A) Gonads 0.25

(B) Breast 0.15

(C) Red Bone Marrow 0.12

(D) Lung 0.12

(E) Thyroid 0.03

(F) Bone Surfaces 0.03

(G) Remainder 0.30 (see note below)

(H) Whole Body 1.00

Note: Assignment of 0.30 for the remaining organs results from a weighting factor of 0.06 for each of five "remainder" organs, excluding the skin and the lens of the eye, that receive the highest doses.

(b) For the purpose of weighting the external whole body dose, for adding it to the internal dose, a single weighting factor, WT = 1.0, has been specified. The use of other weighting factors for external exposure will be approved on a case-by-case basis until such time as specific guidance is issued.

(153) "Whole body" means, for purposes of external exposure, head, trunk including male gonads, arms above the elbow, or legs above the knee.

(154) "Worker" means an individual engaged in work under a license or registration issued by the Authority and controlled by a licensee or registrant, but does not include the licensee or registrant.

(155) "Working level" (WL) means any combination of short-lived radon progeny in one liter of air that will result in the ultimate emission of  $1.3 \times 10^5$  MeV of potential alpha particle energy. The short-lived radon-222 progeny are: polonium-218, lead-214, bismuth-214, and polonium-214; and for radon-220 the progeny are: polonium-216, lead-212, bismuth-212, and polonium-212.

(156) "Working level month" (WLM) means an exposure to one working level for 170 hours (2,000 working hours per year divided by 12 months per year is approximately equal to 170 hours per month.)

(157) "Year" means the period of time beginning in January used to determine compliance with the provisions of these rules. The licensee or registrant may change the starting date of the year used to determine compliance by the licensee or registrant provided that the change is made at the beginning of the year and that no day is omitted or duplicated in consecutive years.

[ED. NOTE: Tables and Appendices referenced are available from the agency.]

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 453.635

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 4-1985, f. & cf. 3-20-85; HD 10-1987, f. & cf. 7-28-87; HD 1-1991, f. & cert. ef. 1-8-91; HD 15-1994, f. & cert. ef. 5-6-94; HD 1-1995, f. & cert. ef. 4-26-95; Administrative Reformatting 12-8-97; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef.



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10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 12-2006, f. & cert. ef. 6-16-06; PH 4-2007, f. & cert. ef. 3-1-07; PH 14-2008, f. & cert. ef. 9-15-08; PH 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 333-102-0203

### Definitions

The following definitions apply for Radioactive Material Licenses issued pursuant to this division and divisions 105, 113, 115, 117, and 121 of this chapter:

**NOTE:** Unless otherwise specified in this rule, the licenses described in this rule are limited by conditions of the radioactive materials license issued pursuant to OAR 333-102-0200, and other applicable rules in this chapter.

(1) "Analytical Leak Test" means a facility-specific license issued pursuant to OAR 333-103-0010(2)(a), authorizing possession of environmental samples, sealed source leak-test, contamination wipe, etc. samples for radioanalytical measurements. This license does not authorize collection of samples, or decommissioning or decontamination activities.

(2) "Assets" means anything of material value or usefulness. In the context of a materials license, assets include all existing capital, effects, possessions, and belongings and all probable future economic benefits obtained or controlled by a particular entity.

(3) "Basic License" means a facility-specific license issued pursuant to OAR 333-103-0010(2)(b) authorizing the receipt, possession, use, transfer, and disposal of sources of radiation or radioactive materials incident to gauge service, teletherapy service, medical afterloader service, and other licensed service activities; pre-packaged waste pickup (not packaging), storage of materials prior to license termination, instrument quality control servicing or calibration (excluding activities authorized by 333-103-0010(2)(m)), or other minor activities not otherwise specified in these rules, such as authorization for "systems," as defined in these rules, pursuant to that definition.

(4) "Beneficiating" means subjecting a product to any process that will increase or concentrate any component (including the radioactive materials) to benefit the product.

(5) "Brachytherapy" means a Healing Arts facility-specific license issued pursuant to OAR 333-103-0010(2)(c) authorizing the use of brachytherapy sources for in vivo application of radiation in accordance with 333-116-0420. Brachytherapy includes radioactive material sealed sources in seeds, needles, plaques, or other localized medical devices, but excludes remote afterloaders.

(6) "Broad Scope A" means a facility-specific license issued pursuant to OAR 333-103-0010(2)(d), authorizing activities in 333-102-0900(1)(a), under the authority of a Radiation Safety Committee.

(7) "Broad Scope B" means a facility-specific license issued pursuant to OAR 333-103-0010(2)(e) authorizing activities described in 333-102-0900(1)(b), under the authority of a Radiation Safety Officer.

(8) "Broad Scope C" means a facility-specific license issued pursuant to OAR 333-103-0010(2)(f) authorizing activities described in 333-102-0900(1)(c), under the authority of an authorized user.

(9) "Commencement of construction" means any clearing of land, excavation or other substantial action related to a proposed activity for specific licensing that would adversely affect the natural environment of a site.

(10) "Current assets" means cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

(11) "Decontamination and Decommissioning" means:

(a) A facility specific license issued pursuant to OAR 333-103-0010(2)(w) authorizing activities that result in returning a site to its original pre-license condition prior to termination of licensed activities; and

(b) Activities performed pursuant to OAR 333-102-0335 on any portion of a site prior to license termination.

(12) "Diagnosis" means examination, determination, identification, study, or analysis of a medical condition.

(13) "Distribution" means a facility-specific license issued pursuant to OAR 333-103-0010(2)(g), authorizing transfer or distribution (sale) of general or specific license radioactive material to persons granted a general license or issued a specific license, or, in the case of NARM, to persons exempt from the rules in this chapter.

(14) "Exempt Source" means radioactive material, exempt from the rules in this chapter.

(15) "Facility" means location of licensed activities under the direct control of licensee management. If a "facility," as used in this division, includes multiple separate addresses, the Authority may determine how the scope of licensed activities, pursuant to OAR 333-102-0190, 333-102-0300, 333-102-0305, 333-102-0315, 333-102-0320, or 333-102-0325, is authorized.

(16) "Fixed Gauge" means a source-specific license for measuring, gauging, or controlling devices pursuant to OAR 333-103-0010(2)(h). The fixed gauge license also includes X-ray & Hybrid Gauges pursuant to division 115 of this chapter, that contain either an X-ray source or a radioactive sealed source.

(17) "General License" means a granted license, as opposed to an issued license, effective under these rules, to acquire, own, possess, use, or transfer radioactive material or a device that contains radioactive material.

(18) "General License Depleted Uranium" means the general license granted subject to receipt of the registration application pursuant to OAR 333-101-0007, and fee, pursuant to 333-103-0015, for depleted uranium used for shielding or counter weights and issued pursuant to 333-102-0103.

(19) "General License Device" means the general license for in vitro materials granted subject to receipt of the registration application pursuant to OAR 333-101-0007, and fee, pursuant to 333-103-0015, for measuring, gauging.

(20) "General License In Vitro Laboratory" means the general license granted by OAR 333-102-0130, subject to receipt of the registration application pursuant to 333-101-0007, and fee, pursuant to 333-103-0015, for in vitro materials granted a general license by 333-102-0130.

(21) "General License Source Material" means the general license granted for use and possession of source material pursuant to OAR 333-102-0101.

(22) "General License for Certain Devices and Equipment" means the general license granted for use and possession of devices consisting of not more than 500 microcuries of polonium-210 or not more than 50 millicuries of tritium (H-3) per device, pursuant to 10 CFR 31.3.

(23) "General License for Luminous Devices for Aircraft" means the general license granted for use and possession of devices containing not more than ten curies of tritium or not more than 300 millicuries of promethium-147.

(24) "General License for Ownership of Radioactive Material and Limits of Possession" means the general license granted to own material that is not necessarily possessed; conversely, material that is possessed is, by grant of general license, not necessarily owned, pursuant to the general license in OAR 333-102-0120.

(25) "General License for Calibration and Reference Sources" means the general license granted to possess not more than five microcuries (185 kBq) of americium-241, plutonium-238, plutonium-239, or radium-226, pursuant to the general license in OAR 333-102-0125.

(26) "General License for Ice Detection Devices" means the general license granted to possess not more than 50 microcuries (1.85 MBq) of strontium-90, pursuant to the general license in OAR 333-102-0135.

(27) "Generators and Kits" means "Imaging and Localization."

(28) "Healing Arts Specific License" means a specific license authorizing activities in division 116 of this chapter.

(29) "High Doserate Remote Afterloader" means a source-specific license issued pursuant to OAR 333-103-0010(2)(i) authorizing the use of sources in accordance with 333-116-0475, which may be either mobile or stationary, and which deliver a doserate in excess of two Gray (200 rad) per hour at the point or surface where the dose is prescribed. A device may be designated as being high, medium, or pulsed dose remote afterloader or mobile high, medium, or pulsed doserate remote afterloader.

(30) "Hybrid Gauge" means a fixed gauging device that contains both a sealed source and an X-ray source, pursuant to division 115 of this chapter.

(31) "In Vitro Laboratory" means a Healing Arts facility-specific license, under management of a physician or Healing Arts specialist, issued pursuant to OAR 333-103-0010(2)(k) authorizing the use of prepackaged radioactive materials in quantities greater than those authorized by the General License granted by 333-102-0130(2).

(32) Imaging and Localization means a Healing Arts facility-specific license issued pursuant to OAR 333-103-0010(2)(j) authorizing the use of generators and kits for nuclear medicine imaging and localization in accordance with 333-116-0320 or positron emission tomography studies in accordance with 333-116-0800 through 333-116-0880.

(33) "Industrial Radiography" means a facility-specific license issued pursuant to OAR 333-103-0010(2)(l) authorizing activities in division 105 of this chapter.

(34) "Instrument Calibration" means a source-specific radioactive materials license issued pursuant to OAR 333-103-0010(2)(m) for sources of radiation used to calibrate instruments.

(35) "Investigational New Drug" means a Healing Arts facility-specific license issued pursuant to OAR 333-103-0010(2)(n) authorizing the use of any investigational product or device approved by the US Food and

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Drug Administration (FDA) for human use research, diagnosis, or therapy, in accordance with the rules in this chapter.

(36) "Irradiator-Other" means an irradiator with greater than 10,000 curies (370 TBq) licensed pursuant to OAR 333-103-0010(2)(w) and 333-103-0010(7), designed to produce extremely high dose rates as authorized by division 121 of this chapter.

(37) "Irradiator Self-shielded or Other -- Less than 10,000 Curies" means a source-specific license issued pursuant to OAR 333-103-0010(2)(o) authorizing self-shielded irradiators, including blood irradiators, panoramic irradiators, and converted teletherapy units, with less than 10,000 Ci (370 TBq) activity.

(38) "Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

(39) "Lot Tolerance Percent Defective" means, expressed in percent defective, the poorest quality in an individual inspection lot that should be accepted.

(40) "Low Doserate Remote Afterloader Device" means a Healing Arts source-specific license issued pursuant to OAR 333-103-0010(2)(b) authorizing devices 333-116-0475, which remotely deliver a doserate of less than two Gray (200 rad) per hour at the point or surface where the dose is prescribed.

(41) "Manufacturing or Compounding" means a facility-specific radioactive materials license issued pursuant to OAR 333-103-0010(2)(p) authorizing manufacture, fabrication, assembly, construction, combining, processing, concentrating, beneficiating, or processing items or products using or containing radioactive materials into a finished product containing radioactive material in accordance with applicable requirements in division 102 of this chapter.

(42) "Manufacturing or Compounding and Distribution" means activities performed as defined in sections (13) and (41) of this rule and require separate specific licenses for each activity.

(43) "Mobile Nuclear Medicine Service" means a facility-specific Healing Arts license issued pursuant to OAR 333-116-0120 authorizing the medical use of radioactive material at specified temporary locations.

(44) "Nationally Tracked Source" means a sealed source containing a quantity equal to or greater than Category 1 or 2 levels of any radioactive material listed in 10 CFR 20 Appendix E.

(45) "Naturally occurring radioactive material (NORM)" means radioactive material in the uranium or thorium decay series existing in nature in concentrations less than 0.05% source material.

(46) "Net working capital" means current assets minus current liabilities.

(47) "Net worth" means total assets minus total liabilities and is equivalent to owner's equity.

(48) "Neutron Howitzer" means a device that contains a sealed source containing Special Nuclear Material (see definition in OAR 333-100-0005) that generates neutrons that are used for analytical, teaching, or research purposes.

(49) "Neutron Production" denotes a process in which neutrons are produced, either by natural or artificial means.

(50) "NORM (no processing)" means a facility-specific license pursuant to OAR 333-103-0010(2)(n) authorizing possession, use, and transfer of NORM in accordance with division 117 of this chapter.

**NOTE:** NORM licenses authorize licensable quantities of radioactive material in the uranium or thorium decay series. Licensable quantities of NORM are derived from disposal limits in OAR 345-050. Any material that contains NORM requires a specific license unless exempted in OAR 345-050. Zircon sand is used as the NORM model for licensing purposes. Quantities of zircon sand in excess of 20,000 pounds in a year constitute a licensable quantity of NORM. NORM materials that are not zircon are based on the zircon model.

(51) "Nuclear Laundry" means a laundry facility designed specifically to clean or launder clothing contaminated with licensed radioactive materials. Nuclear Laundry facilities must have process and waste management control procedures to prevent reconcentrating of licensed materials in sewers, drains, premises, and the environment. Nuclear Laundry activities are authorized pursuant to OAR 333-103-0010(2)(w), "Radioactive Material Not Otherwise Specified Facility," see 333-102-0203(61).

(52) "Nuclear Pharmacy" means a facility-specific license issued pursuant to OAR 333-103-0010(2)(s) for activities authorized by 333-102-0285 and the Oregon Board of Pharmacy rules, to compound Radiopharmaceutical and distribute (sell or transfer) to persons specifically licensed to receive such compounds or products.

**NOTE:** Nuclear Pharmacies, pursuant to policy provisions of chapter 345 division 50 may collect syringes containing residual licensed material from spent patient doses, since the syringe is considered to be a transport device under the administrative control of the pharmacy rather than the licensed material transferred as the dose. Residual licensed material may be considered either to be exempt pursuant to Table 1 of divi-

sion 50 or under the authority of a division license if the receding licensee stores syringes for decay. In either case, the division license should specify which disposal method is being used by the pharmacy and licensee to avoid compatibility conflicts with division 50 requirements.

(53) "Other Measuring Device" means a source-specific license issued pursuant to OAR 333-103-0010(2)(t), authorizing analytical instruments, gas chromatograph electron capture detectors, and other non-portable analytical instruments, including those devices that contain multiple sources but are configured and used as a "system," in accordance with the definition in this rule.

**NOTE:** General license gas chromatograph detectors that formerly were granted a general license by OAR 333-102-0115, but which required a registration fee pursuant to 333-103-0015(2)(b), now are subject to the specific license in 333-103-0010(2)(t).

(54) "Pool-type Irradiator" means an irradiator with greater than 10,000 curies (370 TBq) in which water provides the radiation shielding, authorized in accordance with division 121 of this chapter.

(55) "Portable Gauge" means a source-specific license issued pursuant to OAR 333-103-0010(2)(u) for sources used in devices that can be transported and used at temporary job sites.

**NOTE:** Any device that meets the definition of "portable gauge" and is transported or used at temporary job sites within the state of Oregon, requires an application for and issuance of an Oregon specific license subject to OAR 333-103-0010(2)(u).

(56) "Positron Emission Tomography" (PET) means a licensed healing arts activity authorized by OAR 333-116-0800 and included in the facility specific license issued pursuant to 333-103-0010(2)(j). PET nuclides, which are NARM, are subject to all Oregon rules.

(57) "Possession or Storage of Industrial Wastes Containing Radioactive Material" means activities subject to division 110 of this chapter for the production or storage of wastes that are exempt from division 50 of chapter 345 facility siting requirements, and were generated under a current NRC, Agreement State, or Licensing State specific radioactive materials license.

(58) "Possession or Storage of Uranium Tailings" means activities incident to uranium processing or milling operations resulting in the production of tailings.

(59) "Principal Activities" means activities authorized by the license that are essential to achieving the purpose(s) for which the license was issued or amended. Storage during which no licensed material is accessed for use or disposal and activities incidental to decontamination or decommissioning are not principal activities.

(60) "Processing" means chemically or physically changing a licensed material from one physical form to another form or specie (e.g., breaking an ore down into its components resulting in "tailings"; milling a raw licensed material and combining to form another product or material. See "Beneficiating"; "Manufacturing or Compounding").

(61) "Radiation Source" means source of radiation (see definition of "Source of radiation" in OAR 333-100-0005).

(62) "Radioactive Material Not Otherwise Specified Facility" means a license issued pursuant to OAR 333-103-0010(2)(w) authorizing activities that includes, but are not limited to, complex licensable activities such as facility decontamination and decommissioning, nuclear laundry activities, uranium mill tailings storage, storage of industrial wastes containing radioactive materials, large irradiator management, and other complex activities not otherwise specified in these rules.

(63) "Radioactive Materials License" means the document, pursuant to OAR 333-102-0300, issued after an application, pursuant to OAR 333-102-0190, has been accepted as adequate, that specifies radioactive materials, use authorizations, safety procedures, and use locations.

(64) "Radiopharmaceutical Therapy" means a Healing Arts facility-specific license issued pursuant to OAR 333-103-0010(2)(v) authorizing the use of Radiopharmaceutical for therapy in accordance with 333-116-0360.

(65) "Remote Afterloader" means a medical device that moves a sealed source to an interstitial (in vivo) location without exposing the practitioner to the radiation dose. Remote afterloader sources may be manipulated using computer software and engineering techniques.

(66) "Research & Development" means a facility-specific license issued pursuant to OAR 333-103-0010(2)(x) authorizing research and development activities, as defined in 333-100-0005, but does not authorize additional specific sources of radiation, which must be licensed separately pursuant to 333-103-0010 and 333-103-0015.

(67) "Responsible Representative" means

(a) The person designated as having responsibility for general license device or general license material;

(b) The person management has selected to certify general license inventory; and

(c) The individual responsible to the Authority and to management to ensure that all regulatory elements are adequate.

# ADMINISTRATIVE RULES

(68) "Sealed Source/Device Evaluation" means the review of a licensee's prototype source or device prior to registration by the Nuclear Regulatory Commission in the Sealed Source and Device Catalog.

**NOTE:** The Authority no longer has authority to review sources or devices. All source or device reviews must be forwarded to the NRC for review. Authority to conduct device or source evaluations was rescinded by the NRC in 1998.

(69) "Site Area Emergency" means events may occur, are in progress, or have occurred that could lead to a significant release of radioactive material and that could require a response by offsite response organizations to protect persons offsite.

(70) "Sealed Sources for Diagnosis" means a Healing Arts source-specific license issued pursuant to OAR 333-103-0010(2)(y) authorizing the use of sealed sources for diagnosis in accordance with 333-116-0400.

(71) "Special Nuclear Material" means:

(a) Plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the NRC, pursuant to the provisions of section 51 of the act, determines to be special nuclear material, but does not include source material; or

(b) Any material artificially enriched by any of the foregoing but does not include source material.

(72) "Specific License Radioactive Material" means radioactive material that requires authorization in a specific license document pursuant to OAR 333-102-0075(2) where materials must be annotated on the specific license, and validated with a specific license fee pursuant to 333-103-0010(2)(a) through 333-103-0010(2)(hh) (see "Radioactive Materials License").

(73) "System," as used in this division, means multiple separate (individual) sources of radiation (sealed radioactive sources), which together, rather than independently, achieve a desired functionality. Such "system" is subject to one specific license fee or general license registration fee, as the case may be.

(74) "Tangible Net Worth" means the tangible assets that remain after deducting liabilities; such assets would not include intangibles such as goodwill and rights to patents or royalties.

(75) "Teletherapy" means a Healing Arts source-specific license issued pursuant to OAR 333-103-0010(2)(cc) authorizing teletherapy procedures in accordance with OAR 333-116-0480. This license also includes other high dose rate external beam therapy devices such as the "gamma knife."

(76) "Temporary Job Site" means any location, where specific license material is used that is either:

(a) Not the specific location of the licensee if an in-state licensee; or

(b) Any location in the State if an out-of-state specific licensee pursuant to a specific radioactive materials license.

**NOTE:** Persons authorized for temporary jobsites in Oregon must have a specific license for such activities.

(77) "Therapy" means a process that is meant to be restorative, promotes healing, or is beneficial to a patient in a healing arts context.

(78) "Unique" means a specific license issued pursuant to OAR 333-103-0010(2)(dd) to Agencies in the Oregon Health Authority.

(79) "Uptake and Dilution" means a Healing Arts facility-specific license issued pursuant to OAR 333-103-0010(2)(ee) authorizing activities in OAR 333-116-0300 for uptake, dilution, and excretion studies.

(80) "Use and Possession of Source Material" means a facility-specific radioactive materials license issued pursuant to OAR 333-103-0010(2)(z) to possess, use, process, or transfer source material, as defined in OAR 333-100-0005, in quantities greater than general license quantities or in concentrations greater than 0.05 percent source material.

**NOTE:** This definition was amended to avoid confusion between the definition of "source material" in division 100 of this chapter and the specific license (billable object) in division 103 of this chapter.

(81) "Use of Xenon Gas" means a Healing Arts facility-specific license issued pursuant to OAR 333-103-0010(2)(ff) authorizing the use of Xe-133 for diagnosis pursuant to OAR 333-116-0280;

(82) "Waste Packaging" means a facility-specific license issued pursuant to OAR 333-103-0010(2)(gg), authorizing packaging, collection, storage, and transfer of radioactive waste. This specific license does not authorize storage of radioactive wastes, but does authorize temporary job sites.

(83) "Well Logging" means a license issued pursuant to OAR 333-103-0010(2)(hh) authorizing the possession, use, transfer, or disposal of sources of radiation used for well logging activities authorized by division 113 of this chapter.

**NOTE:** Unless specifically authorized in this rule or in a radioactive materials license that authorizes temporary job sites, specific licenses must be used only at one authorized site.

[ED. NOTE: Appendices referenced are available from the agency.]

Stat. Auth.: ORS 453.635, 453.665

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 1-1995, f. & cert. ef. 4-26-95; HD 2-1995(Temp), f. & cert. ef. 7-11-95; HD 4-1995, f. & cert. ef. 9-8-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 12-2006, f. & cert. ef. 6-16-06; PH 4-2007, f. & cert. ef. 3-1-07; PH 14-2008, f. & cert. ef. 9-15-08; PH 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 333-106-0005

### Definitions

As used in this division, the following definitions apply:

(1) "Accessible Surface" means the external surface of the enclosure or housing provided by the manufacturer.

(2) "Added Filtration" means any filtration that is in addition to the inherent filtration.

(3) "Aluminum Equivalent" means the thickness of type 1100 aluminum alloy affording the same attenuation, under specified conditions, as the material in question.

**NOTE:** The nominal chemical composition of type 1100 aluminum alloy is 99.00 percent minimum aluminum, 0.12 percent copper.

(4) "Applications Training" means a vendor or manufacturer providing training for specific X-ray equipment.

(5) "A.R.R.T." means the American Registry of Radiologic Technologists.

(6) "Assembler" means any person engaged in the business of assembling, replacing, or installing one or more components into an X-ray system or subsystem. The term includes the owner of an X-ray system or his or her employee or agent who assembles components into an X-ray system that is subsequently used to provide professional or commercial services.

(7) "Attenuation Block" means a block or stack, having dimensions 20 centimeters (cm) by 20 cm by 3.8 cm, of type 1100 aluminum alloy or other materials having equivalent attenuation.

(8) "Authority approved instructor" means an individual who has been evaluated and approved by the Authority to teach Radiation Safety.

(9) "Authority approved training course" means a course of training that has been evaluated and approved by the Authority.

(10) "Automatic Exposure Control (AEC)" means a device that automatically controls one or more technique factors in order to obtain at a pre-selected location(s) a required quantity of radiation. (See also "Photo timer".)

(11) "Barrier" (see "Protective Barrier").

(12) "Beam Axis" means a line from the source through the centers of the X-ray fields.

(13) "Beam-Limiting Device" means a device that provides a means to restrict the dimensions of the X-ray field.

(14) "Beam Monitoring System" means a system designed to detect and measure the radiation present in the useful beam.

(15) "C-arm X-ray system" means an X-ray system in which the image receptor and X-ray tube housing are connected by a common mechanical support system in order to maintain a desired spatial relationship. This system is designed to allow a change in the projection of the beam through the patient without a change in the position of the patient.

(16) "Cephalometric Device" means a device intended for the radiographic visualization and measurement of the dimensions of the human head.

(17) "Certified Components" means components of X-ray systems that are subject to the X-ray Equipment Performance Standards promulgated under Public Law 90-602, the Radiation Control Agency for Health and Safety Act of 1968.

(18) "Certified System" means any X-ray system that has one or more certified component(s).

(19) "Changeable Filters" means any filter, exclusive of inherent filtration, which can be removed from the useful beam through any electronic, mechanical or physical process.

(20) "Coefficient of Variation (C)" means the ratio of the standard deviation to the mean value of a set of observations.

(21) "Computed tomography (CT)" means the production of a tomogram by the acquisition and computer processing of X-ray transmission data.

(22) "Computed radiography (CR)" means creating an X-ray image using plates consisting of a photo stimulable phosphor (PSP) that when exposed to radiation and then processed by a scanner, provides the information to a computer for display and manipulation.

(23) "Contact Therapy System" means an X-ray system used for therapy with the tube port placed in contact with or within five centimeters of the surface being treated.

(24) "Control Panel" means that part of the X-ray control upon which are mounted the switches, knobs, pushbuttons and other hardware necessary for manually setting the technique factors.



## ADMINISTRATIVE RULES

(25) "Cooling Curve" means the graphical relationship between heat units stored and cooling time.

(26) "Dead-Man Switch" means a switch so constructed that a circuit closing contact can be maintained only by continuous pressure on the switch by the operator.

(27) "Detector" (see "Radiation detector").

(28) "Diagnostic X-ray imaging system" means an assemblage of components for the generation, emission, and reception of X-rays and the transformation, storage, and visual display of the resultant X-ray image.

(29) "Diagnostic Source Assembly" means the tube housing assembly with a beam-limiting device attached.

(30) "Diagnostic-Type Protective Tube Housing" means a tube housing so constructed that the leakage radiation measured at a distance of one meter from the source does not exceed 100 milliroentgens (mR) in one hour when the tube is operated at its leakage technique factors.

(31) "Diagnostic X-ray System" means an X-ray system designed for irradiation of any part of the human body or animal body for the purpose of diagnosis or visualization.

(32) "Direct Digital Radiography (DR)" means creating an X-ray image by sending signals directly from a digital image receptor to a computer for display and manipulation.

(33) "Direct Scattered Radiation" means that scattered radiation which has been deviated in direction only by materials irradiated by the useful beam (see "Scattered radiation").

(34) "Direct supervision" means that the person who directs the X-ray or fluoroscopic equipment operator(s) shall be present in the room while the individual operates the equipment.

(35) "Entrance Exposure Rate" means the exposure free in air per unit of time.

(36) "Field Emission Equipment" means equipment which uses a tube in which electron emission from the cathode is due solely to the action of an electric field.

(37) "Filter" means material placed in the useful beam to absorb preferentially selected radiations.

(38) "Fluoroscopic Benchmark" means a standard based upon the average cumulative fluoroscopic on-time normally found to be used for a specific fluoroscopic procedure at the site.

(39) "Fluoroscopic Imaging Assembly" means a subsystem in which X-ray photons produce a visible image. It includes the image receptor(s) such as the image intensifier and spot-film device, electrical interlocks, if any, and structural material providing linkage between the image receptor and diagnostic source assembly.

(40) "Fluoroscopic X-ray equipment operator" means any individual who, adjusts technique factors, activates the exposure switch or button of a fluoroscopic X-ray machine or physically positions patients or animals. Human holders, used solely for immobilization purposes (i.e. veterinarian human holders) are excluded from this rule.

(41) "Focal Spot" means the area projected on the anode of the tube by the electrons accelerated from the cathode and from which the useful beam originates.

(42) "General Purpose Radiographic X-ray System" means any radiographic X-ray system which, by design, is not limited to radiographic examination of specific anatomical regions.

(43) "General supervision" means that the person who directs the X-ray or fluoroscopic equipment operator(s), must be immediately available by telephone, pager, or other mode of communication, to provide direction if needed or requested.

(44) "Gonad Shield" means a protective barrier for the testes or ovaries.

(45) "Hand-held unit" means a self contained X-ray machine designed so that it can be held in one or two hands to perform intra-oral radiography or other Authority approved radiography.

(46) "Half-Value Layer (HVL)" means the thickness of specified material which attenuates the beam of radiation to an extent such that the exposure rate is reduced to one-half of its original value. In this definition, the contribution of all scattered radiation, other than any which might be present initially in the beam concerned, is deemed to be excluded.

(47) "Healing arts screening" means the testing of human beings using X-ray machines for the detection or evaluation of health indications when such tests are not specifically and individually ordered by an Oregon licensed practitioner of the healing arts legally authorized to prescribe such X-ray tests for the purpose of diagnosis or treatment.

(48) "Heat Unit" means a unit of energy equal to the product of the peak kilovoltage, milliamperes and seconds, i.e., kVp x mA x second.

(49) "HVL" (see "Half-value layer").

(50) "Image Intensifier" means a device, installed in its housing, which instantaneously converts an X-ray pattern into a corresponding light image of higher energy density.

(51) "Image Receptor" means any device, such as a fluorescent screen or radiographic film, which transforms incident photons either into a visible image or into another form which can be made into a visible image by further transformations.

(52) "Indirect supervision" means that the person who directs the X-ray or fluoroscopic equipment operator(s) be readily available on facility premises when the X-ray or fluoroscopic equipment is operated.

(53) "Inherent Filtration" means the filtration of the useful beam provided by the permanently installed components of the tube housing assembly.

(54) "Interlock" means a device arranged or connected such that the occurrence of an event or condition is required before a second event or condition can occur or continue to occur.

(55) "Irradiation" means the exposure of matter to ionizing radiation.

(56) "Kilovolt-Peak" (see "Peak tube potential").

(57) "kV" means kilovolts.

(58) "kVp" (see "Peak tube potential").

(59) "kW's" means kilowatt second.

(60) "Lead Equivalent" means the thickness of lead affording the same attenuation, under specified conditions, as the material in question.

(61) "Leakage Radiation" means radiation emanating from the diagnostic or therapeutic source assembly except for:

(a) The useful beam; and

(b) Radiation produced when the exposure switch or timer is not activated.

(62) "Leakage Technique Factors" means the technique factors associated with the diagnostic or therapeutic source assembly which are used in measuring leakage radiation. They are defined as follows:

(a) For diagnostic source assemblies intended for capacitor energy storage equipment, the maximum rated peak tube potential and the maximum-rated number of exposures in an hour for operation at the maximum rated peak tube potential with the quantity of charge per exposure being 10 millicoulombs, i.e., 10 milliamperes seconds (mAs), or the minimum obtainable from the unit, whichever is larger.

(b) For diagnostic source assemblies intended for field emission equipment rated for pulsed operation, the maximum-rated peak tube potential and the maximum-rated number of X-ray pulses in an hour for operation at the maximum-rated peak tube potential.

(c) For all other diagnostic or therapeutic source assemblies, the maximum-rated peak tube potential and the maximum-rated continuous tube current for the maximum-rated peak tube potential.

(63) "Light Field" means that area of the intersection of the light beam from the beam-limiting device and one of the set of planes parallel to and including the plane of the image receptor, whose perimeter is the locus of points at which the illumination is one-fourth of the maximum in the intersection.

(64) "Line-Voltage Regulation" means the difference between the no-load and the load line potentials expressed as a percent of the load line potential.

(65) "mA" means milliamperes.

(66) "mAs" means milliamperes second.

(67) "Maximum Line Current" means the root-mean-square current in the supply line of an X-ray machine operating at its maximum rating.

(68) "Mobile Equipment" (see "X-ray Equipment").

(69) "Non-radiologist practitioner" means an individual who practices medicine as a medical doctor (M.D.), doctor of osteopathic medicine (D.O.), doctor of chiropractic medicine (D.C.), doctor of podiatric medicine (D.P.M.) or doctor of veterinary medicine (D.V.M.); and

(a) Are not specifically certified in diagnostic and/or therapeutic use of X-rays; and

(b) Are currently licensed by their respective Oregon licensing board.

(70) "Operator" means an individual who, under the supervision of a practitioner of the healing arts, handles ionizing radiation equipment, physically positions patients or animals, determines exposure parameters or applies the radiation for the diagnostic or therapeutic purposes intended.

(71) "Patient" means an individual subjected to healing arts examination, diagnosis, or treatment.

(72) "Peak Tube Potential" means the maximum value of the potential difference across the X-ray tube during an exposure.

(73) "Phantom" means a volume of material behaving in a manner similar to tissue with respect to the attenuation and scattering of radiation.

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This requires that both the atomic number (Z) and the density of the material be similar to that of tissue.

(74) "Photo timer" means a method for controlling radiation exposures to image receptors by measuring the amount of radiation which reaches a radiation monitoring device(s). The radiation monitoring device(s) is a part of an electronic circuit which controls the duration of time the tube is activated (see also "Automatic exposure control").

(75) "PID" (see "Position indicating device").

(76) "Portable Equipment" (see "X-ray Equipment").

(77) "Position Indicating Device" means a device on dental X-ray equipment used to indicate the beam position and to establish a definite source-surface (skin) distance. It may or may not incorporate or serve as a beam-limiting device.

(78) "Primary Dose Monitoring System" means a system which will monitor useful beam during irradiation and which will terminate irradiation when a pre-selected number of dose monitor units have been acquired.

(79) "Primary Protective Barrier" (see "Protective barrier").

(80) "Protective Apron" means an apron made of radiation absorbing materials used to reduce radiation exposure.

(81) "Protected Area" means an area shielded with primary or secondary protective barriers or an area removed from the radiation source such that the exposure rate within the area due to normal operating procedures and workload does not exceed any of the following limits:

(a) 2 milliroentgens (mR) in any one hour; or

(b) 100 mR in any one year.

(c) See OAR 333-120-0180 for additional information.

(82) "Protective Barrier" means a barrier of radiation absorbing material(s) used to reduce radiation exposure. The types of protective barriers are as follows:

(a) "Primary protective barrier" means the material, excluding filters, placed in the useful beam, for protection purposes, to reduce the radiation exposure;

(b) "Secondary protective barrier" means a barrier sufficient to attenuate the stray radiation to the required degree.

(83) "Protective Glove" means a glove made of radiation absorbing materials used to reduce radiation exposure.

(84) "Qualified Expert" means an individual, approved by the Authority, who has demonstrated, pursuant to these rules, that he/she possesses the knowledge, skills, and training to measure ionizing radiation, to evaluate radiation parameters, to evaluate safety techniques, and to advise regarding radiation protection needs. The individual shall:

(a) Be certified in the appropriate field by the American Board of Radiology, the American Board of Health Physics, the American Board of Medical Physics or the American Board of Nuclear Medicine Science; or

(b) Hold a master's or doctor's degree in physics, biophysics, radiological physics, health physics, or medical physics and have completed one year of documented, full time training in the appropriate field and also one year of documented, full time work experience under the supervision of a qualified expert in the appropriate field. To meet this requirement, the individual shall have performed the tasks required of a qualified expert during the year of work experience; or

(c) Receive approval from the Authority for specific activities.

(85) "Quality Control Program" means a program directed at film processing and radiographic image quality whereby periodic monitoring of film processing is performed. Test films are compared against control film, either visually or by use of a densitometer, to determine if density or contrast have changed. Steps can then be taken to investigate such change and correct the problem. The X-ray machine itself can also be involved in the quality control program, as can other components of the imaging chain.

(86) "Radiation Detector" means a device which in the presence of radiation provides a signal or other indication suitable for use in measuring one or more quantities of incident radiation.

(87) "Radiation Therapy Simulation System" means a radiographic or fluoroscopic system intended for localizing the volume to be exposed during radiation therapy and confirming the position and size of the therapeutic irradiation field.

(88) "Radiograph" means an image receptor on which the image is created directly or indirectly by a pattern and results in a permanent record.

(89) "Radiographic Imaging System" means any system whereby a permanent or semipermanent image is recorded on an image receptor by the action of ionizing radiation.

(90) "Radiological Physicist" means an individual who:

(a) Is certified by the American Board of Radiology in therapeutic radiological physics, radiological physics, or x- and gamma-ray physics; or

(b) Has a bachelor's degree in one of the physical sciences or engineering and three years full-time experience working in therapeutic radiological physics under the direction of a physicist certified by the American Board of Radiology. The work duties must include duties involving the calibration and spot checks of a medical accelerator or a sealed source teletherapy unit; or

(c) Has a master's or a doctor's degree in physics, biophysics, radiological physics, health physics, or engineering; has had one year's full-time training in therapeutic radiological physics; and has had one year's full-time work experience in a radiotherapy facility where the individual's duties involve calibration and spot checks of a medical accelerator or a sealed source teletherapy unit.

(91) "Radiologist" or "Oral Radiologist" means a physician or dentist trained in the diagnostic and/or therapeutic use of X-rays and who is:

(a) Currently licensed by their respective Oregon licensing board; and

(b) Board certified by the American Board of Radiology (ABR) or American Osteopathic Board of Radiology (AOBR) or American Chiropractic Board of Radiology (DACBR) or Royal College of Physicians and Surgeons of Canada (RCPSC) or the American Board of Oral and Maxillo-Facial Radiology (ABOMFR) and currently licensed to practice medicine or dentistry in Oregon.

(92) "Radiology Physician's Assistant" (R.P.A.)/ "Registered Radiology Assistant" (R.R.A.).

(a) An R.P.A. means an American Registry of Radiologic Technologists (A.R.R.T.) technologist who has successfully completed an advanced training program and is certified by the Certification Board for Radiology Practitioner Assistants (CBRPA).

(b) An R.R.A. means an A.R.R.T. technologist who has successfully completed an advanced training program and is certified by A.R.R.T.

(93) "R.T." means a radiologic technologist certified in radiography and currently licensed by the Oregon Board of Radiologic Technology (OBRT).

(94) "Rating" means the operating limits as specified by the component manufacturer.

(95) "Recording" means producing a permanent form of an image resulting from X-ray photons.

(96) "Registrant," as used in this division, means any person who owns or possesses and administratively controls an X-ray system which is used to deliberately expose humans, animals or materials to the useful beam of the system and is required by the provisions contained in divisions 100 and 101 of this chapter to register with the Authority.

(97) "Response Time" means the time required for an instrument system to reach 90 percent of its final reading when the radiation-sensitive volume of the instrument system is exposed to a step change in radiation flux from zero, sufficient to provide a steady state midscale reading.

(98) "Scattered Radiation" means radiation that, during passage through matter, has been deviated in direction (see "Direct Scattered Radiation").

(99) "Screening" means the use of a systematic approach to obtain cursory examinations of a person or group of persons without regard to specific clinical indications.

(100) "Secondary Dose Monitoring System" means a system which will terminate irradiation in the event of failure of the primary system.

(101) "Secondary Protective Barrier" (see "Protective barrier").

(102) "Shutter" means a device attached to the tube housing assembly which can totally intercept the useful beam and which has a lead equivalency not less than that of the tube housing assembly.

(103) "SID" (see "Source-image receptor distance").

(104) "Source" means the focal spot of the X-ray tube.

(105) "Source-Image Receptor Distance" means the distance from the source to the center of the input surface of the image receptor.

(106) "Spot Check" means a procedure which is performed to assure that a previous calibration continues to be valid.

(107) "Spot Film" means a radiograph which is made during a fluoroscopic examination to permanently record conditions which exist during that fluoroscopic procedure.

(108) "Spot-Film Device" means a device intended to transport and/or position a radiographic image receptor between the X-ray source and fluoroscopic image receptor. It includes a device intended to hold a cassette over the input end of an image intensifier for the purpose of making a radiograph.

(109) "SSD" means the distance between the source and the skin of the patient.

(110) "Stationary Equipment" (see "X-ray Equipment").

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(111) "Stray Radiation" means the sum of leakage and scattered radiation.

(112) "Technique Factors" means the conditions of operation. They are specified as follows:

(a) For capacitor energy storage equipment, peak tube potential in kV and quantity of charge in mAs;

(b) For field emission equipment rated for pulsed operation, peak tube potential in kV and number of X-ray pulses;

(c) For all other equipment, peak tube potential in kV and either tube current in mA and exposure time in seconds, or the product of tube current and exposure time in mAs.

(113) "Termination of Irradiation" means the stopping of irradiation in a fashion which will not permit continuance of irradiation without the resetting of operating conditions at the control panel.

(114) "Traceable to a National Standard" means that a quantity or a measurement has been compared to a national standard directly or indirectly through one or more intermediate steps and that all comparisons have been documented.

(115) "Tube" means an X-ray tube, unless otherwise specified.

(116) "Tube Housing Assembly" means the tube housing with tube installed. It includes high-voltage and/or filament transformers and other appropriate elements when such are contained within the tube housing.

(117) "Tube Rating Chart" means the set of curves which specify the rated limits of operation of the tube in terms of the technique factors.

(118) "Unprotected Area" means any area in which the exposure rate, due to the use of the radiation machine under normal operating procedures and workload, exceeds any of the following limits:

(a) Two mR in any one hour;

(b) 100 mR in any seven consecutive days; or

(c) 500 mR in any one year.

(119) "Useful Beam" means the radiation emanating from the tube housing port or the radiation head and passing through the aperture of the beam limiting device when the exposure controls are in a mode to cause the system to produce radiation.

(120) "Variable-Aperture Beam-Limiting Device" means a beam-limiting device which has capacity for stepless adjustment of the X-ray field size at a given SID.

(121) "Visible Area" means that portion of the input surface of the image receptor over which the incident X-ray photons are producing a visible image.

(122) "Wedge Filter" means an added filter effecting continuous progressive attenuation on all or part of the useful beam.

(123) "X-ray Control" means a device which controls input power to the X-ray high-voltage generator and/or the X-ray tube. It includes equipment such as exposure switches (control), timers, photo timers, automatic brightness stabilizers and similar devices, which control the technique factors of an X-ray exposure.

(124) "X-ray Equipment" means an X-ray system, subsystem, or component thereof. Types of equipment are as follows:

(a) "Mobile equipment" means X-ray equipment mounted on a permanent base with wheels and/or casters for moving while completely assembled;

(b) "Portable equipment" means X-ray equipment designed to be hand-carried;

(c) "Stationary equipment" means X-ray equipment which is installed in a fixed location; and

(d) "Transportable" means X-ray equipment installed in a vehicle or trailer.

(125) "X-ray equipment operator" means any individual who handles, adjusts technique factors, activates the exposure switch/ or button of an X-ray machine, or physically positions patients or animals for a radiograph (see "Operator").

(126) "X-ray Field" means that area of the intersection of the useful beam and any one of the set of planes parallel to and including the plane of the image receptor, whose perimeter is the locus of points at which the exposure rate is one-fourth of the maximum in the intersection.

(127) "X-ray High-Voltage Generator" means a device which transforms electrical energy from the potential supplied by the X-ray control to the tube operating potential. The device may also include means for transforming alternating current to direct current, filament transformers for the X-ray tube(s), high-voltage switches, electrical protective devices and other appropriate elements.

(128) "X-ray System" means an assemblage of components for the controlled production of X-rays. It includes minimally an X-ray high-voltage generator, an X-ray control, a tube housing assembly, a beam-limiting

device and the necessary supporting structures. Additional components which function with the system are considered integral parts of the system.

(129) "X-ray Subsystem" means any combination of two or more components of an X-ray system for which there are requirements specified in this division.

(130) "X-ray Tube" means any electron tube which is designed to be used primarily for the production of X-rays.

[ED. NOTE: Equations referenced are available from the agency.]

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 15-1994, f. & cert. ef. 5-6-94; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 5-2005, f. & cert. ef. 4-11-05; PH 12-2006, f. & cert. ef. 6-16-06; PH 14-2008, f. & cert. ef. 9-15-08; PH 4-2010, f. & cert. ef. 2-16-10; PH 20-2010, f. & cert. ef. 9-1-10; PH 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 333-106-0101

### Diagnostic X-ray Systems

Additional Requirements. In addition to other requirements of this division, all diagnostic X-ray systems shall meet the following requirements:

(1) Warning Label. The control panel containing the main power switch shall bear the warning statement, legible and accessible to view: "WARNING: This X-ray unit may be dangerous to patient and operator unless safe exposure factors and operating instructions are observed."

(2) The state will attach an identification number to each X-ray control panel or an appropriate location:

(a) Identification numbers shall not be removed without written permission of the Authority;

(b) Identification numbers shall not be defaced.

(3) Mobile and portable X-ray systems shall meet the requirements of a stationary system when used for greater than seven consecutive days in the same location.

(4) Battery Charge Indicator. On battery-powered X-ray generators, visual means shall be provided on the control panel to indicate whether the battery is in a state of charge adequate for proper operation.

(5) Leakage Radiation from the Diagnostic Source Assembly. The leakage radiation from the diagnostic source assembly measured at a distance of one meter in any direction from the source shall not exceed 100 mR (25.8 C/kg) in one hour when the X-ray tube is operated at its leakage technique factors. Compliance shall be determined by measurements averaged over an area of 100 square cm with no linear dimension greater than 20 cm.

(6) Radiation from Components Other Than the Diagnostic Source Assembly. The radiation emitted by a component other than the diagnostic source assembly shall not exceed 2 mR (0.516 C/kg) in one hour at 5 cm from any accessible surface of the component when it is operated in an assembled X-ray system under any conditions for which it was designed. Compliance shall be determined by measurements averaged over an area of 100 square cm with no linear dimension greater than 20 cm.

(7) Beam Quality:

(a) Half-Value Layer (HVL):

The HVL of the useful beam for a given X-ray tube potential shall not be less than the values shown in Table 4. If it is necessary to determine such HVL at an X-ray tube potential which is not listed in Table 4, linear interpolation or extrapolation may be made; The referenced table is available on the Program's website: <http://www.oregon.gov/DHS/ph/rps/index.shtml>

(A) The HVL required in subsection (7)(a) of this rule will be considered to have been met if it can be demonstrated that the aluminum equivalent of the total filtration in the primary beam is not less than that shown in Table 5. The referenced table is available on the Program's website: <http://www.oregon.gov/DHS/ph/rps/index.shtml>

(B) In addition to the requirements of section (5) of this rule, all intra-oral dental radiographic systems manufactured on and after December 1, 1980, shall have a minimum HVL not less than 1.5 mm aluminum (Al) equivalent filtration permanently installed in the useful beam;

(C) Beryllium window tubes shall have a minimum of 0.5 mm Al equivalent filtration permanently installed in the useful beam;

(D) For capacitor energy storage equipment, compliance with the requirements of section (5) of this rule shall be determined with the maximum quantity of charge per exposure;

(E) The required minimal aluminum equivalent filtration shall include the filtration contributed by all materials, which are always, present between the source and the patient.

(b) Filtration Controls. For X-ray systems which have variable kVp and variable filtration for the useful beam, a device shall link the kVp selec-



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tor with the filter(s) and shall prevent an exposure unless the minimum amount of filtration required by subsection (5)(a) of this rule is in the useful beam for the given kVp, which has been selected.

(8) Multiple Tubes. Where two or more radiographic tubes are controlled by one exposure switch, the tube or tubes, which have been selected, shall be clearly indicated prior to initiation of the exposure. This indication shall be both on the X-ray control panel and at or near the tube housing assembly, which has been selected.

(9) Mechanical Support of Tube Head. The tube housing assembly supports shall be adjusted such that the tube housing assembly will remain stable during an exposure unless the tube housing movement is a designed function of the X-ray system.

(10) Technique Indicators:

(a) The technique factors to be used during an exposure shall be indicated before the exposure begins. If automatic exposure controls are used, the technique factors, which are set prior to the exposure, shall be indicated;

(b) The requirement of subsection (10)(a) of this rule may be met by permanent marking on equipment having fixed technique factors.

(11) There shall be provided for each X-ray machine a means for determining the proper SID.

(12) X-ray film developing requirements. Compliance with this section is required of all healing arts registrants and is designed to ensure that patient and operator exposure is minimized and to produce optimum image quality and diagnostic information:

(a) Manual processing of films.

(A) The relationship between temperature of the developer and development time indicated in Table 6 or the manufacturer's recommendations must be used with standard developing chemistry. The referenced table is available on the Program's website: <http://www.oregon.gov/DHS/ph/rps/index.shtml>

(B) Processing of film. All films shall be processed in such a fashion as to achieve adequate sensitometric performance. This criterion shall be adjudged to have been met if:

(i) Film manufacturer's published recommendations for time and temperature are followed; or

(ii) Each film is developed in accordance with the time-temperature chart (see subsection (12)(a) of this rule).

(C) Chemical-film processing control.

(i) Chemicals shall be mixed in accordance with the chemical manufacturer's recommendations;

(ii) Developer replenisher shall be periodically added to the developer tank based on the recommendations of the chemical or film manufacturer. Solution may be removed from the tank to permit the addition of an adequate volume of replenisher.

(D) All processing chemicals shall be completely replaced at least every two months or as indicated by the manufacturer.

(E) Devices shall be available which will:

(i) Give the actual temperature of the developer; and

(ii) Give an audible or visible signal indicating the termination of a preset development time (in minutes or seconds).

(b) Automatic film processing. Films shall be processed in such a manner that the degree of film development is the same as would be achieved by proper adherence to subsection (a) of this rule (manual processing).

(c) Darkrooms. Darkrooms shall be constructed so that film being processed, handled, or stored will be exposed only to light which has passed through an appropriate safelight filter.

(d) Safelights shall be mounted in accordance with manufacturer's recommendations.

(e) Light bulbs used in safelights shall be the type and wattage recommended by the manufacturer.

(f) Safelight lenses shall be the type recommended for use by the film manufacturer.

(g) Rapid film processing. Special chemicals have been designed for use in Endodontics. These chemicals have special development requirements and do not permit as large a margin of error in darkroom technique as do standard developing chemicals. Failure to precisely follow manufacturer's recommendations can easily lead to overexposure and underdevelopment. Darkroom procedures shall include:

(A) The manufacturer's time temperature development is crucial and shall be followed exactly;

(B) Caution: A timer capable of accurately measuring the short development times required shall be used;

(C) If rapid chemical processing is used for general radiography all applicable requirements of section (12) of this rule shall be followed.

(h) The Authority shall make such tests as may be necessary to determine compliance with this section.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 4-1985, f. & cf. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 5-2005, f. & cert. ef. 4-11-05; PH 12-2006, f. & cert. ef. 6-16-06; PH 14-2008, f. & cert. ef. 9-15-08; PH 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 333-119-0010

### Definitions

(1) "Authority" means the Oregon Health Authority.

(2) "Customer" means any member of the public who is provided access to a tanning device in exchange for a fee or other compensation, or any individual who, in exchange for a fee or other compensation, is afforded use of a tanning device as a condition or benefit of membership or access.

(3) "Employee" means any individual, including a minor whether lawfully or unlawfully employed, who engages to furnish services for remuneration, financial or otherwise, subject to the direction and control of an employer and includes any individual who is required to have workers' compensation coverage.

(4) "EPA" means the U.S. Environmental Protection Agency.

(5) "FDA" means the U.S. Food and Drug Administration.

(6) "Formal Training" means a course of instruction reviewed and approved by the Authority and which is conducted or presented under formal classroom conditions or online by a qualified expert possessing adequate knowledge and experience to offer a curriculum, associated training, and certification testing pertaining to and associated with the correct use of tanning equipment. Operator training shall cover ultraviolet radiation and effects on the skin, photosensitivity, FDA and State of Oregon regulations, eye protection, and equipment maintenance.

(7) "Handrails" means a suitable physical aid that will help to maintain proper exposure distance.

(8) "Individual" means any human being.

(9) "Minor" means any individual under the age of 18.

(10) "Operator" means the person who is an employee (defined by the Oregon Occupational Safety and Health Division, Oregon Administrative Rule 437-003-0011(2)) or contractor of the tanning facility who has received a certificate from an approved formal training course and who is responsible for:

(a) Determining customer's skin type;

(b) Determining the suitability for use of a tanning device;

(c) Providing information regarding the dangers of ultraviolet radiation exposure including photoallergic reactions and photosensitizing agents;

(d) Assuring that all required forms are understood and properly signed by the customer;

(e) Maintaining required exposure records;

(f) Recognizing and reporting injuries or alleged injuries to the registrant;

(g) Determining the customers' exposure schedule;

(h) Setting timers which control the duration of exposure; and

(i) Instructing the customer in the proper use of protective eyewear.

(11) "Other Compensation" means the payment or exchange of goods, services or anything of value for use of the tanning device or devices.

(12) "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof, and any legal successor, representative, agent or agency of these entities.

(13) "Phototherapy Device" means equipment that emits Ultraviolet radiation used by a health care professional in the treatment of disease or illness.

(14) "Program" means the Radiation Protection Services section of the Public Health Division.

(15) "Protective Eyewear" means suitable eyewear that protects the eye from Ultraviolet radiation and allows adequate vision.

(16) "Registrant" means a tanning facility registered with the Authority as required by provisions of this division.

(17) "Registration" means registration with the Authority in accordance with provisions of this division.

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(18) "Safe Level" means not more than 50 colonies of microorganisms per four square inches of equipment surface.

(19) "Sanitize" means the effective bactericidal treatment of surfaces of equipment and devices by an EPA or FDA registered product that provides a sufficient concentration of chemicals, and enough time to reduce the bacterial count, including pathogens, to a safe level. Chemical germicides that are registered with EPA as hospital disinfectants when used at recommended dilutions and directions may be approved for sanitizing of tanning devices.

(20) "Tanning Device" means any equipment used for tanning of the skin, that emits electromagnetic radiation with wavelengths in the air between 200 and 400 nanometers including, but not limited to, a sunlamp, Ultraviolet Lamp, tanning booth, facial unit, UVA wand, or tanning bed. "Tanning device" also means any accompanying equipment, including, but not limited to, protective eyewear, timers, ballasts, starters, lamps, reflectors, cooling fans, acrylics, comfort pillows and handrails.

(21) "Tanning Facility" means any location, place, area, structure, or business that provides persons access to any tanning device.

(22) "Timers" means a device provided to terminate the exposure at a preset time interval.

(23) "Ultraviolet Radiation" means radiation that has a wavelength between two hundred nanometers and four hundred nanometers.

Stat. Auth.: ORS 431.925 - 431.955

Stats. Implemented: ORS 431.925 - 431.955

Hist.: HD 15-1991, f. & cert. ef. 10-1-91; HD 15-1994, f. & cert. ef. 5-6-94; PH 14-2008, f. & cert. ef. 9-15-08; PH 4-2010, f. & cert. ef. 2-16-10; PH 20-2010, f. & cert. ef. 9-1-10; PH 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 333-175-0021

### Definitions

(1) "Approved" means approved by the Oregon Health Authority.

(2) "Assessment" means to determine whether the food worker understood the concepts represented by the learning objectives. The assessment used by the program providers must be provided or approved by the Authority.

(3) "Authority" means the Oregon Health Authority, Foodborne Illness Prevention Program.

(4) "Certificate of Program Completion" confirms that a person has successfully completed the food handler training program.

(5) "Certified Food Manager" means that a manager has successfully completed an Authority-approved food manager program.

(6) "Computer-Based Training" means self-training through the use of a computer program or the Internet.

(7) "Designated Agent" means an individual or organization who/that has been authorized by the Oregon Health Authority or Local Public Health Authority to provide a food handler training program and issue certificates of program completion.

(8) "Food Handler" means those persons involved in the supervision or preparation or service of food in a restaurant or food service facility licensed under ORS 624.020 or 624.320. This includes, but is not limited to, managers, cooks, wait staff, dishwashers, bartenders and bus persons.

(9) "Local Public Health Authority" means those counties to which the Oregon Health Authority has entered into an Intergovernmental Agreement under ORS 624.510.

(10) "Program" means an Authority-approved food handler training program.

(11) "Program Provider" means the Oregon Health Authority, Local Public Health Authority or a Designated Agent.

(12) "Self-Training" means a training process wherein the individual learns without the presence or intervention of a trainer or instructor.

(13) "Trainer" means the person actively delivering food handler training to learners.

Stat. Auth.: ORS 624.570

Stats. Implemented: ORS 624.570

Hist.: PH 21-2004, f. & cert. ef. 6-18-04; PH 14-2006, f. 6-27-06, cert. ef. 7-1-06; PH 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 333-536-0005

### Definitions

As used in 333-536-0000 through 333-536-0095, the following definitions apply:

(1) Abuse.

(A) As it applies to an adult, includes but is not limited to:

(i) Any physical injury caused by other than accidental means, or that appears to be at variance with the explanation given of the injury.

(ii) Neglect that leads to physical harm through withholding of services necessary to maintain health and well-being.

(iii) Abandonment, including desertion or willful forsaking of a person or the withdrawal or neglect of duties and obligations owed a person.

(iv) Willful infliction of physical pain or injury.

(v) 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.

(vi) 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.

(vii) 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 self-care activities that must be accomplished by an individual to meet his or her daily needs.

(3) "Agency" means In-Home Care Agency.

(4) "Authentication" means verification by the author that an entry in the client record is genuine.

(5) "Authority" means the Oregon Health Authority.

(6) "Branch office" means a location or site from which an in-home care agency provides services within a portion of the total geographic area served by the parent agency. The site of the branch office generally does not exceed one hour of travel time from the parent agency. The branch office is part of the in-home care agency and is located sufficiently close to share administration, supervision, and services in a manner that renders it unnecessary for the branch to independently meet the requirements of an in-home care agency.

(7) "Caregiver" means a person providing assistance with activities of daily living or assistance with personal care tasks, household and supportive services, or medication services as authorized by these rules.

(8) "Client Representative" means:

(a) A parent, stepparent, foster parent, or other adult with primary caregiving responsibility for the client when the client is a child; or

(b) An individual, paid or unpaid, related or unrelated, who acts on behalf of, or cares for the client when the client is an adult.

(9) "Governing Body" means the owner or designee legally responsible for the direction and control of the operation of the in-home care agency.

(10) "Home health agency" means a public or private agency that provides coordinated home health services on a home visiting basis. Home health agencies provide skilled nursing services and at least one of the following therapeutic services:

(a) Physical therapy;

(b) Occupational therapy;

(c) Speech therapy;

(d) Home health aide services.

(11) "In-home care agency" means an agency primarily engaged in providing in-home care services for compensation to an individual in that individual's place of residence. "In-home care agency" does not include a home health agency or portion of an agency providing home health services as defined in ORS 443.005.

(12) "In-home care services" means personal care services furnished by an in-home care agency, or an individual under an arrangement or contract with an in-home care agency, that are necessary to assist an individual in meeting the individual's daily needs, but do not include curative or rehabilitative services.

(13) "Licensed" means that the person or agency for which the term applies is currently licensed, certified, or registered by the proper authority within the State of Oregon.

(14) "Medication assistance" means self-administration of non-injectable medication which the client is not physically able to administer to him or herself, but fully self directs its administration.

(15) "Medication administration" means agency staff administering medications to a client or directly supervising the client who is not able or not willing to self-direct, but may be physically able to perform the tasks.

(16) "Medication set up" means taking the client's medications from original containers and putting the medications into closed secondary containers designed and manufactured for this purpose.

(17) "Parent agency" means the in-home care agency that develops and maintains administrative controls of subunits or branch offices.

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(18) "Personal care services" means the provision of or assistance with tasks intended to supplement a client's own personal abilities which are necessary to accomplish the client's activities of daily living and other activities as described in OAR 333-536-0045(1), and are preventive and maintaining in nature.

(19) "Registered Nurse" (RN) means a person licensed under ORS Chapter 678.

(20) "Schedule caregivers" means to plan appointments for caregivers to deliver specific in-home care services to clients; the times and dates of these appointments are set by the in-home care agency.

(21) "Skilled nursing services" means the patient care services pertaining to the curative, rehabilitative, and/or preventive aspects of nursing performed by, or under the supervision of, registered nurse pursuant to the plan of treatment established by a physician or nurse practitioner.

(22) "Stable and predictable condition" means a situation where the client's clinical and behavioral state is known, not characterized by rapid changes, and does not require continuous reassessment and evaluation.

(23) "Subunit" means an in-home care agency that provides 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.

(24) "Written "pro re nata (prn) parameters" means directions that are so specific that the unlicensed caregivers uses no discretion when administering prn (as needed) medications or treatments.

Stat. Auth.: ORS 443.340

Stats. Implemented: ORS 443.305 - 443.350

Hist.: OH 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04; PH 22-2004, f. & cert. ef. 6-25-04; PH 14-2007, f. 12-19-07, cert. ef. 1-1-08; PH 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

## 333-700-0005

### Definitions

As used in OAR chapter 333, division 700, unless the context requires otherwise, the following definitions apply:

(1) "Health care facility" (HCF) has the meaning given the term in Oregon Revised Statute (ORS) 442.015, and includes but is not limited to the classifications defined in subsections (a) through (e) of this section. The phrases "subject health care facility(ies)" and "subject HCF(s)" refer to those classifications subject to Oregon Health Authority or Department of Human Services licensure; i.e., hospitals, special inpatient care facilities, long-term care facilities, ambulatory surgical centers, outpatient renal dialysis facilities, and freestanding birthing centers.

(a) "Hospital" means an establishment with an organized medical staff, with permanent facilities that include inpatient beds, and with medical services, including physician services and continuous nursing services under the supervision of registered nurses, to provide diagnosis and medical or surgical treatment primarily for, but not limited to, acutely ill patients and accident victims, or to provide treatment for the mentally ill or to provide treatment in special inpatient care facilities. "Special inpatient care facilities" are facilities with permanent inpatient beds and other facilities designed and utilized for special health care purposes, to include but not be limited to: Rehabilitation center, college infirmary, chiropractic facility, facility for the treatment of alcoholism or drug abuse, freestanding hospice facility, infirmary for the homeless, or inpatient care facility meeting the requirements of ORS 441.065, and any other establishment falling within a classification established by the Authority, after determination of the need for such classification and the level and kind of health care appropriate for such classification.

(b) "Long-term care facility" includes the terms "skilled nursing facility" and "intermediate care facility," but such definition shall not be construed to include facilities licensed and operated pursuant to ORS 443.400 to 443.455.

(c) "Ambulatory surgical center" (ASC) means a health care facility which performs outpatient surgery not routinely or customarily performed in a physician's or dentist's office, and is able to meet health facility licensure requirements.

(d) A freestanding birthing center means a health care facility licensed for the primary purpose of performing low risk deliveries.

(e) An outpatient renal dialysis facility means a facility licensed to provide ESRD services on an outpatient basis.

(2) "Administrator" means a person designated by the governing body to have overall management of the facility. The administrator enforces the rules and regulations relative to the health care and safety of patients. The administrator plans, organizes, and directs those responsibilities delegated to the administrator by the governing body.

(3) As used in 333-700-0085 and 333-700-0090, the term "assessment" means an assessment done by a registered nurse, social worker, or

dietitian that is appropriate for the scope of practice for that discipline. This includes:

(a) Systematic and ongoing collection of information to determine an individual's health status and need for intervention;

(b) Comparison with past information; and

(c) Judgment, evaluation, or conclusion that occurs as a result of parts (a) and (b) of this definition.

(4) "Agreement", as used in these rules, means a written document executed between a dialysis facility and another facility in which the other facility agrees to assume responsibility for furnishing specified services to patients and for obtaining reimbursement for those services.

(5) "Arrangement", as used in these rules, means a written document executed between a dialysis facility and another facility in which the other facility agrees to furnish specified services to patients but the dialysis facility retains responsibility for those services and for obtaining reimbursement for them.

(6) "Authentication" means verification that an entry in the patient medical record is genuine.

(7) "Authority" means the Oregon Health Authority.

(8) "CMS" means the Center for Medicare and Medicaid Services.

(9) "Dialysis" means a process by which dissolved substances are removed from a patient's body by diffusion from one fluid compartment to another across a semi-permeable membrane. The two types of dialysis that are currently in common use are hemodialysis and peritoneal dialysis.

(10) "Discharge", as used in these rules, means the process whereby a patient who was receiving services in a facility is either sent home, transferred to another facility or has died.

(11) "End-Stage Renal Disease (ESRD)" means that stage of renal impairment that appears irreversible and permanent, and requires a regular course of dialysis or kidney transplantation to maintain life.

(12) "ESRD service" means the type of care or services furnished to a dialysis patient.

(13) "Facility", as used in these rules, means an outpatient renal dialysis facility.

(14) "Furnishes directly" means the facility provides the service through its own staff and employees, or through individuals who are under direct contract to furnish such services personally for the facility (i.e., not through Agreements" or "arrangements").

(15) "Furnishes on the premises" means the facility furnishes services on its main premises; or on its other premises that are contiguous with or in immediate proximity to the main premises, and under the direction of the same professional staff and governing body as the main premises.

(16) "Governing body" means the body or person legally responsible for the direction and control of the operation of the facility.

(17) "Governmental unit" means the state, or any county, municipality, or other political subdivision, or any related department, division, board or other agency.

(18) "Health Care Facility Licensing Law" means ORS 441.005 to 441.990 and rules there under.

(19) "Histocompatibility testing" means laboratory test procedures which determine compatibility between a potential organ donor and a potential organ transplant recipient.

(20) "Licensed" means that the person or facility to whom the term is applied is currently licensed, certified or registered by the proper authority to follow his or her profession or vocation within the State of Oregon, and when applied to a subject health care facility means that the facility is currently and has been duly and regularly licensed by the Authority.

(21) "Licensed nurse" means a Registered Nurse (RN) or a Licensed Practical Nurse (LPN).

(22) "Licensed Practical Nurse" (LPN) means a person licensed under ORS Chapter 678 to practice practical nursing.

(23) "Major alteration" means changes other than repair or replacement of building materials and equipment with materials and equipment of a similar type.

(24) "Network" means Northwest Renal Network (Network 16). The Network is a Quality Improvement Organization under contract to the federal Centers for Medicare and Medicaid Services.

(25) "New Construction" means a new building or an addition to an existing building.

(26) "NFPA" means National Fire Protection Association.

(27) "Nurse Practitioner" means a registered nurse who has been certified by the Oregon State Board of Nursing (OSBN) as qualified to practice in an expanded specialty role within the practice of nursing.

(28) "Outpatient dialysis" means dialysis furnished on an outpatient basis at an outpatient renal dialysis facility. Outpatient dialysis includes:



# ADMINISTRATIVE RULES

(a) Staff-assisted dialysis. Dialysis performed by the staff of the facility;

(b) Self-dialysis. Dialysis performed, with little or no professional assistance, by a dialysis patient who has completed an appropriate course of training;

(c) "Home dialysis" means dialysis performed by an appropriately trained patient or helper at home;

(d) "Self-dialysis and home dialysis training" means a program that trains dialysis patients to perform self-dialysis or home dialysis with little or no professional assistance, and trains other individuals to assist patients in performing self-dialysis or home dialysis.

(29) "Organ procurement", as used in these rules, means the process of acquiring donor kidneys.

(30) "Oregon Sanitary Code" means the Food Sanitation Rules, OAR 333-150-0000 through 333-168-0020 except 333-157-0000 through 333-158-0030.

(31) "Patient audit" means review of the medical record and/or physical inspection and/or interview of a patient.

(32) "Patient care staff" as used in these rules means registered nurses, licensed practical nurses, hemodialysis technicians, social workers, and dietitians.

(33) "Person" means an individual, a trust or estate, a partnership or corporation (including associations, joint stock, companies and insurance companies, a state or a political subdivision or instrumentality including a municipal corporation).

(34) "Physician" means a person licensed under ORS Chapter 677 to practice medicine by the Board of Medical Examiners.

(35) "Physician's Assistant" means a person who is registered as a physician's assistant in accordance with ORS Chapter 677.

(36) "Qualified instructor" means a person who is qualified in the field of instruction by education and experience.

(37) "Qualified personnel" means personnel who meet the requirements specified in this paragraph.

(a) "Chief executive officer" means a person who:

(A) Holds at least a baccalaureate degree or its equivalent and has at least 1 year of experience in a dialysis facility; or

(B) Is a registered nurse or physician director as defined in this definition; or

(C) Has demonstrated capability by acting for at least 2 years as a chief executive officer in a dialysis facility or transplantation program.

(b) "Dietitian" means a person who is a licensed dietitian as specified in ORS 691.435.

(c) "Medical record practitioner" means a person who:

(A) Has graduated from a program for Medical Record Administrators accredited by the Council on Medical Education of the American Medical Association and the American Medical Record Association, and is eligible for certification as a Registered Record Administrator (RRA) by the American Medical Record Association; or

(B) Has graduated from a program for Medical Record Technicians approved jointly by the Council on Medical Education of the American Medical Association and the American Medical Record Association, and is eligible for certification as an Accredited Record Technician (ART) by the American Medical Record Association, or

(C) Has successfully completed and received a satisfactory grade in the American Medical Record Association's Correspondence Course for Medical Record Personnel approved by the Accrediting Commission of the National Home Study Council, and is eligible for certification as an Accredited Record Technician by the American Medical Record Association.

(d) "Nurse responsible for nursing service" means a person who is licensed as a registered nurse by the State in which practicing, and

(A) Has at least 12 months of experience in clinical nursing, and an additional 6 months of experience in nursing care of the patient with permanent kidney failure or who is undergoing kidney transplantation including training in and experience with the dialysis process; or

(B) Has 18 months of experience in nursing care of the patient on maintenance dialysis, or in nursing care of the patient with a kidney transplant including training in and experience with the dialysis process.

(e) "Physician-director" or medical director means a physician who:

(A) Is board-eligible or board-certified in internal medicine or pediatrics by a professional board, and has had at least 12 months of experience or training in the care of patients at dialysis facilities; or

(B) As of the date of these rules served for at least 12 months as director of a dialysis or transplantation program.

(f) "Social worker" means a person who:

(A) Has completed a course of study with specialization in clinical practice at, and holds a masters degree from, a graduate school of social work accredited by the Council on Social Work Education; or

(B) Has served for at least 2 years as a social worker, 1 year of which was in a dialysis unit or transplantation program prior to September 1, 1976, and has established a consultative relationship with a social worker who qualifies under paragraph (f)(A) of this definition.

(g) "Transplantation surgeon" means a physician who:

(A) Is board-eligible or board-certified in general surgery or urology by a professional board; and

(B) Has at least 12 months training or experience in the performance of renal transplantation and the care of patients with renal transplants.

(38) "Records" are defined as case histories, clinical records, x-rays, treatment charts, progress reports and other similar written accounts of the patients of any provider.

(39) "Registered Nurse" (RN) means a person licensed under ORS Chapter 678 by the OSBN.

Stat. Auth.: ORS 441.020 & 442.015

Stats. Implemented: ORS 441.020 & 442.015

Hist.: PH 7-2003, f. & cert. ef. 6-6-03; PH 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11

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## Oregon Medical Board

### Chapter 847

**Rule Caption:** Fee changes as approved.

**Adm. Order No.:** OMB 10-2011(Temp)

**Filed with Sec. of State:** 7-13-2011

**Certified to be Effective:** 7-13-11 thru 1-4-12

**Notice Publication Date:**

**Rules Amended:** 847-005-0005

**Subject:** The fee amendments were approved as part of the budget proposal(s) that were presented to the Oregon Legislature.

The temporary rule change amends fees for physicians, podiatric physicians, physician assistants, and acupuncturists when licenses are renewed each biennium. Licensees with Active, Inactive, Locum Tenens, Teleradiology, and Telemedicine, and Military/Public Health statuses are included in the fee amendments.

**Rules Coordinator:** Malar Ratnathicam—(971) 673-2713

### 847-005-0005

#### Fees

(1) Fees to be effective upon adoption:

(a) Doctor of Medicine/Doctor of Osteopathy (MD/DO) Initial License Application — \$375.

(b) MD/DO Registration: Active, Military/Public Health, and Teleradiology, Inactive, Locum Tenens, and Telemedicine — \$232/year\*\*.

(c) MD/DO Emeritus Registration — \$50/year.

(d) Limited License, SPEX/COMVEX, Visiting Professor, Fellow, Medical Faculty, Postgraduate, Special — \$185.

(e) Acupuncture Initial License Application — \$245.

(f) Acupuncture Registration: Active, Inactive, and Locum Tenens — \$148/year\*\*.

(g) Acupuncture Limited License, Special, Visiting Professor, Postgraduate — \$75.

(h) Physician Assistant Initial License Application — \$245.

(i) Physician Assistant Registration: Active, Inactive, and Locum Tenens — \$175/year\*\*.

(j) Physician Assistant Limited License, Special, Postgraduate — \$75.

(k) Podiatrist Initial Application — \$340.

(l) Podiatrist Registration: Active, Inactive, and Locum Tenens — \$222/year\*\*.

(m) Podiatrist Emeritus Registration — \$50/year.

(n) Podiatrist Limited License, Special, Postgraduate — \$185.

(o) Workforce Data Fee — \$5/license period.

(p) Miscellaneous: All Fines and Late Fees:

(A) MD/DO Registration Renewal Late Fee — \$159.

(B) Acupuncture Registration Renewal Late Fee — \$80.

(C) Physician Assistant Registration Renewal Late Fee — \$80.

(D) Podiatrist Registration Renewal Late Fee — \$159.

(q) Electronic Prescription Monitoring Program — \$25/year per license\*\*\*.

(r) Dispensing MD/DO/DPM Failure to Register — \$159.

(s) Oral Specialty or Competency Examination (\$1,000 deposit required) — Actual costs.

(t) Affidavit Processing Fee for Reactivation — \$50.

# ADMINISTRATIVE RULES

- (u) Licensee Information Requests:
  - (A) Verification of Licensure — Individual Requests (1-4 Licenses) — \$10 per license.
  - (B) Verification of Licensure — Multiple (5 or more) — \$7.50 per license.
  - (C) Verification of MD/DO License Renewal — \$150 Biennially.
  - (D) Malpractice Report — Individual Requests — \$10 per license.
  - (E) Malpractice Report — Multiple (monthly report) — \$15 per report.
  - (F) Disciplinary — Individual Requests — \$10 per license.
  - (G) Disciplinary Report - Multiple (quarterly report) — \$15 per report.
- (v) Base Service Charge for Copying — \$5 + .20/page.
- (w) Record Search Fee (+ copy charges see section (v) of this rule):
  - (A) Clerical — \$20 per hour\*.
  - (B) Administrative — \$40 per hour\*.
  - (C) Executive — \$50 per hour\*.
  - (D) Medical — \$75 per hour\*.
- (x) Data Order:
  - (A) Standard Data License Order — \$150 each.
  - (B) Custom Data License Order — \$150.00 + \$40.00 per hour Administrative time.

- (C) Address Label Disk — \$100 each.
  - (D) Active and Locum Tenens MD/DO list — \$75 each.
  - (E) DPM, PA, or AC list — \$10 each.
  - (F) Quarterly new MD/DO, DPM, PA, or AC list — \$10 each.
  - (2) All Board fees and fines are non-refundable, and non-transferable.
- \*Plus photocopying charge above, if applicable.  
\*\*Collected biennially except where noted in the Administrative Rules. All active MD/DO registration fees include \$10.00 for the Oregon Health and Science University Library, and are collected biennially.  
\*\*\*Per SB 355 (2009), physician, podiatric physician and physician assistant licensees authorized to prescribe or dispense controlled substances in Oregon assessed \$25/year; funds transferred to the Department of Human Services, minus administrative costs, to support the Electronic Prescription Monitoring Program. Licensees with Active, Locum Tenens, Telemonitoring, Teleradiology, and Telemedicine status are included. Licensees with a limited license are not included.  
Stat. Auth.: ORS 677.265  
Stats. Implemented: ORS 677.265  
Hist.: ME 7-1984, f. & ef. 1-26-84; ME 17-1984, f. & ef. 11-5-84; ME 6-1985, f. & ef. 7-30-85; ME 3-1986(Temp), f. & ef. 4-23-86; ME 4-1986, f. & ef. 4-23-86; ME 9-1986, f. & ef. 7-31-86; ME 2-1987, f. & ef. 1-10-87; ME 7-1987(Temp), f. & ef. 1-26-87; ME 9-1987, f. & ef. 4-28-87; ME 25-1987, f. & ef. 11-5-87; ME 9-1988, f. & ef. 8-5-88; ME 14-1988, f. & ef. 10-20-88; ME 1-1989, f. & ef. 1-25-89; ME 5-1989(Temp), f. & ef. 2-16-89; ME 6-1989, f. & ef. 4-27-89; ME 9-1989(Temp), f. & ef. 8-1-89; ME 17-1989, f. & ef. 10-20-89; ME 4-1990, f. & ef. 4-25-90; ME 9-1990, f. & ef. 8-2-90; ME 5-1991, f. & ef. 7-24-91; ME 11-1991(Temp), f. & ef. 10-21-91; ME 6-1992, f. & ef. 5-26-92; ME 1-1993, f. & ef. 1-29-93; ME 13-1993, f. & ef. 11-1-93; ME 14-1993(Temp), f. & ef. 11-1-93; ME 1-1994, f. & ef. 1-24-94; ME 6-1995, f. & ef. 7-28-95; ME 7-1996, f. & ef. 10-29-96; ME 3-1997, f. & ef. 11-3-97; BME 7-1998, f. & ef. 7-22-98; BME 7-1999, f. & ef. 4-22-99; BME 10-1999, f. & ef. 7-8-99, cert. ef. 8-3-99; BME 14-1999, f. & ef. 10-28-99; BME 4-2000, f. & ef. 2-22-00; BME 6-2001(Temp), f. & ef. 7-18-01 thru 11-30-01; BME 10-2001, f. & ef. 10-30-01; BME 8-2003, f. & ef. 4-24-03; BME 16-2003, f. & ef. 10-23-03; BME 17-2004, f. & ef. 9-9-04; BME 6-2005, f. & ef. 7-20-05; BME 15-2006, f. & ef. 7-25-06; BME 1-2007, f. & ef. 1-24-07; BME 1-2008, f. & ef. 1-22-08; BME 15-2008, f. & ef. 7-21-08; BME 1-2009, f. & ef. 1-22-09; BME 15-2009(Temp), f. & ef. 9-11-09 thru 3-8-10; BME 1-2010, f. & ef. 1-26-10; OMB 10-2011(Temp), f. & ef. 7-13-11 thru 1-4-12

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**Rule Caption:** Criminal background checks for employees and applicants for employment and volunteers.

**Adm. Order No.:** OMB 11-2011

**Filed with Sec. of State:** 7-13-2011

**Certified to be Effective:** 7-13-11

**Notice Publication Date:** 6-1-2011

**Rules Adopted:** 847-002-0000, 847-002-0005, 847-002-0010, 847-002-0015, 847-002-0020, 847-002-0025, 847-002-0030, 847-002-0035, 847-002-0040, 847-002-0045

**Subject:** The adopted rules address the purpose, intent and scope of criminal background checks for employees, applicants and volunteers of the Oregon Medical Board.

**Rules Coordinator:** Malar Ratnathicam—(971) 673-2713

## 847-002-0000

### Purpose and Intent

The purpose of these rules is to provide for the reasonable screening of subject individuals to determine if they have a history of criminal behavior such that they are not fit to work or volunteer for the Board. The fact that the Board determines that a subject individual is fit does not guarantee the

individual a position as a Board employee, volunteer, or that the individual will be hired by the Board.

Stat. Auth.: ORS 181.534, 303, 676 & 677.280

Stats. Implemented: ORS 181.534

Hist.: OMB 11-2011, f. & cert. ef. 7-13-11

## 847-002-0005

### Definitions

As used in OAR 847-002-0000 through 847-002-0050, unless the context of the rule requires otherwise, the following definitions apply:

- (1) "Board" means the Oregon Medical Board.
- (2) "Conviction" means a final judgment on a verdict or finding of guilty, a plea of guilty, or a plea of nolo contendere (no contest) or any determination of guilt entered by a court of law against a subject individual in a criminal case, unless that judgment has been reversed or set aside by a subsequent court decision.
- (3) "Criminal offender information" means records and related data concerning physical description and vital statistics, fingerprints received and compiled by the Oregon State Police (OSP) to identify criminal offenders and alleged offenders, records of arrests and the nature and disposition of criminal charges, including sentencing, confinement, parole and release records.

(4) "Criminal records check" means one or more of the following three processes undertaken by the Board to check the criminal history of a subject individual:

- (a) Law Enforcement Data System (LEDS) Check: A name-based check of criminal offender information maintained by the OSP;
- (b) Oregon Criminal Records Check: A check of Oregon criminal offender information, through fingerprint identification and other means, conducted by the OSP at the Board's request; or
- (c) Nationwide Criminal Records Check: A nationwide check of federal criminal offender information, through fingerprint identification and other means, conducted by the OSP through the Federal Bureau of Investigations (FBI) or otherwise at the Board's request.

(5) "Criminal records request form" means a Board-approved form, completed by a subject individual, requesting the Board to conduct a criminal records check.

(6) "False statement" means, in association with an activity governed by these rules, a subject individual either:

- (a) Provided the Board with false information about the subject individual's criminal history, including but not limited to false information about the individual's identity or conviction record; or
- (b) Failed to provide the Board information material to determine the individual's criminal history.

(7) "Fitness determination" means a determination made by the Board, pursuant to the process established under OAR 847-002-0020, that a subject individual is fit or not fit to be a Board employee or volunteer.

(8) "OSP" means the Oregon State Police.

(9) "Subject individual" means an individual the Board may require to complete a criminal records check pursuant to these rules because the person is:

- (a) A Board employee;
- (b) A Board volunteer; or
- (c) An applicant for employment with the Board.

Stat. Auth.: ORS 181.534, 303, 676 & 677.280

Stats. Implemented: ORS 181.534

Hist.: OMB 11-2011, f. & cert. ef. 7-13-11

## 847-002-0010

### Criminal Records Check Process

(1) A subject individual must disclose information required by the Board as described below:

(a) Before a criminal records check, a subject individual must complete and sign the Board Criminal Records Request form and a fingerprint card, both of which may include identifying information (e.g., name, birth date, social security number, physical characteristics, driver's license or identification card number and current and previous addresses).

(b) A subject individual must complete and submit to the Board the Criminal Records Request form and, if requested, a fingerprint card within five business days of receiving the forms. The deadline may be extended for good cause.

(c) Additional information may be required from the subject individual as necessary to complete the criminal records check and fitness determination, including but not limited to, proof of identity or additional criminal, judicial, or other background information.

(d) The Board may not request a fingerprint card from a subject individual under the age of 18 years unless the subject individual is emancipat-

# ADMINISTRATIVE RULES

ed pursuant to ORS 419B.550 et seq, or unless the Board also requests the written consent of a parent or guardian. Such parent or guardian and youth must be informed that they are not required to consent. Notwithstanding, failure to consent may be construed as a refusal to consent under OAR 847-002-0015(4).

(2) The Board or its staff may conduct, or request the OSP to conduct, a criminal record check when:

(a) An individual meets the definition of a subject individual; or

(b) A federal law or regulation, state statute or administrative rule, or contract or written agreement with the Board requires a criminal record check.

Stat. Auth.: ORS 181.534, 303, 676 & 677.280

Stats. Implemented: ORS 181.534

Hist.: OMB 11-2011, f. & cert. ef. 7-13-11

## 847-002-0015

### Final Fitness Determination

(1) After a criminal records check, the Board or its staff must make a fitness determination about a subject individual based on information provided by the subject individual under OAR 847-002-0010(1), any criminal records check conducted, and any false statement made by the subject individual.

(2) In relation to information described in section (1) of this rule and other known information, the following factors will be considered:

(a) Whether the subject individual has been convicted, found guilty except for insanity (or a comparable disposition), or has a pending indictment for a crime listed in OAR 847-002-0020;

(b) The nature of any crime identified under section (2)(a) of this rule;

(c) The facts that support the conviction, finding of guilty except for insanity, or pending indictment;

(d) Any facts that indicate the subject individual made a false statement;

(e) The relevance, if any, of a crime identified under section (2)(a) of this rule or of a false statement made by the subject individual to the specific requirements of the subject individual's present or proposed position, services or employment; and

(f) The following intervening circumstances, to the extent that they are relevant to the responsibilities and circumstances of the position, services or employment:

(A) The passage of time since the commission or alleged commission of the crime identified under section (2)(a) of this rule;

(B) The age of the subject individual at the time of the commission or alleged commission of the crime identified under section (2)(a) of this rule;

(C) The likelihood of a repetition of offenses or of the commission of another crime;

(D) The subsequent commission of another crime listed in OAR 847-002-0020;

(E) Whether the conviction identified under section (2)(a) of this rule has been set aside, and the legal effect of setting aside the conviction;

(F) A recommendation of an employer;

(G) The disposition of the pending indictment identified under section (2)(a) of this rule;

(H) Whether the subject individual has been arrested for or charged with a crime listed under OAR 847-002-0020;

(I) Whether the subject individual is being investigated, or has an outstanding warrant, for a crime listed under OAR 847-002-0020;

(J) Whether the subject individual is currently on probation, parole or another form of post-prison supervision for a crime listed under OAR 847-002-0020;

(K) Whether the subject individual has a deferred sentence or conditional discharge in connection with a crime listed under OAR 847-002-0020;

(L) Whether the subject individual has been adjudicated in a juvenile court and found to be within the court's jurisdiction for an offense that would have constituted a crime listed in OAR 847-002-0020 if committed by an adult;

(M) Periods of incarceration of the subject individual; and

(N) The education and work history (paid or volunteer) of the subject individual since the commission or alleged commission of a crime.

(3) The subject individual must meet with the Board or its staff if requested and provide additional relevant information or authorization to obtain other relevant information within a reasonable period of time, as established by the Board.

(4) If a subject individual refuses to submit or consent to a criminal records check including fingerprint identification, the Board may deny the

position, employment or services. A person may not appeal any determination made based on a refusal to consent.

(5) If a subject individual is determined to be not fit, the subject individual may not be employed by or provide services as a volunteer to the Board.

(6) A completed final fitness determination is a final order of the Board unless the affected subject individual appeals the determination by requesting a contested case hearing as provided by OAR 847-002-0035(1) or an alternative appeals process as provided by OAR 847-002-0035(6).

Stat. Auth.: ORS 181.534, 303, 676 & 677.280

Stats. Implemented: ORS 181.534

Hist.: OMB 11-2011, f. & cert. ef. 7-13-11

## 847-002-0020

### Potentially Disqualifying Crimes

(1) Crimes Relevant to a Fitness Determination:

(a) All felonies;

(b) All misdemeanors; and

(c) Any United States Military crime or international crime.

(2) A crime will be evaluated on the basis of the law of the jurisdiction in which the crime or offense occurred, as those laws are in effect at the time of the fitness determination.

(3) Under no circumstances may a subject individual be determined to be not fit under these rules on the basis of the existence or contents of a juvenile record that has been expunged pursuant to ORS 419A.260 and 419A.262.

Stat. Auth.: ORS 181.534, 303, 676 & 677.280

Stats. Implemented: ORS 181.534

Hist.: OMB 11-2011, f. & cert. ef. 7-13-11

## 847-002-0025

### Incomplete Fitness Determination.

(1) A preliminary or final fitness determination is incomplete when:

(a) Circumstances change so that a person no longer meets the definition of a "subject individual" under OAR 847-002-0005;

(b) The subject individual does not submit materials or information within the time required under OAR 847-001-0045;

(c) The Board cannot locate or contact the subject individual;

(d) The subject individual fails or refuses to cooperate with attempts to acquire other criminal records information under OAR 847-002-0015;

(e) The subject individual is not eligible or not qualified for the position of employee or volunteer, for a reason unrelated to the fitness determination process; or

(f) The position is no longer open.

(2) A subject individual does not have a right to a contested case hearing under OAR 847-002-0035(1) or a right to an alternative appeals process under OAR 847-002-0035(6) to challenge the closing of a fitness determination as incomplete.

Stat. Auth.: ORS 181.534, 303, 676 & 677.280

Stats. Implemented: ORS 181.534

Hist.: OMB 11-2011, f. & cert. ef. 7-13-11

## 847-002-0030

### Notice to Subject Individual of Fitness Determination.

The Board must inform the subject individual if he or she is determined not to be fit via personal service or registered or certified mail to the most current address provided by the subject individual.

Stat. Auth.: ORS 181.534, 303, 676 & 677.280

Stats. Implemented: ORS 181.534

Hist.: OMB 11-2011, f. & cert. ef. 7-13-11

## 847-002-0035

### Appealing a Fitness Determination

(1) Appeal process:

(a) To request a contested case hearing, the subject individual or the subject individual's legal representative must submit a written request for a contested case within 14 calendar days of the date of the notice provided under OAR 847-002-0030 to the address specified in that notice. The Board must address a request received after expiration of the deadline as provided under OAR 137-003-0528.

(b) When a timely request is received, a contested case hearing will be conducted by an administrative law judge assigned by the Office of Administrative Hearings, pursuant to the Attorney General's Uniform and Model Rules, "Procedural Rules, Office of Administrative Hearings" OAR 137-003-0501 to 137-003-0700, as supplemented by the provisions of this rule.

(2) Discovery: The Board or the administrative law judge may protect information made confidential by ORS 181.534(15) or other applicable law as provided under OAR 137-003-0570(7) or (8).



# ADMINISTRATIVE RULES

(3) Contested case hearings on fitness determinations are closed to non-participants.

(4) Proposed and Final Order:

(a) After a hearing, the administrative law judge will issue a proposed order.

(b) Exceptions, if any, must be filed within 14 calendar days after service of the proposed order. The proposed order must provide an address to which exceptions must be sent.

(c) A completed final fitness determination made under OAR 847-002-0015 becomes final:

(A) Unless the subject individual makes a timely request for a hearing; or

(B) When a party withdraws a hearing request, notifies the Board or the Administrative Law Judge that the party will not appear, or fails to appear at the hearing.

(5) The only remedy that may be awarded is a determination that the subject individual is fit or not fit. Under no circumstances may the Board be required to place a subject individual in any position, nor may the Board be required to accept services or enter into a contractual agreement with a subject individual.

(6) Alternative Process: A subject individual currently employed by the Board may choose to appeal a fitness determination either under the process made available in sections (1) to (5) of this rule or through a process made available by applicable personnel rules, policies and collective bargaining provisions. A subject individual's decision to appeal a fitness determination through applicable personnel rules, policies, and collective bargaining provisions is an election of remedies as to the rights of the individual with respect to the fitness determination and is a waiver of the contested case process made available by this rule.

(7) A subject individual may not use the appeals process established by this rule to challenge the accuracy or completeness of information provided by the OSP, the FBI, or agencies reporting information to the OSP or the FBI.

(a) To challenge such information, a subject individual may use any process made available by the agency that provided the information.

(b) If the subject individual successfully challenges the accuracy or completeness of such information and the position for which the original criminal history check was conducted is vacant and available, the subject individual may request that the Board conduct a new criminal records check and re-evaluate the original fitness determination made under OAR 847-002-0015 by submitting a new Board Criminal Records Request form.

(8) Appealing a fitness determination under section (1) or section (6) of this rule, challenging criminal offender information with the agency that provided the information, or requesting a new criminal records check and re-evaluation of the original fitness determination under section (7)(b) of this rule, will not delay or postpone the Board's hiring process or employment decisions.

Stat. Auth.: ORS 181.534, 303, 676 & 677.280

Stats. Implemented: ORS 181.534

Hist.: OMB 11-2011, f. & cert. ef. 7-13-11

## 847-002-0040

### Recordkeeping and Confidentiality

Any information obtained in the criminal records check is confidential. The Board must restrict the access and dissemination of information obtained in the criminal records check to only those persons with a demonstrated and legitimate need to know the information.

Stat. Auth.: ORS 181.534, 303, 676 & 677.280

Stats. Implemented: ORS 181.534

Hist.: OMB 11-2011, f. & cert. ef. 7-13-11

## 847-002-0045

### Fees

(1) The Board may charge a fee for acquiring criminal offender information for use in making a fitness determination that will not exceed the fee charged the Board by the OSP and the FBI to obtain such information.

(2) The Board may charge the fee to the subject individual on whom criminal offender information is sought.

Stat. Auth.: ORS 181.534, 303, 676 & 677.280

Stats. Implemented: ORS 181.534

Hist.: OMB 11-2011, f. & cert. ef. 7-13-11

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**Rule Caption:** Amend language for reactivation of license for military/public health, renumbers Mandatory Pain Management Education.

**Adm. Order No.:** OMB 12-2011

**Filed with Sec. of State:** 7-13-2011

**Certified to be Effective:** 7-13-11

**Notice Publication Date:** 6-1-2011

**Rules Amended:** 847-008-0018, 847-008-0050, 847-008-0055, 847-008-0075

**Subject:** The adopted rule amendments allow a licensee who is assigned or employed by the military service for 12 months or less to maintain an active status without changing to Military/Public Health status, simplifies the process for changing to Military/Public Health status, and clarifies the reactivation requirement. Clarifies the process to reinstate or reactivate a license after the registration period has lapsed due to non-renewal. Also clarifies that pain management education hours may be used to fulfill the regularly required CME hours for biennial licensure renewal.

**Rules Coordinator:** Malar Ratnathicam—(971) 673-2713

## 847-008-0018

### Military/Public Health Active Registration

(1) Any licensee who is deployed with the US Military or employed with the US Public Health Service, US Department of Veteran Affairs or the US Department of State Foreign Service for more than 12 months and whose official state of residence is Oregon must obtain a Military/Public Health Active status by providing the Board with written notification of current assignment or employment, a copy of their Oregon Driver's License or other proof of residence, and payment of the biennial registration fee.

(2) The Military/Public Health Active status remains valid as long as the licensee maintains active duty in the military or public health, and the licensee's official state of residence is Oregon. At the conclusion of the military assignment or employment, the licensee must reactivate according to 847-008-0055 before beginning active practice in Oregon.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.172, 677.265

Hist.: BME 8-2008, f. & cert. ef. 4-24-08; BME 16-2010, f. & cert. ef. 10-25-10; OMB 12-2011, f. & cert. ef. 7-13-11

## 847-008-0050

### Reinstatement of License Lapsed Due to Non-Renewal

(1) A licensee of the Board whose license has lapsed through failure to renew registration may:

(a) Reinstatement within 90 days of the end of the registration period by paying a late registration fee, paying renewal fees for the lapsed registration period, completing and submitting the required forms, and meeting any other requirements defined by Oregon law. The reinstatement will be effective on the date the renewal is processed.

(b) Reactivate after 90 days from the end of the registration period but within two biennia by completing and submitting the reactivation application and processing fee, paying a late registration fee, paying renewal fees for the lapsed registration periods, and meeting any other requirements defined by Oregon law. If a licensee has ceased the practice of medicine for a period of 12 or more consecutive months, the licensee may be required to demonstrate clinical competency. If a licensee has ceased the practice of medicine for a period of 24 or more consecutive months, the licensee may be required to complete a re-entry plan. The reactivation will be effective on the date the renewal is processed.

(2) A license will expire if it is not reinstated or reactivated within two biennia from the date the license lapsed. A previous licensee of the Board who wishes to be relicensed after the license has expired must apply as a new applicant by submitting the license application form and fee, meeting all current licensing requirements, and satisfactorily completing the application process.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.172

Hist.: ME 5-1990, f. & cert. ef. 4-25-90; ME 11-1990, f. & cert. ef. 11-15-90; ME 12-1993(Temp), f. & cert. ef. 10-27-93; ME 2-1994, f. & cert. ef. 1-24-94; BME 1-2002, f. & cert. ef. 1-28-02; BME 17-2003, f. & cert. ef. 12-8-03; OMB 12-2011, f. & cert. ef. 7-13-11

## 847-008-0055

### Reactivation from Locum Tenens/Inactive/Emeritus/Active-Military or Public Health to Active/Locum Tenens Status

(1) A licensee of the Board who wishes to reactivate from an inactive or emeritus status to an active or locum tenens status, or from locum tenens status to active status, must provide the Board with the following:

(a) Completed Affidavit of Reactivation form;

(b) Completed application(s) for registration;

(c) Appropriate fees for processing of affidavit and registration;

(d) A completed "Reports for Disciplinary Inquiries" (MD/DO/DPM) sent to the Board from the Federation of State Medical Boards or

# ADMINISTRATIVE RULES

Federation of Podiatric Medical Boards and the results of the Practitioner Request for Information Disclosure (Self-Query) from the National Practitioners Data Bank and the Healthcare Integrity and Protection Data Bank, sent to the Board by the applicant;

(e) Verification of current licensure sent directly from each of the State Boards in the United States or Canada where the licensee has been practicing during the past 5 years, or from the date the license to practice in Oregon changed to inactive, locum tenens or emeritus status, whichever is the shorter period of time, showing license number, date issued, and status; and

(f) An official letter sent directly to the Board from the director, administrator, dean, or other official of each hospital, clinic, office, or training institute where the licensee was employed, practiced, had hospital privileges (MD/DO/DPM), or trained in the United States or foreign countries during the past 5 years, or from the date the license to practice in Oregon changed to locum tenens, inactive or emeritus status, whichever is the shorter period of time. The letter must include an evaluation of overall performance, and specific beginning and ending dates of practice/employment/training.

(2) A licensee who wishes to reactivate from an active-military or public health status to an active or locum tenens status must provide the Board with a completed Affidavit of Reactivation form and a copy of the Active Duty Orders, Change of Duty Orders or Reassignment Orders.

(3) A personal appearance before the Board may be required.

(4) If, in the judgment of the Board, the conduct of the licensee has been such, during the period of active-military or public health, locum tenens, inactive or emeritus registration, that the licensee would have been denied a license if applying for an initial license to practice medicine, the Board may deny active registration.

(5) If a licensee has ceased the practice of medicine for a period of 12 or more consecutive months, the licensee may be required to demonstrate clinical competency.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.265

Hist.: ME 5-1990, f. & cert. ef. 4-25-90; ME 2-1997, f. & cert. ef. 7-28-97; BME 6-2000, f. & cert. ef. 7-27-00; BME 7-2002, f. & cert. ef. 7-17-02; BME 2-2004, f. & cert. ef. 1-27-04; BME 14-2004, f. & cert. ef. 7-13-04; BME 25-2006, f. & cert. ef. 10-23-06; BME 2-2008, f. & cert. ef. 1-22-08; OMB 12-2011, f. & cert. ef. 7-13-11

## 847-008-0075

### Mandatory Pain Management Education

(1) All licensees of the Oregon Medical Board, except the licensees listed in section (2) of this rule, must complete mandatory continuing medical education (CME) in the subjects of pain management and/or the treatment of terminally ill and dying patients as follows:

(a) A one-hour pain management course specific to Oregon provided by the Pain Management Commission of the Department of Human Services; and

(b) A minimum of six continuing medical education credit hours in the subjects of pain management and/or the treatment of terminally ill and dying patients. Any combination of CME coursework focusing on pain management and/or treatment of terminally ill and dying patients may be used to fulfill this requirement.

(2) Licensees holding the following types of licenses are not required to meet this requirement:

- (a) Lapsed license;
- (b) Limited License;
- (c) Telemedicine license;
- (d) Teleradiology license; or
- (e) Telemonitoring license.

(3) The required CME must be completed after January 1, 2000, and before January 2, 2009.

(4) Licensees must be prepared to provide documentation of CME if requested by the Board.

(5) All applicants granted a license after January 2, 2009, except those granted a license listed in section (2), must obtain the required CME coursework no later than 12 months after the date the Board granted licensure.

(6) Licensees who wish to reactivate to a status requiring completion of this CME who have not previously completed the required CME must obtain the required coursework no later than 12 months after the date the Board approved reactivation.

(7) The continuing medical education hours in pain management and/or the treatment of terminally ill or dying patients may be used to fulfill the continuing medical education hours required for registration renewal under 847-008-0070.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.265

Hist.: BME 7-2005, f. & cert. ef. 7-20-05; BME 3-2009, f. & cert. ef. 1-22-09; Renumbered from 847-010-0100 by OMB 4-2011, f. & cert. ef. 2-11-11; OMB 12-2011, f. & cert. ef. 7-13-11

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**Rule Caption:** Change definition to Oregon Health Authority, removes unnecessary language.

**Adm. Order No.:** OMB 13-2011

**Filed with Sec. of State:** 7-13-2011

**Certified to be Effective:** 7-13-11

**Notice Publication Date:** 6-1-2011

**Rules Amended:** 847-035-0001, 847-035-0025

**Subject:** The adopted rule amendment changes the definition of the Emergency Medical Services and Trauma Systems of the Public Health of the Department of Human Services to the Emergency Medical Services and Trauma Systems Oregon Health Authority. The proposed rule removes unnecessary language and defines the provider levels as prescribed by OAR 333, division 265.

**Rules Coordinator:** Malar Ratnathicam—(971) 673-2713

## 847-035-0001

### Definitions

(1) "Agent" means a medical or osteopathic physician licensed under ORS Chapter 677, actively registered and in good standing with the Board, a resident of or actively practicing 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 these rules.

(2) "Board" means the Oregon Medical Board for the State of Oregon.

(3) "Committee" means the EMT Advisory Committee to the Oregon Medical Board.

(4) "Emergency Care" as defined in ORS 682.025(5) 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.

(5) "Authority" means the Public Health Division, Emergency Medical Services and Trauma Systems of the Oregon Health Authority.

(6) "First Responder" means a person who is certified by the Authority as a First Responder.

(7) "Emergency Medical Technician-Basic (EMT-Basic)" means a person who is certified by the Authority as an EMT-Basic.

(8) "Advanced Emergency Medical Technician (AEMT or Advanced EMT)" means a person who is certified by the Authority as an Advanced Emergency Medical Technician (AEMT).

(9) "Emergency Medical Technician-Intermediate (EMT-Intermediate)" means a person who is certified by the Authority as an EMT-Intermediate.

(10) "Emergency Medical Technician-Paramedic (EMT-Paramedic)" means a person who is certified by the Authority as an EMT-Paramedic.

(11) "In Good Standing" means a person who is currently certified or licensed, who does not have any restrictions placed on his/her certificate or license, or who is not on probation with the certifying or licensing agency for any reason.

(12) "Nonemergency care" as defined in ORS 682.025 (11) 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 677, insofar as any of these 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.

(13) "Supervising Physician" means a person licensed under ORS Chapter 677, actively registered and in good standing with the Board as a Medical Doctor or Doctor of Osteopathic Medicine, approved by the Board, and who provides direction of, and is ultimately responsible for emergency and nonemergency care rendered by EMTs and First Responders as specified in these rules. The supervising physician is also ultimately responsible for the agent designated by the supervising physician

# ADMINISTRATIVE RULES

to provide direction of the medical services of the EMT and First Responder as specified in these rules.

(14) "Scope of Practice" means the maximum level of emergency and nonemergency care that an EMT or First Responder may provide as defined in OAR 847-035-0030.

(15) "Standing Orders" means the written detailed procedures for medical or trauma emergencies and nonemergency care to be performed by an EMT or First Responder issued by the supervising physician commensurate with the scope of practice and level of certification of the EMT or First Responder.

Stat. Auth.: ORS 682.245

Stats. Implemented: ORS 682.015(11)

Hist.: ME 2-1983, f. & ef. 7-21-83; ME 7-1985, f. & ef. 8-5-85; ME 11-1986, f. & ef. 7-31-86; ME 15-1988, f. & cert. ef. 10-20-88; ME 6-1991, f. & cert. ef. 7-24-91; ME 1-1996, f. & cert. ef. 2-15-96; ME 3-1996, f. & cert. ef. 7-25-96; BME 6-1998, f. & cert. ef. 4-27-98; BME 13-1999, f. & cert. ef. 7-23-99; BME 10-2002, f. & cert. ef. 7-22-02; BME 18-2010, f. & cert. ef. 10-25-10; OMB 1-2011, f. & cert. ef. 2-11-11; OMB 13-2011, f. & cert. ef. 7-13-11

## 847-035-0025

### Supervision

(1) A supervising physician is responsible for the following:

(a) Issuance, review and maintenance of standing orders within the scope of practice not to exceed the certification level of the EMT or the First Responder when applicable;

(b) Explaining the standing orders to the EMT and First Responder, making sure they are understood and not exceeded;

(c) Ascertaining that the EMT and First Responder are currently certified and in good standing with the Division;

(d) Providing regular review of the EMT's and First Responder's practice by complying with one or more of the following:

(A) Direct observation of prehospital emergency care performance by riding with the emergency medical service; and

(B) Indirect observation using one or more of the following:

(i) Prehospital emergency care report review;

(ii) Prehospital communications tapes review;

(iii) Immediate critiques following presentation of reports;

(iv) Demonstration of technical skills; and

(v) Post-care patient or receiving physician interviews using questionnaire or direct interview techniques.

(e) Provide or coordinate formal case reviews for EMTs by thoroughly discussing a case (whether one in which the EMT has taken part or a textbook case) from the time the call was received until the patient was delivered to the hospital. The review should include discussing what the problem was, what actions were taken (right or wrong), what could have been done that was not, and what improvements could have been made;

(f) Provide or coordinate continuing education. Although the supervising physician is not required to teach all sessions, the supervising physician is responsible for assuring that the sessions are taught by a qualified person.

(2) The supervising physician may delegate responsibility to his/her agent to provide any or all of the following:

(a) Explanation of the standing orders to the EMT or First Responder, making sure they are understood, and not exceeded;

(b) Assurance that the EMT or First Responder is currently certified and in good standing with the Division;

(c) Regular review of the EMT's and First Responder's practice by complying with one or more of the following:

(A) Direct observation of prehospital emergency care performance by riding with the emergency medical service; and

(B) Indirect observation using one or more of the following:

(i) Prehospital emergency care report review;

(ii) Prehospital communications tapes review;

(iii) Immediate critiques following presentation of reports;

(iv) Demonstration of technical skills; and

(v) Post-care patient or receiving physician interviews using questionnaire or direct interview techniques.

(d) Provide or coordinate continuing education. Although the supervising physician or agent is not required to teach all sessions, the supervising physician or agent is responsible for assuring that the sessions are taught by a qualified person.

(3) Nothing in this section shall limit the number of EMTs and First Responders that may be supervised by a supervising physician so long as the supervising physician can meet with the EMTs and First Responders under his/her direction for a minimum of two hours each calendar year.

(4) An EMT or First Responder may have more than one supervising physician as long as the EMT or First Responder has notified all of the

supervising physicians involved, and the EMT or First Responder is functioning under one supervising physician at a time.

(5) The supervising physician shall report in writing to the Authority's Chief Investigator any action or behavior on the part of the EMT or First Responder which could be cause for disciplinary action under ORS 823.160 or 823.165.

Stat. Auth.: ORS 183.205

Stats. Implemented: ORS 183.205

Hist.: ME 2-1983, f. & ef. 7-21-83; ME 13-1984, f. & ef. 8-2-84; ME 6-1991, f. & cert. ef. 7-24-91; ME 1-1996, f. & cert. ef. 2-15-96; OMB 13-2011, f. & cert. ef. 7-13-11

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**Rule Caption:** Repealed rules, covered in Division 8, which applies to all Board licensees

**Adm. Order No.:** OMB 14-2011

**Filed with Sec. of State:** 7-13-2011

**Certified to be Effective:** 7-13-11

**Notice Publication Date:** 6-1-2011

**Rules Repealed:** 847-050-0031, 847-050-0032

**Subject:** The rules are no longer necessary because the requirement is covered in division 8, which applies to all Board licensees.

**Rules Coordinator:** Malar Ratnathicam—(971) 673-2713

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**Rule Caption:** Repealed rules, covered in Division 8, which applies to all Board licensees.

**Adm. Order No.:** OMB 15-2011

**Filed with Sec. of State:** 7-13-2011

**Certified to be Effective:** 7-13-11

**Notice Publication Date:** 6-1-2011

**Rules Repealed:** 847-070-0018, 847-070-0042

**Subject:** The rules are no longer necessary because the requirement is covered in division 8, which applies to all Board licensees.

**Rules Coordinator:** Malar Ratnathicam—(971) 673-2713

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**Rule Caption:** Updates name of state acupuncture association and includes minor word changes.

**Adm. Order No.:** OMB 16-2011

**Filed with Sec. of State:** 7-13-2011

**Certified to be Effective:** 7-13-11

**Notice Publication Date:** 6-1-2011

**Rules Amended:** 847-070-0050

**Subject:** The adopted rule updates the name of the state Acupuncture Association to "Oregon Association of Acupuncture and Oriental Medicine," and makes minor grammatical changes including changing of the word "shall" to "must" within the rule.

**Rules Coordinator:** Malar Ratnathicam—(971) 673-2713

## 847-070-0050

### Acupuncture Advisory Committee

(1) An Acupuncture Advisory Committee is established. The committee must consist of six members appointed by the Board. The Board must appoint one of its members, two physicians, and three acupuncturists licensed by the Board. The acupuncture members may be appointed from nominations of the Oregon Association of Acupuncture and Oriental Medicine and other professional acupuncture organizations.

(2) The term of office of a member of the committee must be four years, and members may be reappointed to serve not more than two terms. Vacancies in the committee must be filled by appointment by the Board for the balance of the unexpired term, and each member must serve until a successor is appointed and qualified.

(3) The Board may remove any member from the committee.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.265, 677.759, 677.780

Hist.: ME 4-1995, f. & cert. ef. 5-3-95; ME 10-1996, f. & cert. ef. 10-29-96; BME 15-1998, f. & cert. ef. 10-26-98; BME 14-2001, f. & cert. ef. 10-30-01; BME 19-2007, f. & cert. ef. 10-24-07; OMB 16-2011, f. & cert. ef. 7-13-11

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**Rule Caption:** Repealed rules, covered in Division 8, which applies to all Board licensees.

**Adm. Order No.:** OMB 17-2011

**Filed with Sec. of State:** 7-13-2011

**Certified to be Effective:** 7-13-11

**Notice Publication Date:** 6-1-2011



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**Rules Repealed:** 847-080-0019, 847-080-0020, 847-080-0025

**Subject:** The rules are no longer necessary because the requirement is covered in division 8, which applies to all Board licensees.

**Rules Coordinator:** Malar Ratnathicam—(971) 673-2713

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## Oregon Patient Safety Commission Chapter 325

**Rule Caption:** Establishes the Oregon Patient Safety Commission's 2011–2013 biennial budget by amending OAR 325-005-0015.

**Adm. Order No.:** PSC 1-2011

**Filed with Sec. of State:** 7-1-2011

**Certified to be Effective:** 7-1-11

**Notice Publication Date:** 6-1-2011

**Rules Amended:** 325-005-0015

**Subject:** In accordance with the rules governing semi-independent state agencies, this action establishes the Oregon Patient Safety Commission's 2011–2013 biennial budget of \$1,426,006 by amending OAR 325-005-0015.

**Rules Coordinator:** Bethany A. Higgins—(503) 224-9226

### 325-005-0015

#### Biennial Budget

The Commission hereby adopts by reference the Oregon Patient Safety Commission's 2011–2013 Biennial Budget of \$1,426,006 covering the period July 1, 2011, through June 30, 2013. The Commission's Administrator will amend budgeted accounts as necessary, within the approved budget of \$1,426,006 for the effective operation of the Commission. The Commission will not exceed the approved 2011–2013 Biennial Budget without amending this rule, notifying interested parties, and holding a public hearing as required by ORS Chapter 182.462. Copies of the budget are available from the Commission's office and are posted on the Commission's website.

Stat. Auth.: ORS 442.820 & Sec. 9 Ch. 686 OL 2003

Stats. Implemented: ORS 183.453(1), 183.453(2)

Hist.: PSC 1-2006, f. & cert. ef. 2-6-06; PSC 4-2007, f. & cert. ef. 7-2-07; PSC 1-2009, f. & cert. ef. 6-26-09; PSC 1-2011, f. & cert. ef. 7-1-11

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## Oregon State Marine Board Chapter 250

**Rule Caption:** This rule will close an area of the Willamette River in Lane County.

**Adm. Order No.:** OSMB 10-2011(Temp)

**Filed with Sec. of State:** 6-30-2011

**Certified to be Effective:** 7-1-11 thru 10-1-11

**Notice Publication Date:**

**Rules Amended:** 250-020-0221

**Subject:** This rule action will temporarily close an area of the Willamette River in Lane County due to construction associated with the I-5 Bridge project.

**Rules Coordinator:** June LeTarte—(503) 378-2617

### 250-020-0221

#### Boat Operations on Certain Waters in Lane County

(1) No person shall operate a motorboat in excess of 5 MPH ("Slow–No Wake") in the following areas:

(a) Triangle Lake: Within 200 feet of a marked swimming area or a designated public launching ramp;

(b) Fern Ridge Lake:

(A) Within 200 feet of a marked swimming area or a designated public launching ramp;

(B) In the Coyote Creek Channel;

(C) Between shore and buoy line which extends southerly from the north shore to a point approximately 200 feet of the northern most Eugene Yacht Club mooring dock thence generally south and west approximately 200 feet of the docks to a point approximately 200 feet south of the Tri Pass Club mooring dock thence generally west to the southern tip of the Tri Pass Club dock as buoyed except for the buoyed corridor immediately south of the Eugene Yacht Club southernmost dock;

(D) South of the buoy line which extends easterly from a point approximately 100 yards north of the Perkins Boat Ramp to the adjacent shoreline;

(E) In the Main Long Tom River Channel.

(c) Dexter Dam Reservoir:

(A) Within 200 feet of a marked swimming area or a designated public launching ramp;

(B) Within 50 feet of the causeway crossing the reservoir.

(d) Lookout Point Reservoir:

(A) Within 200 feet of a marked swimming area or a designated public launching ramp;

(B) East of the Southern Pacific Railroad bridge.

(e) Dorena Dam Reservoir:

(A) Within 200 feet of a marked swimming area or a designated public launching ramp.

(B) Southeast of a line between markers on Humphrey Point and the northeast shore.

(f) Cottage Grove Reservoir:

(A) Within 200 feet of a marked swimming area or a designated public launching ramp;

(B) South of a line between a marker on the east shore, near the Wilson Creek area, and on the west shore near Cedar Creek.

(g) Hills Creek Reservoir:

(A) Within 200 feet of a marked swimming area or a designated public launching ramp;

(B) On Packard Creek arm west of Rigdon Road (USFS Road #21);

(C) On Hills Creek south of the Hills Creek Crossing Bridge;

(D) On the Middle Fork, Willamette River south of the Rigdon Road (USFS #21) (Upper Crossing) Bridge;

(E) No person shall operate a motorboat for any purpose on Larison Creek arm west of Rigdon Road (USFS Road #21)

(h) Collard Lakes;

(i) Picket Lake;

(j) Munsel Lake: West of the line of marker buoys;

(k) Fall Creek Lake:

(A) Within 200 feet of a designated public launching ramp or marked swimming area;

(B) On Fall Creek upriver from the buoys located approximately 200 feet downstream of the Big Fall Creek Road;

(C) On Winberry Creek upriver from the buoys located approximately 1800 feet downstream of the Winberry Creek Road Bridge.

(l) Siltcoos Lake:

(A) Within 200 feet of a designated public launching ramp or marked swimming area;

(B) Between shore and buoy line at the mouth of Kiechle Arm beginning at a point at the east shoreline of Arrowhead Point and extending northerly approximately 900 yards to a point approximately 100 yards off shore of Camp Baker during the period of June 1 through September 30.

(C) In Miller Arm north of the buoy line, located at the entrance near Nightingales' Fishing Camp, during the period of May 1 through September 31.

(2) No person shall operate a motorboat in excess of 5 MPH on Leaburg Reservoir and the McKenzie River from the dam upstream to Good Pasture Bridge.

(3) No person shall operate a motorboat in excess of a "Slow–No Wake" speed within 300 feet of a boat launching ramp or a boat moorage on the following bodies of water (for purpose of this regulation, "Slow–No Wake" speed means the speed of a boat shall not exceed 5 MPH):

(a) Cougar Reservoir;

(b) Blue River Reservoir;

(c) Siuslaw River — between the river entrance and the highway bridge at Mapleton.

(4) No person shall operate a motorboat for any purpose on the following lakes: Scott, Melakwa, Hidden, Blair, Upper Erma Bell, Middle Erma Bell, Lower Erma Bell, Torrey, Whig, Wahanna, Rigdon, Lower Rigdon, Kiwa, Upper Eddeleo, Round, Betty, and Alameda.

(5) No person shall operate a motorboat for any purpose in excess of 10 MPH on Munsel Lake east of the line of marker buoys, except from June 1 through September 30, between the hours of 10 a.m. and 5 p.m.

(6) No person shall operate a motorboat on the McKenzie River above Good Pasture Bridge, except a representative of the Oregon State Police or the County Sheriff's Office pursuant to a criminal investigation or search and rescue operation.

(7) No person shall operate a motorboat, except with an electric motor:

(a) In the Old Long Tom River Channel;

(b) On Fern Ridge Reservoir south of State Highway 126;

(c) On Hult Reservoir.

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(8) No person shall operate a propeller-driven airboat or non-displacement hull type hovercraft in the following areas on Fern Ridge Reservoir where there is emergent vegetation present:

(a) Coyote Creek area — east of a line beginning at the West Coyote Creek bridge at Highway 126 extending north approximately one mile to a point near the mouth of Coyote Creek, then extending north approximately 1.4 miles to a point located approximately 100 yards off shore of the north-west corner of Gibson Island;

(b) Amazon Bay area — east of a line beginning at a point located approximately 100 yards off shore of the northwest corner of Gibson Island extending northeast approximately one mile to the Shore Lane access;

(c) South Marsh area — west of a line extending from a point on the shoreline at the southern boundary of Zumwalt Park near the end of Vista Drive extending southeast approximately one mile to a point on the shoreline at the tip of Perkins Peninsula;

(d) Long Tom Area — southwest of a line beginning at a point on the shore line at the end of Moyer Lane extending southeast approximately 0.9 miles to a point on the west shoreline of the Jeans Peninsula at the north end of Winter Lane.

(9) No person shall operate a motorboat north and east of a line across the entrance of Bannister Cove on Lookout Point Reservoir, as marked.

(10) Use of internal combustion motors in boats and floatplanes operating on the surface of Waldo Lake is prohibited year round. "Watercraft" includes boats and floatplanes operating on the surface of Waldo Lake. Official use of internal combustion motors in watercraft operated on the surface of Waldo Lake by local, state or federal governmental officials or agents is allowed for the following activities: search and rescue, law enforcement and fire suppression. Previous approval by the Willamette National Forest Supervisor is required for other activities undertaken by local, state or federal government officials or agents that involve use of internal combustion motors in watercraft operated on the surface of Waldo Lake. Emergency landings of private or governmental floatplanes on Waldo Lake are allowed without previous approval.

(11) No person shall operate a boat for any purpose between July 1 and October 1, 2011, on the Willamette River between the low-head dam downstream of the "D" Street Ramp at Springfield and the downstream end of the I-5 Bridge construction project.

Stat. Auth.: ORS 830.110 & 830.175

Stats. Implemented: ORS 830.175

Hist.: MB 21, f. 8-23-63; MB 27, f. 6-3-65; MB 31, f. 6-20-66; MB 42, f. 12-3-68; MB 44, f. 8-21-69; MB 48, f. 6-28-71, ef. 7-25-71; MB 49, f. 8-14-72, ef. 9-1-72; MB 3-1979(Temp), f. & ef. 6-22-79; MB 5-1979, f. 7-31-79, ef. 8-1-79; Renumbered from 250-020-0131; MB 8-1981, f. & ef. 11-16-81; MB 5-1982, f. & ef. 6-1-82; MB 6-1982, f. & ef. 6-1-82; MB 15-1984, f. 11-30-84, ef. 12-1-84; MB 6-1995, f. & cert. ef. 7-14-95; MB 9-1996, f. & cert. ef. 5-29-96; OSMB 2-2000, f. & cert. ef. 7-14-00; OSMB 2-2001, f. & cert. ef. 1-25-01; OSMB 1-2008, f. & cert. ef. 1-15-08; OSMB 3-2010, f. & cert. ef. 1-15-10; OSMB 9-2010(Temp), f. & cert. ef. 5-6-10 thru 9-30-10; Administrative correction 10-26-10; OSMB 13-2010, f. & cert. ef. 11-1-10; OSMB 5-2011(Temp), f. 3-28-11, cert. ef. 4-8-11 thru 4-11-11; Administrative correction, 4-25-11; OSMB 10-2011(Temp), f. 6-30-11, cert. ef. 7-1-11 thru 10-1-11

## Oregon University System Chapter 580

**Rule Caption:** To adopt tuition and fees for the 2011–2012 Academic Year, including room and board rates.

**Adm. Order No.:** OUS 2-2011

**Filed with Sec. of State:** 6-23-2011

**Certified to be Effective:** 6-23-11

**Notice Publication Date:** 5-1-2011

**Rules Amended:** 580-040-0040

**Subject:** To establish tuition and fees for the 2011–2012 Academic Year, including room and board rates, The fee book, as approved, is available at <http://www.ous.edu/sites/default/dept/budget/files/AY11-12Fbk-final-06-06-11.pdf>.

**Rules Coordinator:** Marcia M. Stuart—(541) 346-5749

### 580-040-0040

#### Academic Year Fee Book

Through this action, the document entitled "Academic Year Fee Book" dated June 3, 2011, 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. The Chancellor or designated staff are permitted to make revisions as needed to comport with any subsequent legislative actions as well as to authorize minor adjustments to the final document, if necessary.

[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; OUS 2-2011, f. & cert. ef. 6-23-11

## Oregon University System, Oregon Institute of Technology Chapter 578

**Rule Caption:** To amend the Schedule of Special Institutional fees and Charges.

**Adm. Order No.:** OIT 1-2011

**Filed with Sec. of State:** 6-20-2011

**Certified to be Effective:** 6-20-11

**Notice Publication Date:** 5-1-2011

**Rules Amended:** 578-041-0030

**Subject:** 578-001-0030 Amends the Schedule of Special Institutional Fees and Charges. Amendments allow for increase, revisions, additions, or deletions of special course fees and general services for fiscal year 2011–2012. The schedule of subject fees may be obtained from the Oregon Institute of Technology Business Affairs 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 2011–2012 and are hereby adopted by reference.

(2) Copies of this fee schedule may be obtained from the Oregon Institute of Technology Business Affairs Office.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070(2)

Hist.: OIT 1-1985, f. 1-10-85, ef. 2-1-85; OIT 1-1986, f. & ef. 9-4-86; OIT 4-1991, f. & cert. ef. 7-22-91; OIT 5-1992, f. & cert. ef. 9-24-92; OIT 1-1993, f. & cert. ef. 9-24-93; OIT 1-1995, f. & cert. ef. 7-7-95; OIT 1-1996, f. & cert. ef. 9-11-96; OIT 2-1996, f. & cert. ef. 12-19-96; OIT 1-1997, f. & cert. ef. 12-31-97; OIT 2-1998, f. & cert. ef. 11-12-98; OIT 1-1999, f. & cert. ef. 8-26-99; OIT 1-2000, f. & cert. ef. 7-7-00; OIT 1-2001, f. & cert. ef. 7-19-01; OIT 1-2002, f. & cert. ef. 7-15-02; OIT 1-2003, f. & cert. ef. 6-11-03; OIT 1-2004, f. & cert. ef. 6-9-04; OIT 1-2005, f. & cert. ef. 6-10-05; OIT 1-2006, f. & cert. ef. 6-2-06; OIT 1-2007, f. & cert. ef. 6-7-07; OIT 1-2008, f. & cert. ef. 6-10-08; OIT 1-2009, f. & cert. ef. 9-2-09; OIT 1-2010(Temp), f. & cert. ef. 6-28-10 thru 12-23-10; OIT 2-2010, f. & cert. ef. 8-30-10; OIT 1-2011, f. & cert. ef. 6-20-11

## Oregon University System, University of Oregon Chapter 571

**Rule Caption:** Amend Special fees, fines, penalties, and services charges.

**Adm. Order No.:** UO 2-2011

**Filed with Sec. of State:** 6-22-2011

**Certified to be Effective:** 7-1-11

**Notice Publication Date:** 3-1-2011

**Rules Amended:** 571-060-0005

**Subject:** The University administration has determined that the adoption of the amendments to the fee list will be necessary in order to provide the basis for funding to cover the expenses of the services rendered and to maintain a current schedule of fees, fines, penalties, and services charges.

**Rules Coordinator:** Deb Donning—(541) 346-3082

# ADMINISTRATIVE RULES

## 571-060-0005

### Special Fees, Fines, Penalties, Service Charges

The University of Oregon has adopted by reference a list of Special Fees, Fines, Penalties, Service Charges, etc., for the current fiscal year:

(1) The fees, fines, penalties and service charges listed by reference in this rule are updated annually and copies are on file in the listed departments by July 1.

(2) The amounts and conditions of these fees may change from time to time throughout the year due to administrative considerations, changing costs, changes in institutional budgets, etc. If the size and the amount of these fees are or could be of importance to users, they should verify the details prior to making a commitment, before entering into any planning activities or before actually incurring any charges.

(3) The master copy of the current list of fees is maintained in the Office of the Director of Business Affairs and is available upon request to any person during regular business hours. The Director of Business Affairs also maintains a bulletin board where fee changes made during each 30-day period are posted. Following that posted period, the changes are filed with in the master copy.

(4) University departments charging fees shall maintain a copy of at least that department's section of the list of special fees, fines, penalties and service charges including any updates made during the course of the fiscal year. The list and all current changes shall be available upon request to any person during regular departmental business hours.

(5) No department may change fees between annual amendments to this rule without first obtaining an approved statement of justification signed by the appropriate Vice-President. Prior to granting approval of any fee charged to students, the Vice-President shall consult with the Office of Student Advocacy. Changes in fees approved by the Vice-President and the justification statement shall be posted for 15 days in a public area of the departmental office. The new fee, fine, penalty or charge becomes effective at the end of the 15-day posting period after it is filed with the Director of Business Affairs along with the justification statement.

(6) However, student loan service charges, charges levied as penalties for prohibited conduct, general tuition, building fees, incidental fees, health service fees, and residence hall and housing charges, shall be adopted in accordance with the provision of ORS 183.310 to 183.500.

(7) Certain charges, fees or fee schedules may, according to ORS 351.072(b), be adopted without compliance with rulemaking provisions of ORS 183.310 to 183.500. They are: charges relating to symposiums, conferences, short courses, food, books or other retail goods, prices of admission to athletic, entertainment or cultural events or advertising rates in student or institutional publications.

Stat. Auth.: ORS 351.070, 351 & 352  
Stats. Implemented: ORS 351.070

Hist.: UOO 20, f. & cert. ef. 4-27-76; UOO 34(Temp), f. & cert. ef. 8-8-77; UOO 37, f. & cert. ef. 9-30-77; UOO 3-1978, f. & cert. ef. 7-1-78; UOO 1-1979(Temp), f. 6-26-79, ef. 7-1-79; UOO 4-1979, f. & cert. ef. 10-3-79; UOO 7-1980, f. 6-30-80, ef. 7-1-80; UOO 7-1981(Temp), f. 6-16-81, ef. 7-1-81; UOO 9-1981(Temp), f. & cert. ef. 6-29-81; UOO 2-1982, f. & cert. ef. 4-14-82; UOO 4-1982, f. & cert. ef. 6-10-82; UOO 4-1983, f. & cert. ef. 6-10-83; UOO 5-1983(Temp), f. & cert. ef. 6-15-83; UOO 2-1984, f. 6-11-84, ef. 7-1-84; UOO 3-1985, f. 6-19-85, ef. 7-1-85; UOO 1-1986; f. 6-4-86, ef. 7-1-86; UOO 4-1986(Temp), f. & cert. ef. 11-10-86; UOO 7-1986(Temp), f. 12-30-86, ef. 1-1-87; UOO 8-1986(Temp), f. 12-30-86, ef. 1-1-87; UOO 1-1987, f. & cert. ef. 1-29-87; UOO 3-1987, f. 6-17-87, ef. 7-1-87; UOO 6-1988, f. 6-29-88, cert. ef. 7-1-88; UOO 8-1988, f. & cert. ef. 8-17-88; UOO 5-1989, f. 6-20-89, cert. ef. 7-1-89; UOO 7-1990, f. 6-14-90, cert. ef. 7-1-90; UOO 9-1991, f. 6-12-91, cert. ef. 7-1-91; UOO 1-1992, f. 4-9-92, cert. ef. 7-1-92; UOO 2-1993, f. 4-19-93, cert. ef. 7-1-93; UOO 9-1993, f. & cert. ef. 6-15-93; UOO 11-1993, f. 8-29-93, cert. ef. 9-1-93; UOO 2-1994, f. 6-13-94, cert. ef. 7-1-94; UOO 3-1994, f. 6-14-94, cert. ef. 7-1-94; UOO 4-1995, f. 6-13-95, cert. ef. 7-1-95; UOO 5-1995, f. 7-31-95, cert. ef. 8-1-95; UOO 3-1996, f. 6-6-96, cert. ef. 7-1-96; UOO 6-1997, f. 6-18-97, cert. ef. 7-1-97; UOO 7-1997, f. 6-18-97, cert. ef. 7-1-97; UO 1-1998, f. 6-17-98, cert. ef. 7-1-98; UO 2-1998, f. 6-17-98, cert. ef. 7-1-98; UO 2-1999, f. 6-1-99, cert. ef. 7-1-99; UO 3-1999, f. 6-1-99, cert. ef. 7-1-99; UO 2-2000, f. 6-15-00, cert. ef. 7-1-00; UO 1-2001, f. 6-18-01, cert. ef. 7-1-01; UO 2-2001, f. 6-18-01, cert. ef. 7-1-01; UO 2-2002, f. 6-19-02, cert. ef. 7-1-02; UO 3-2002, f. 6-19-02, cert. ef. 7-1-02; UO 1-2003, f. 6-23-03, cert. ef. 7-1-03; UO 2-2003, f. 6-23-03, cert. ef. 7-1-03; UO 2-2004, f. 5-11-04, cert. ef. 7-1-04; UO 3-2004, f. 6-30-04, cert. ef. 7-1-04; UO 6-2007, f. & cert. ef. 2-22-07; UO 8-2007, f. & cert. ef. 3-12-07; UO 9-2007, f. 5-10-07, cert. ef. 6-29-07; UO 11-2007, f. 6-19-07, cert. ef. 6-29-07; UO 2-2008, f. 5-6-08, cert. ef. 7-1-08; UO 4-2008, f. 6-27-08, cert. ef. 7-1-08; UO 1-2009, f. 4-24-09, cert. ef. 7-1-09; UO 2-2009, f. 6-30-09, cert. ef. 7-1-09; UO 1-2010, f. 4-22-10, cert. ef. 7-1-10; UO 2-2010, f. 7-29-10, cert. ef. 7-30-10; UO 2-2011, f. 6-22-11, cert. ef. 7-1-11

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### Physical Therapist Licensing Board Chapter 848

**Rule Caption:** Amend current rule expense budget figure to reflect 2011–2013 Board approved expense budget.

**Adm. Order No.:** PTLB 1-2011

**Filed with Sec. of State:** 6-20-2011

**Certified to be Effective:** 7-1-11

**Notice Publication Date:** 5-1-2011

## Rules Amended: 848-005-0010

**Subject:** The Physical Therapist Licensing Board hereby adopts by reference the Physical Therapist Licensing Board 2011–2013 Biennium Budget of \$988,900 covering the period from July 1, 2011 through June 30, 2013. The Executive Director of the Board will amend budgeted accounts as necessary within the approved budget of \$988,900 for the effective operation of the Board. The Board will not exceed the approved 2011–2013 Biennium Budget without amending this rule, notifying holders of licenses, and holding a public hearing thereon as required by ORS Chapter 182.462(1) and (2). Copies of the budget are available on the Board website or by contacting the Board's office.

**Rules Coordinator:** James Heider—(971) 673-0203

## 848-005-0010

### Board Budget

The Physical Therapist Licensing Board hereby adopts by reference the Physical Therapist Licensing Board 2011–2013 Biennium Budget of \$988,900 covering the period from July 1, 2011 through June 30, 2013. The Executive Director of the Board will amend budgeted accounts as necessary within the approved budget of \$988,900 for the effective operation of the Board. The Board will not exceed the approved 2011–2013 Biennium Budget without amending this rule, notifying holders of licenses, and holding a public hearing thereon as required, by ORS Chapter 182.462(1) and (2). Copies of the budget are available from the Board's office.

Stat. Auth.: ORS 688.210

Stats. Implemented: ORS 688.160(5)(c)

Hist.: PTLB 3-1999(Temp), f. & cert. ef. 9-7-99 thru 3-1-00; PTLB 5-1999, f. 11-23-99, cert. ef. 12-1-99; PTLB 5-2001(Temp), f. & cert. ef. 6-18-01 thru 9-30-01; PTLB 6-2001, f. & cert. ef. 10-1-01; PTLB 2-2003, f. 6-30-03, cert. ef. 7-1-03; Renumbered from 848-010-0105, PTLB 2-2004, f. & cert. ef. 12-29-04; PTLB 1-2005, f. & cert. ef. 4-8-05; PTLB 2-2007, f. 5-25-07, cert. ef. 6-1-07; PTLB 1-2009, f. & cert. ef. 5-14-09; PTLB 2-2009, f. 5-14-09, cert. ef. 7-1-09; PTLB 1-2011, f. 6-20-11, cert. ef. 7-1-11

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### Psychiatric Security Review Board Chapter 859

**Rule Caption:** Establishes Exception for Petition Requirements for Persons who Previously received Judicial Relief for their Civil Commitment Firearm Bar.

**Adm. Order No.:** PSRB 2-2011(Temp)

**Filed with Sec. of State:** 7-5-2011

**Certified to be Effective:** 7-5-11 thru 12-27-11

**Notice Publication Date:**

**Rules Amended:** 859-300-0050

**Subject:** Oregon Laws 2009, Ch. 826 requires the PSRB to administer a hearings process for persons who are disqualified from transporting, shipping, possessing, or receiving a firearm under federal and certain state laws. Prior to the passage of this legislation, persons previously civilly committed could seek judicial relief from state court to request that their state firearms privilege be restored. However, this judicial relief never restored their federal firearm privileges. On August 3, 2009, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) certified Oregon's PSRB Gun Relief Program has having authority to restore a person's federal firearm privilege. The purpose of this administrative rules is to streamline the petition process for those individuals who have previously been granted State relief who now seek to have their federal mental health prohibitor lifted.

**Rules Coordinator:** Mary Claire Buckley—(503) 229-5596

## 859-300-0050

### Petition for Relief

(1) An individual who is barred from transporting, shipping, possessing, or receiving a firearm under federal law due to a State of Oregon mental health determination may petition for relief of the firearm bar to the PSRB for the limited purpose of having his or her federal gun rights restored as it pertains only to the mental health determination firearm disqualification.

(2) An individual who is barred from possessing or purchasing a firearm under ORS 166.250(1)(c)(D) or (E), or 166.470(1)(e) or (f), may petition for relief of the firearm bar to the PSRB for the purpose of having his or her state gun rights restored as it pertains only to the firearm disqualification as a result of either a commitment to the Oregon Health



# ADMINISTRATIVE RULES

Authority or the Department of Human Services under ORS 426.130 or 427.290, or an order of a court under ORS 426.130 after a finding of mental illness that the petitioner is prohibited from purchasing or possessing a firearm as a result of petitioner's mental illness.

(3) A petition for relief shall be made on forms developed by the PSRB, which shall be available on the PSRB's public website, e-mail, or through U.S. Mail. The petition for relief shall be submitted in its entirety before a hearing will be scheduled. In addition to the forms provided, the petitioner shall submit:

(a) A certified copy of all mental health records pertaining to the disqualifying mental health determination;

(b) A certified copy of all court records related to the circumstances surrounding the firearms disability. If the county courthouse is unable to locate petitioner's records, petitioner must obtain a letter from the courthouse records department stating that it is unable to locate the court records related to petitioner's mental health determination;

(c) A certified copy of petitioner's national criminal history, including juvenile adjudications;

(d) An independent forensic mental health assessment performed no more than 90 calendar days prior to submission of the petition for relief to the PSRB. This assessment may not be performed by petitioner's current or previous mental health provider. The assessment shall be performed by a licensed psychiatrist or psychologist. The assessment shall include, at a minimum, an opinion and a basis for that opinion, of petitioner's interpersonal violence and self-harm risk. If petitioner has previously been granted judicial gun relief under ORS 166.274, for his or her civil commitment mental health determination prior to August 3, 2009, this independent forensic mental health assessment is not required as a prerequisite for scheduling a hearing. However, this waiver does not bar the Board from later ordering an assessment if deemed appropriate under OAR 859-300-0160.

(4) In addition to the required forms and documents in subsection (3), the petitioner may submit additional information in support of the petition for relief including, but not limited to:

(a) A certified copy of all mental health records detailing the petitioner's psychiatric history.

(b) A certified copy of medical records from all of the petitioner's current and former mental health treatment providers, including alcohol/substance abuse providers if the petitioner is receiving or has received such treatment. The records may also include a letter from petitioner's current treating mental health practitioner, if any. The letter may contain the petitioner's current medical health diagnosis, a list of psychiatric medicines and dosage, if any, the petitioner is currently prescribed, history of compliance with the medication, and any other information the practitioner deems relevant to petitioner possessing a firearm.

(c) If petitioner is currently on probation/parole for a criminal offense, a letter from the petitioner's probation/parole officer providing a history of petitioner's compliance with terms of probation/parole and any other relevant information he or she deems relevant to petitioner's risk for harm if granted a firearm.

(d) Written evidence of the petitioner's reputation, such as notarized letters of reference from current and past employers, family members or personal friends or other character evidence.

(5) In addition to submitting a petition and required documents to the PSRB, petitioner shall serve a copy of the petition and required documents on the Department of Human Services/Oregon Health Authority and the district attorney in the county in which the court made the mental health determination.

(6) The petitioner shall ensure that all required information accompanies the petition for relief at the time it is submitted to the PSRB and served on the Department of Human Services/Oregon Health Authority and the district attorney in the county in which the court made the mental health determination.

(7) Failure to provide truthful information in the petition and application materials shall result in denial of the petition.

Stat. Auth.: ORS 161.387(1), OL 2009, Ch. 826 (HB 2853)

Stats. Implemented: ORS 161.387(1), OL 2009, Ch. 826 (HB 2853)

Hist.: PSRB 3-2010(Temp), f. 10-5-10, cert. ef. 10-8-10 thru 4-6-11; PSRB 1-2011, f. 2-2-11, cert. ef. 2-15-11; PSRB 2-2011(Temp), f. & cert. ef. 7-5-11 thru 12-27-11

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**Public Utility Commission**  
**Chapter 860**

**Rule Caption:** In the Matter of Amending Division 38 Rules to Include New Utility-Owned Resources in Revenue Requirement at Cost and to Clarify Language.

**Adm. Order No.:** PUC 3-2011

**Filed with Sec. of State:** 6-17-2011

**Certified to be Effective:** 6-17-11

**Notice Publication Date:** 5-1-2011

**Rules Amended:** 860-038-0080, 860-038-0480

**Subject:** The revision to OAR 860-038-0080(1) requires that new utility-owned resources be included in revenue requirement at cost. In its Order No. 11-007, the Commission ordered this change be made as a result of its investigation (docket UM 1066) to re-examine and update resource planning acquisition policies. The revision to OAR 860-038-0480(2) was necessary to clarify that self-directing customer credits are applied to specific accounts.

**Rules Coordinator:** Diane Davis—(503) 378-4372

**860-038-0080**

**Resource Policies and Plans**

(1) The Commission adopts the following policies with respect to the Oregon share of generating resources (generating assets and power purchase contracts with a duration of at least one year) of each electric company:

(a) At such time as the Resource Plan is implemented and fully executed, each electric company will retain in its Oregon revenue requirement costs associated with a level of generating resources that is not greater than that necessary to meet the current and reasonably expected future loads of its Oregon cost-of-service consumers. In determining whether an electric company has excess generating resources, the Commission will consider the projected useful lives and mix of fuels of the electric company's generating resources. To encourage the development of a competitive retail energy market, it is the policy of the Commission to release to the competitive market generating resources in excess of such reasonably expected future loads. It is also the policy of the Commission to determine a one-time valuation for the share of an electric company's generating resources attributable to Oregon consumers who are not cost-of-service consumers;

(b) The Commission will not require an electric company to acquire new generating resources except as provided in ORS 757.663.

(c) Major capital improvements to existing generating resources will continue to be, and new generating resources will be, subject to least cost planning processes and analyses and the Oregon share of their prudently-incurred costs will be included in an electric company's Oregon revenue requirement, which for a multi-state electric company shall be consistent with Commission decisions pursuant to subsection (3)(a)(G) of this rule.

(d) The Oregon share of the costs of each generating resource may be either completely in, completely out, or "mixed" with respect to inclusion in an electric company's Oregon revenue requirement. The Commission will permit mixed status unless it finds that mixed status will:

(A) Reduce the generating resource's operating efficiency;

(B) Harm the development of a competitive market; and

(C) Prevent the owners from making economic decisions about the operation of the generating resource.

(e) For a multi-state electric company for which the Commission adopts a fixed-allocated Oregon share amount, and a Resource Plan is implemented, such generating allocation amount will be used for developing cost-of-service rates, transition charges and credits, and Operations and Maintenance allocations as well as other allocations that use generation-based factors.

(2) For purposes of this rule and OARs 860-038-0100 and 860-038-0140, a class's share of the total Oregon share of a generating resource will equal the ratio of the class's total Oregon retail load measured in weather-normalized kilowatt-hour sales to total Oregon retail load measured in weather-normalized kilowatt-hour sales for a 12 month period as determined by the Commission. Loads will be adjusted to remove the effects of demand exchange programs that were in effect during the 12 month period. To the extent such shares are not known as of the time period established by the Commission, the electric company will use estimates until relevant data are available.

(3) By a date to be determined by the Commission, each electric company must file with the Commission a resource plan that meets the following requirements:

(a) Information. The resource plan must include the following information:

(A) Consistent with paragraph subsection (3)(a)(G) of this rule, the amount of capacity and energy and the availability of each generating resource that is attributable to the share of the electric company's load from cost-of-service consumers, and the amount that is attributable to the share

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of the electric company's load from consumers not eligible for a cost-of-service rate;

(B) A forecast of the revenue requirements associated with each generating resource over both its projected remaining useful life and economic life, with sensitivities for major assumptions, and identification of deferred taxes, excess deferred taxes, FASB 109 assets, and any investment tax credits associated with each generating resource;

(C) The other characteristics of the generating resource that could affect its value including but not limited to its capability to provide or support ancillary services, the value of its site and environmental or operating permits, and any environmental issues associated with it;

(D) A forecast of future market prices for electricity, including forecasts of major fuel inputs and sensitivity analyses;

(E) A forecast of loads of the electric company's Oregon cost-of-service consumers covering at least the period of the longest-lived generating resource;

(F) The estimated fair market value of the Oregon share of each generating resource; and

(G) For a multi-state electric company, how the electric company proposes to allocate a share of its generating resources to Oregon. The multi-state electric company must also propose a fixed Oregon-allocated generating resource share based on the following factors:

(i) A forecasted allocation of each generating resource for a 12 month period as determined by the Commission, using traditional allocation methods recognized by the Commission;

(ii) The projected potential changes in Oregon share, due to alternative inter-jurisdictional allocation methods, over the life of each resource absent implementation of these rules; and

(iii) The change in risk borne by parties by fixing the Oregon share of generating resource.

(b) Recommended Valuation Methodology. The resource plan must identify, for each generating resource, or portion thereof if the resource meets the criteria for mixed status, whether the Oregon share of each generating resource should be:

(A) Retained in the electric company's Oregon revenue requirement for the purpose of serving Oregon cost-of-service consumers and administratively valued through a process to be specified by rule;

(B) Sold through the auction process specified in OAR 860-038-0100, and if so:

(i) The general terms and conditions that should apply to the sale, including but not limited to, a prototype purchase and sale agreement; and

(ii) Any sales incentives that the electric company proposes to apply to Oregon nonresidential consumers for the Oregon nonresidential consumers' share of the generating resource. Such incentives may be structured to encourage the electric company to follow the recommended timeline provided under subsection (3)(d) of this rule; or

(C) Removed from the electric company's Oregon revenue requirement and administratively valued through a process to be specified by rule, and if so, any incentive to apply to Oregon nonresidential consumers for removing the nonresidential consumers' share of the generating resource from revenue requirement. Such incentives may be structured to encourage the electric company to follow the recommended timeline provided under subsection (3)(d) of this rule.

(c) Results of the Resource Plan. The resource plan must identify the impacts of implementing it, including the following:

(A) The approximate load/resource balance, and the availability of each generating resource based on the electric company's current and forecasted load for Oregon cost-of-service consumers;

(B) The estimated rates to each Oregon customer class that will result from implementation of the resource plan, including:

(i) The amount of estimated transition charges and credits;

(ii) A comparison to the current effective rates of the electric company as of the date of filing; and

(iii) An estimate of the cost-of-service rates for cost-of-service consumers 10 years after implementation of the resource plan.

(C) How the resource plan is consistent with the purposes of SB 1149 in that the plan:

(i) Facilitates a fully competitive market;

(ii) Provides consumers fair, non-discriminatory access to competitive markets; and

(iii) Retains the benefits of low-cost resources for consumers.

(D) Any other implications of the resource plan that could help inform the Commissioners in their decision.

(d) Process. The electric company must develop the resource plan in a public process designed to inform and solicit input from Commission

staff, representatives of Oregon residential, small nonresidential and large nonresidential consumers, and other interested parties.

(4) The Commission must consider the electric company's recommended resource plan in a contested case proceeding. The Commission's order must identify those resources that, at the option of the electric company, may be auctioned immediately, before any Commission decision to waive the requirements for a cost-of-service rate for any consumers under ORS 757.603(1)(b) and before final administrative valuation of other resources and potential modification of the electric company's Resource Plan. The Commission's order must also approve, modify, or reject the resource plan.

(a) If the Commission modifies the resource plan, the electric company will have 30 days from the date of the Commission's order to accept or reject the modifications. If the electric company rejects the Commission's modifications, the electric company must file a second recommended resource plan within 60 days of the date of rejection;

(b) If the Commission rejects the resource plan, the order rejecting the plan must specifically describe the deficiencies in the resource plan. In that event, the electric company must file a second recommended resource plan within 60 days of the order rejecting the original plan;

(c) If the Commission modifies the second recommended resource plan, the electric company will have 30 days from the date of the order to accept or reject the modifications. If the electric company rejects the Commission's modifications, future attempts at reaching a resource plan may be initiated by either the electric company or the Commission. The timelines outlined in subsection (4)(a) of this rule shall apply once a new resource plan is submitted or modifications to a former plan are suggested.

(5) A resource plan that has been recommended by the electric company and approved by the Commission, or modified by the Commission and accepted by the electric company, is referred to in these rules as a "Resource Plan." The Resource Plan may encompass one plan or a set of plan options corresponding to different assumptions about consumer eligibility for cost-of-service rates. The electric company must implement the Resource Plan consistent with OAR 860-038-0100 and a process for administrative valuation to be specified by rule. The ongoing valuation method, as described in OAR 860-038-0140, will be used to establish transition charges and credits for resources that have not been sold or administratively valued.

(6) For a multi-state electric company, pending the implementation of a Resource Plan and establishing final values for generating resources in accordance with these rules, the following will guide developing rates for Oregon consumers of the electric company for the period March 1, 2002, through December 31, 2003:

(a) Cost-of-service rates will be based upon traditional allocation methods;

(b) Transition charges or credits shall not include assumed costs and revenues of the portion of generating resources not needed to serve Oregon loads associated with residential and small nonresidential consumers choosing portfolio access, small nonresidential consumers choosing direct access or standard offer rate options, and large nonresidential consumers when, and to the extent, the costs and revenues of the generating resources that are not needed are recognized and included in the electric company's revenue requirement in another state, less the costs and revenues of such generating resources which have been included in the electric company's revenue requirement by another state prior to October 1, 2001; and

(c) Beginning January 1, 2004, transition charges and transition credits will be calculated without regard to subsection (7)(b) of this rule.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.600 - 757.667

Hist.: PUC 17-2000, f. & cert. ef. 9-29-00; PUC 5-2001(Temp), f. & cert. ef. 2-6-01 thru 8-4-01; PUC 6-2001(Temp), f. & cert. ef. 3-1-01 thru 8-27-01; PUC 12-2001(Temp), f. & cert. ef. 5-4-01 thru 10-30-01; PUC 14-2001, f. & cert. ef. 5-25-01; PUC 20-2001, f. 8-1-01, cert. ef. 8-4-01; PUC 24-2001, f. 10-25-01, cert. ef. 10-31-01; PUC 18-2002, f. & cert. ef. 10-17-02; PUC 3-2011, f. & cert. ef. 6-17-11

### 860-038-0480

#### Public Purposes

(1) Each electric company that offers direct access to its retail electricity consumers and each electricity service supplier that provides electricity services to direct access consumers in the electric company's service territory will collect a public purpose charge from its retail electricity consumers until January 1, 2026.

(2) Except as provided in section (6) of this rule, electric companies and electricity service suppliers will bill and collect from each of their retail electricity consumers a public purpose charge equal to 3 percent of the total revenues billed to those consumers for electricity services, distribution,

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ancillary services, metering and billing, transition charges, and other types of costs that were included in electric rates on July 23, 1999.

(3) The electricity service suppliers will remit monthly to each electric company the public purpose charges they collect from the customers of each electric company.

(4) The electricity service suppliers will remit monthly the public purpose charges collected from direct service industrial consumers they serve to the electric company in whose service territory the direct service industrial site is located.

(5) The electric company whose territory abuts the greatest percentage of the site of an aluminum plant that averages more than 100 average megawatts of electricity use per year will collect monthly from the aluminum company a public purpose charge. The aluminum company will remit to the appropriate electric company a public purpose charge equal to 1 percent of the total revenue from the sale of electricity services to the aluminum plant from any source. Annually, the aluminum company will submit to the electric company an affidavit from a certified public accountant verifying that the costs for electricity services at the site of the aluminum plant and the remittance of the public purpose charges are accurate for the previous calendar year.

(6) A retail electricity consumer, including an aluminum plant as described in section (5) of this rule, may receive credits against its public purpose charges for qualifying expenditures incurred for new energy conservation and the above-market costs of new renewable energy resources at any site if the following qualifications for becoming a self-directing consumer are met:

(a) The consumer has used more than one average megawatt of electricity at any such site in the prior calendar year; and

(b) The consumer has received final certification from the Oregon Department of Energy for expenditures for new energy conservation and/or new renewable energy resources.

(7) Self-directing consumers may not claim a public purpose credit for energy conservation measures that were started prior to July 23, 1999. For energy conservation measures that were started on or after July 23, 1999, but prior to the implementation of direct access, a self-directing consumer may claim a public purpose credit if either of the following conditions is met:

(a) The energy conservation measure did not receive funding from an electric company conservation program and was certified by the Oregon Department of Energy after July 23, 1999; or

(b) The energy conservation measure did receive funding from an electric company conservation program and was certified by the Oregon Department of Energy after July 23, 1999, but the self-directing consumer repaid the amount of such funding (cost of audit and incentives plus interest) no later than 90 days following the implementation of direct access; provided that, a self-directing consumer shall not be required to repay the amount of any energy conservation audit related to a conservation measure if the audit was completed prior to January 1, 2000. The cost of an audit that identifies multiple energy conservation measures shall be prorated among such measures.

(c) For purposes of this subsection, "started" means that a contract has been executed to install or implement an energy conservation measure.

(8) The Oregon Department of Energy will establish specific rules and procedures that are consistent with these rules for qualifying a self-directing consumer's expenditures.

(9) The electric company will apply the self-direction credit, determined by the Oregon Department of Energy, toward the consumer's public purpose obligation.

(10) Each electric company will establish five separate accounts for the public purpose charges to be funded from its collections of public purpose charges as follows:

(a) Energy conservation in schools;

(b) New cost-effective local energy conservation and new market transformation;

(c) Above-market costs of new renewable energy resources;

(d) New low-income weatherization; and

(e) Construction and rehabilitation of low-income housing.

(11) Each electric company will allocate the public purpose funds it collects (billed less uncollectible amounts) from electricity service suppliers and consumers to the five public purpose accounts as follows:

(a) Energy conservation in schools — 10.0 percent;

(b) Local and market transformation conservation — 56.7 percent;

(c) Above market costs of new renewable energy resources — 17.1 percent;

(d) Low-income weatherization — 11.7 percent; and

(e) Low-income housing — 4.5 percent.

(12) Each electric company will adjust the local and market transformation conservation and above market costs of new renewable energy resources accounts specified in subsections 11(b) and (c) of this rule for the credits returned to self-directing customers for conservation or renewable resource expenditures certified by the Oregon Department of Energy.

(13) Each electric company will distribute funds from the public purpose accounts at least monthly as follows:

(a) The funds for conservation in schools to the education service districts located in its service territory;

(b) The funds for local and market transformation conservation as directed by the Commission;

(c) The funds for renewable energy resources as directed by the Commission;

(d) The funds for low-income weatherization to the Housing and Community Services Department; and

(e) The funds for low-income housing to the Housing and Community Services Department Revolving Account.

(14) Each electric company will determine by January 1 of each year the allocation of public purpose funds for schools to the Education Service Districts according to the following methodology:

(a) From the Department of Education, collect current total weighted average daily membership (ADMw) as defined in ORS 327.013 and average daily membership (ADM) for each Education Service District that contains schools served by the electric company;

(b) For each of the Education Service Districts, compute the ratio of ADM in schools served by the electric company to total ADM;

(c) For each Education Service District, multiply its total ADMw by the ratio of ADM in schools served by the electric company to total ADM. The result is an estimate of ADMw in schools served by the electric company;

(d) Add the estimates of ADMw for each Education Service District; and

(e) Compute the percentage of the total ADMw represented by each Education Service District. These are the percentages that will be used to allocate the public purpose funds for schools to Education Service Districts for the 12-month period with the exception of 2002 where the funds will be allocated for a 10-month period beginning March 1, 2002. After 2002, the 12-month period will begin on January 1 of each year.

(15) The electric company may be reimbursed for the reasonable administrative costs it incurs to collect and distribute the public purpose funds. Those administrative costs will be deducted from the total amount of public purpose funds collected by the electric company before the funds are allocated to the five public purpose accounts. The electric company will also pay from the total public purpose funds collected or from a specific fund any other administrative costs the Commission directs to be paid for implementation of the public purpose requirements. The entities responsible for administering the public purpose funds will pay for their costs of implementing the public purpose requirements from the public purpose funds they receive from the electric company.

(16) The electric companies and the administrators of the public purpose funds will collect sufficient information so that biennial reports can be made to the Legislature on what has been accomplished with the public purpose funds and how those funds have benefited the consumers of each electric company. Specifically, information must be collected so that the reporting requirements of ORS 757.617 can be fulfilled.

(a) Each electric company must report the total funds collected by source (that is, electric company customers, electricity service suppliers and self-directing consumers) for public purposes, the amounts distributed to the administrators of each public purpose fund, and its administrative costs;

(b) Each administrator of public purpose funds must report, at a minimum:

(A) The amount of funds received;

(B) The amount of funds spent;

(C) Its administrative costs; and

(D) Its results, for example, measures installed, projects funded, energy saved, homes weatherized, and low-income homes built/rehabilitated.

Stat. Authority: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.600 - 757.667

Hist.: PUC 1-2001, f. & cert. ef. 1-5-01; PUC 2-2001, f. & cert. ef. 1-5-01; PUC 11-2002, f. & cert. ef. 3-8-02; PUC 13-2004, f. & cert. ef. 8-31-04; PUC 7-2007, f. & cert. ef. 5-15-07; PUC 13-2007, f. & cert. ef. 12-31-07; PUC 3-2011, f. & cert. ef. 6-17-11



# ADMINISTRATIVE RULES

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

09 thru 8-7-09; Administrative correction 8-21-09; BMP 5-2009, f. & cert. ef. 8-24-09; BMP 1-2010, f. & cert. ef. 4-27-10; BMP 1-2011, f. 6-28-11, cert. ef. 6-29-11

**Rule Caption:** Establishes a process to file complaints with the Board; housekeeping.

**Adm. Order No.:** BMP 1-2011

**Filed with Sec. of State:** 6-28-2011

**Certified to be Effective:** 6-29-11

**Notice Publication Date:** 6-1-2011

**Rules Adopted:** 856-010-0031

**Rules Amended:** 856-010-0015, 856-010-0022

**Subject:** A new rule that establishes a process to file complaints with the Board and a process for their disposition. Housekeeping is for two rules to make their language consistent with other provisions.

**Rules Coordinator:** Susan Johnson—(971) 673-1530

### 856-010-0015

#### Renewal of License

(1) Application for renewal of license shall be made on a form provided by the board, signed by the applicant, accompanied by a completed physical examination form consistent with the provisions of 856-010-0010(2) and presented to the administrator of the board at least thirty (30) days prior to expiration of license.

(2) All state-licensed pilots shall be required to have an annual physical examination by an Oregon or Washington licensed physician within ninety (90) days prior to expiration of their license, the physical requirements for which are the same as for the original license as specified in OAR 856-010-0010(2), except for drug testing.

(3) All state-licensed pilots shall, within six months prior to the expiration of their license, submit to a test indicating licensee is free of illegal substance abuse. Testing will be for the presence of Cocaine, Opiates, Marijuana (THC), Amphetamines and PCP (phencyclidine). Testing will be in accordance with the Department of Transportation (Coast Guard) guidelines outlined in the Code of Federal Regulations 46, CFR § 16 (2009). Urine specimens are to be analyzed by a laboratory that meets DHHS regulations set forth by the National Institute of Drug Abuse (NIDA); or provide proof to the board that licensee is participating in a US Coast Guard approved random drug testing program;

(4) All applicants for renewal of licenses shall submit a photocopy of their currently applicable United States government license with radar endorsement issued by the United States Coast Guard.

(5) All applicants for renewal of unlimited licenses shall provide certification of meeting the continuing professional development requirements specified in OAR 856-010-0027. Unless waived as provided below in this paragraph, failure to comply with all requirements for renewal of license shall constitute the failure to submit a complete application for renewal and will result in the withholding of the renewal license. A pilot who is unable to complete the requirements within the time allowed due to unexpected, emergency circumstances may request in writing a waiver and the Board may, upon good cause shown, permit a license renewal for one year without the requirements being met, provided that all required certifications must be made by the applicant at the time application for renewal is made the following year.

(6) Each license issued is valid for one year and only the unlimited state license may be renewed.

(7) Notwithstanding subsection (4) of this section, if a pilot has submitted an application for renewal of the pilot's federal license at least 60 days prior to the expiration date of his federal license, but the United States Coast Guard has not completed its renewal process by the expiration date for the federal license and the pilot has, for that reason, no currently applicable federal license at the time of renewing his state license, then the board may issue a provisionally renewed state license. Any pilot to whom a provisionally renewed state license is issued must report to the board every 30 days regarding the status of the pilot's federal license renewal. If the United States Coast Guard completes its processing for the federal license but declines to renew the federal license, the board may treat the refusal to renew the federal license as a suspension or revocation of the federal license.

Stat. Auth.: ORS 776, 670

Stats. Implemented: ORS 776.115, 670.310

Hist.: PC 1, f. 10-29-57, ef. 7-1-57; MP 2-1984, f. & ef. 10-4-84; MP 3-1988, f. & cert. ef. 11-9-88; MP 1-1992, f. & cert. ef. 4-29-92; MP 1-1995, f. & cert. ef. 5-9-96; BMOP 1-2000, f. & cert. ef. 12-6-00; BMP 4-2006, f. 9-28-06, cert. ef. 10-6-06; BMP 1-2007, f. 1-25-07, cert. ef. 1-26-07; BMP 4-2008, f. & cert. ef. 1-24-08; BMP 1-2009(Temp), f. & cert. ef. 2-10-

### 856-010-0022

#### Incident Investigation Procedures

(1) Upon receiving notice that an incident has occurred, the Board member who is a licensee for the pilotage ground where the incident occurred will commence a preliminary investigation as soon as practicable. If the incident involves that Board member, or if that Board member is not available to commence a timely preliminary investigation, then the Board Chair will appoint another Board member to commence the preliminary investigation, in which case the Board Chair will also seek a volunteer from among those who are or have been licensees for the pilotage ground where the incident occurred, to serve as an advisor to the Board member conducting the preliminary investigation.

(2) The Board member conducting the preliminary investigation will, as soon as possible after receiving notice that an incident has occurred, gather sufficient information to form an opinion regarding whether the incident is likely to be a Category I or Category II incident, according to the following criteria:

(a) Category I Incident:

(A) Property damage exceeding \$150,000; or

(B) loss of life or serious personal injury (requiring hospitalization);

or

(C) allision with a bridge; or

(D) release of more than 50 gallons of oil or other hazardous substance into the water; or

(E) a pilot may have been acting under the influence of drugs or alcohol or there is evidence of gross negligence or willful misconduct; or

(F) any factor that results in substantial, widespread public interest in the incident.

(b) Category II Incident:

(A) Any incident reportable under Board regulations that does not satisfy any of the criteria in OAR 856-010-0022(2)(a).

(3) As soon as possible after completing the preliminary investigation, the investigating Board member will contact the Board's Chair to make a preliminary report and recommendation regarding classification of the incident as Category I or Category II. Based on the preliminary report, the investigating Board member's recommendation, and such other factors as the Board Chair deems appropriate under the circumstances, the Board Chair will, in his or her discretion, determine whether to classify the incident as Category I or Category II.

(4) Upon the Chair's classification of an incident as Category I, an investigating team will be promptly appointed by the Chair. The investigating team will include:

(a) The Chair or other public member of the Board, to serve as the team leader; and

(b) a shipping industry or port representative member of the Board; and

(c) the pilot member of the Board from the pilotage ground where the incident occurred, unless the incident involves that pilot, in which case the Chair will appoint another pilot member of the Board. If the pilot Board member appointed to the investigating team is not a licensee on the pilotage ground where the incident occurred, then the Board will request a volunteer from among those who are or have been licensees for the pilotage ground where the incident occurred, to serve as an advisor to the investigating team.

(5) Upon the Chair's classification of an incident as Category II, the Board member who conducted the preliminary investigation shall proceed with completion of the investigation. The Chair may, at any time during the course of the investigation, upon receipt of new information, elect to reclassify the incident as a Category I incident requiring the appointment of an investigating team.

(6) The services of a qualified independent investigator, or an expert in a discipline that is relevant and necessary for determining the cause of an incident, should be obtained in the following circumstances:

(a) In any Category I incident, upon request of the Chair, or of two or more members of the investigating team.

(b) In any Category II incident, upon agreement of the Chair and the Board member conducting the investigation.

(7) In order to qualify as an expert for purposes of OAR 856-010-0022(6), a person must have a postgraduate degree, professional training or substantial practical experience in a discipline or subject matter that the Board investigators determine is relevant and necessary for determining the cause of an incident.

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(8) The Board will keep and periodically update a list of qualified independent investigators who may be available to provide services. In order to qualify as an independent investigator for the Board, a person must:

(a) Have had at least four years previous experience investigating maritime casualties; or

(b) have served at least two years as pilot or master of vessels greater than 1600 GRT, and had formal training in investigations procedures or extensive actual experience investigating maritime casualties.

(9) The role of an independent investigator is that of an advisor to the investigating team in a Category I incident, or to the investigating Board member in a Category II incident. An independent investigator is to serve as a fact gatherer at the direction of the Board investigators, delivering information to the Board members investigating the incident. Information gathered by an independent investigator may be used by the investigating Board members for their analysis and for use in their preparation of a written report with their recommendations to the Board as a whole.

(10) When the investigation is complete, the investigating Board member or members will prepare a written report for consideration by the Board. The report shall describe the scope of the investigation, the information gathered, and include an assessment of the probable causes of the incident, and recommendations for any further Board action that should be considered. The written report shall also make a recommendation concerning the scope of distribution of the report.

Stat. Auth.: ORS 776, 670

Stats. Implemented: ORS 776.115, 670.310

Hist.: BMP 3-2009, f. & cert. ef. 6-19-09; BMP 1-2011, f. 6-28-11, cert. ef. 6-29-11

## 856-010-0031

### Complaint Process

(1) Any person or entity may file a complaint with the Board regarding the conduct of a Board licensee or trainee. Such complaints shall be in writing, and include a detailed explanation of the conduct or events complained of. Anonymous complaints are disfavored, but allowed, provided that an explanation is offered of the reason why the complainant does not wish to be identified. Anonymity may limit the ability of the Board to investigate the complaint, and therefore anonymous complaints should allege facts sufficient to allow the Board, should it choose to investigate as provided in this section, to pursue an investigation without further communications with the complainant.

(2) Each complaint shall be assigned a filing code, and then shall be directed to the Board's Executive Committee, with a copy provided to the licensee or trainee who's conduct is the subject of the complaint. The Executive Committee will review each complaint and shall, within 10 days of the date of filing, provide an initial response to the complainant, if identified, and the licensee or trainee, indicating whether a preliminary investigation will be undertaken. Every complaint and the Executive Committee's initial response will be announced at the next regularly scheduled meeting of the Board.

(3) If the Executive Committee decides that an investigation should be undertaken, the Committee shall determine what resources will be necessary to complete the preliminary investigation, which may include, but are not limited to, assistance from the Board Administrator, Board Counsel, independent investigators, or subject matter experts. The Executive Committee may proceed with an initial investigation using such resources, provided that the Board may subsequently choose to expand or limit access to such resources.

(4) The Executive Committee shall, at each regularly scheduled meeting of the Board, report on the progress of any preliminary investigation it has in progress.

(5) When the preliminary investigation is complete, the Executive Committee shall report preliminary findings to the Board in writing, and shall include a recommendation to the Board of what further action, if any, appears appropriate under the circumstances, including whether to commence a disciplinary or other action authorized by ORS Chapter 776 or the Board's regulations. A copy of the Executive Committee's preliminary findings and recommendations shall be provided to the complainant, if known, and to the licensee or trainee whose conduct was the subject of the preliminary investigation.

(6) Nothing in this section is intended to limit the Board's authority to initiate and conduct investigations on the Board's own motion, supported by any basis deemed adequate by the Board.

Stat. Auth.: ORS 776, 670

Stats. Implemented: ORS 776.115, 670.310

Hist.: BMP 1-2011, f. 6-28-11, cert. ef. 6-29-11

**Rule Caption:** Establishes rules for the Transportation Oversight Committee created by Board Order No. 10-02.

**Adm. Order No.:** BMP 2-2011

**Filed with Sec. of State:** 6-28-2011

**Certified to be Effective:** 6-29-11

**Notice Publication Date:** 6-1-2011

**Rules Adopted:** 856-030-0040

**Subject:** Establishes rules for the Transportation Oversight Committee (TOC), who will make recommendations to the Board for annual adjustments to the transportation system cost component of the tariff funding the pilotage system for the Columbia River Bar pilotage ground.

**Rules Coordinator:** Susan Johnson—(971) 673-1530

## 856-030-0040

### Transportation Oversight Committee

(1) For the purpose of making annual, automatic, cost-based adjustments to the transportation system cost component of the tariff funding the pilotage system for the Columbia River Bar pilotage grounds, a Transportation Oversight Committee is established, composed of one public member of the Oregon Board of Maritime Pilots (Board), two members of the Columbia River Bar Pilots (CRBP), a representative of the Columbia River Steamship Operators Association and a representative of a port located on the Columbia River. The public member of the Transportation Oversight Committee will act as chair.

(2) Beginning in 2011, the Transportation Oversight Committee will meet as necessary but at least semiannually. The Transportation Oversight Committee will perform long-term transportation system planning, will regularly review transportation system costs and operations, and will make recommendations regarding the operation of the transportation system, for the Columbia River Bar pilotage grounds.

(3) Upon agreement of a majority of members, the Transportation Oversight Committee may submit data requests to the CRBP. Data requests are written interrogatories or requests for production of documents. The data requests must be answered within 20 Board business days from the date of service. Each data request must be answered fully and separately in writing or by production of documents.

(4) On an annual basis beginning in 2011, the Transportation Oversight Committee shall make a recommendation to the Board regarding annual adjustments to the components of the Transportation System Cost of the pilotage system serving the Columbia River Bar pilotage grounds to reflect the best available information about changing economic conditions including expense levels shown by CRBP financial statements and Transportation Oversight Committee projections. The Transportation System Cost components include the following line item categories: helicopter service; repairs and maintenance infrastructure; repairs and maintenance; insurance; boat operator expense; employee wages; employee benefits; transportation launch expense; food vessel expense; taxes and licenses; and administrative/accounting. The recommended adjustments to one or more of the components of the Transportation System Cost shall be developed by the Transportation Oversight Committee and submitted in writing to the Board by June 1 of each year.

(5) In the event the Transportation Oversight Committee cannot reach agreement on one or more of the components of the Transportation System Cost, the competing views shall be described in appropriate memoranda drafted by one or more representative of the Transportation Oversight Committee and submitted to the Oregon Board of Maritime Pilots by June 1 of each year. The submission from the Transportation Oversight Committee shall be considered by the Oregon Board of Maritime Pilots at a meeting that occurs on or before July 15 of each year so that the Committee's recommendations can be considered and any disputed issue decided in order for any adjustments to the components of the Transportation System cost to be effective on July 15 of that year.

Stat. Auth.: ORS 776, ORS 670

Stats. Implemented: ORS 776.115, ORS 670.310

Hist.: BMP 2-2011, f. 6-28-11, cert. ef. 6-29-11

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**Rule Caption:** Adds reporting obligations, amends disciplinary rules, renumbers remedial actions rule.

**Adm. Order No.:** BMP 3-2011

**Filed with Sec. of State:** 6-28-2011

**Certified to be Effective:** 6-29-11

**Notice Publication Date:** 6-1-2011

**Rules Adopted:** 856-010-0021

# ADMINISTRATIVE RULES

**Rules Amended:** 856-010-0013, 856-010-0035, 856-010-0045

**Rules Renumbered:** 856-010-0048 to 856-010-0041

**Subject:** The new disciplinary rules require pilots to report information on non-maritime incidents that may be material to whether the Board should continue to license them. The amendments tie the new rules to the existing disciplinary action rules. Preventive, Corrective or Remedial rule language is being renumbered to position it in closer proximity to the rest of the disciplinary rules.

**Rules Coordinator:** Susan Johnson—(971) 673-1530

## 856-010-0013

### Grounds for Denying Original License Application

The Board may deny an application for a pilot's license, if the Board finds, after notice and hearing, that:

(1) The applicant fails to meet any one or all of the requirements of the physical examination as specified in OAR 856-010-0010 and/or the physical health of the applicant is such that the applicant is not physically capable of competently exercising the license privilege and performing the work involved without creating an unreasonable risk of harm to the applicant or to the person or property of others.

(2) The mental or emotional health of an applicant is such that the applicant is not competent to exercise the license privilege and is unable to perform the work involved without creating an unreasonable risk of harm to the applicant or to the person or property of others.

(3) The applicant has committed a criminal act, the facts and circumstances of which bear a demonstrable relationship to the exercise of the license privilege. Conviction of a crime is not required to deny an application under this provision.

(4) The applicant uses or has used alcohol, drugs, or any other substance in such a manner as to impair the applicant's physical or mental ability to exercise the license privilege without creating an unreasonable risk of harm to the applicant or the person or property of others.

(5) The applicant has engaged in conduct involving dishonesty or misrepresentation, the facts and circumstances of which bear a demonstrable relationship to the exercise of the license privilege.

(6) The applicant has failed to fulfill all the minimum requirements as stated in ORS Chapter 776 and OAR Chapter 856.

(7) The applicant has been charged with a drug or alcohol offense during the past five years, the facts and circumstances of which bear a demonstrable relationship to the exercise of the license privilege.

Stat. Auth.: ORS 670 & 776

Stats. Implemented: ORS 670.280, 670.310 & 776.115

Hist.: MP 3-1988, f. & cert. ef. 11-9-88; MP 1-1992, f. & cert. ef. 4-29-92; BMP 3-2011, f. 6-28-11, cert. ef. 6-29-11

## 856-010-0021

### Miscellaneous Reporting Obligations

(1) Any licensee or trainee who has a post-incident, random or reasonable cause drug or alcohol test with results confirmed positive by a medical review officer must report the results in writing to the Board within 72 hours after receiving such results.

(2) Any licensee or trainee who is arrested or cited for any alcohol or drug-related offense must report the arrest or citation in writing to the Board within 72 hours. Additionally, any licensee or trainee arrested or cited for any alcohol or drug-related offense must, within 72 hours, report in writing to the Board the ultimate resolution of the arrest or citation, whether by conviction, diversion, dismissal, acquittal or otherwise.

(3) Any licensee or trainee who is convicted of any crime must report the conviction in writing to the Board within 5 days of receiving notice of such conviction.

(4) Any licensee or trainee who has disciplinary action commenced against him or her, or against his or her license by the U.S. Coast Guard, must report such action in writing to the Board within 5 days of receiving notice of the initiation of such action by the U.S. Coast Guard.

Stat. Auth.: ORS 776 & 670

Stats. Implemented: ORS 776.115, 670.280 & 670.310

Hist.: BMP 3-2011, f. 6-28-11, cert. ef. 6-29-11

## 856-010-0035

### Disciplinary Actions

(1) Absence from Pilotage Grounds. A pilot must request in writing to the Board on the form provided by the Board permission to be absent from the pilotage ground for a period of more than sixty days. The Board will discipline any pilot who is absent from the pilotage ground for a period of more than 60 days without permission of the Board. A pilot who has been granted permission to be absent from piloting duties for a period of more

than 60 days shall, at the end of 180 days, reapply in writing for an extension or shall return to duty. The pilot must notify the Board in writing, ten days prior to returning to the pilotage ground, of the pilot's intention to return to duty. A pilot who has been absent with permission from piloting duties for more than 180 days shall notify the Board in writing on the form provided by the Board of the pilot's intention to return to the pilotage ground. The notice shall include a statement of the number of trips under the supervision of an unlimited state-licensed pilot that will be taken to re-familiarize the pilot with the pilotage ground, but in no event shall the returning pilot take fewer than two trips for every 90 days' absence from the pilotage grounds. The Board may, following receipt of a pilot's notice of intent to return to the pilotage ground, require more familiarization trips than the returning pilot indicates in the notice provided to the Board.

(2) Suspension, Revocation or Lapse of Federal License. The state license of any pilot whose federal license is suspended or revoked, or whose federal license lapses due to delay in renewal as a consequence of a drug or alcohol-related event, shall be automatically suspended or revoked for the same period. The lapse of a federal license due to delay in renewal as a consequence of a drug or alcohol-related event shall be treated as a suspension for purposes of the paragraph. The state license shall be reinstated upon restoration of the federal license. The pilot so affected may apply to the Board for a review of the case while under suspension. If the review of the case shows that circumstances warrant modification of the pilot's suspended status, the Board may order the pilot's state license restored, or it may take any other appropriate action.

(3) Upon suspension, revocation or other disciplinary action taken by the Board against a state-licensed pilot, the U.S. Coast Guard shall be notified by the Board in writing within 24 hours.

(4) Pilots shall not refuse to provide pilotage service unless necessary for their own or public safety. If a representative of the vessel requesting piloting service contests a pilot's determination concerning safety, then, the vessel's representative may seek a determination by the Board.

(5) Other Causes for Discipline. See the following administrative rules for other causes for discipline of licensee:

(a) OAR 856-010-0015, failure to comply with requirements for renewal;

(b) OAR 856-010-0019, failure to present surety bond or deposit;

(c) OAR 856-010-0025, failure to report to Board;

(d) OAR 856-010-0025, failure to report incident to U.S. Coast Guard;

(e) OAR 856-010-0035, refusal to provide pilotage service;

(f) OAR 856-010-0045, grounds for pilot discipline.

Stat. Auth.: ORS 670 & 776

Stats. Implemented: ORS 670.280, 670.310 & 776.115

Hist.: PC 1, f. 10-29-57, ef. 7-1-57; MP 5-1983, f. & ef. 12-15-83; MP 2-1984, f. & ef. 10-4-84; MP 3-1988, f. & cert. ef. 11-9-88; MP 1-1992, f. & cert. ef. 4-29-92; MP 1-1997(Temp), f. & cert. ef. 9-30-97; BMP 3-2011, f. 6-28-11, cert. ef. 6-29-11

## 856-010-0041

### Preventative, Corrective or Remedial Actions

(1) Notwithstanding any other provision of its regulations, the board may enter into a written agreement with a licensee in lieu of license suspension or revocation proceedings or any other disciplinary alternative. The board may enter into an agreement pursuant to this section if, after the preliminary investigation of an incident or other occurrence is complete, it appears that the licensee, the pilotage system or the public interest will be served by preventative, corrective or remedial action. An agreement between the board and a licensee may include any preventative, corrective or remedial measures including, but not limited to:

(a) Supervised retraining trips for the licensee under the supervision of pilots from the training organization for the pilotage ground;

(b) Completion of computerized simulated ship-handling training, manned model training, radar observer training, or such other training or course work as may be appropriate under the circumstances that is in addition to continuing professional development training required of all licensees;

(c) Counseling relating to the duties and obligations of a pilot; or

(d) Issuance by the board of a letter of warning or concern to the licensee.

(2) An agreement entered into between a licensee and the board pursuant to this section shall not be considered an admission of a violation of statute or rule and the agreement shall not be considered to be a board determination of a violation of statute or rule on the part of the licensee who enters into the agreement. The preventative, corrective or remedial measures contained in such agreement and the licensee's compliance with the agreement may be considered by the board in any subsequent proceeding in which such matters are relevant.



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(3) A licensee who enters into an agreement with the board must complete all requirements in the agreement within the time period specified in the agreement. Failure by the licensee to complete any agreed upon remedial or corrective measures shall constitute a separate ground for discipline pursuant to OAR 856-010-0045.

Stat. Auth.: ORS 776  
Stats. Implemented: ORS 776.115  
Hist.: MP 1-1988(Temp), f. & cert. ef. 2-5-88; MP 2-1988, f. & cert. ef. 5-4-88; MP 1-1992, f. & cert. ef. 4-29-92; MP 1-1996, f. & cert. ef. 5-9-96; BMP 2-2001, f. & cert. ef. 5-21-01; Renumbered from 856-010-0048, BMP 3-2011, f. 6-28-11, cert. ef. 6-29-11

## 856-010-0045

### Grounds for Pilot Discipline

The board may revoke or suspend a pilot's license, impose on the pilot a civil penalty of not more than \$250 for each offense, or issue the pilot a written reprimand if the board finds, after notice and hearing, that:

(1) The physical health of a pilot is such that the pilot is not physically capable of competently exercising the license privilege and performing the work involved without creating an unreasonable risk of harm to the pilot or to the person or property of others.

(2) The mental or emotional health of a pilot is such that the pilot is not competent to exercise the license privilege and is unable to perform the work involved without creating an unreasonable risk of harm to the pilot or to the person or property of others.

(3) The pilot has committed a criminal act, the facts and circumstances of which bear a demonstrable relationship to the exercise of the license privilege. Conviction of a crime is not required to discipline a pilot under this provision.

(4) The pilot uses or has used alcohol, drugs, or any other substance in such a manner as to impair the pilot's physical or mental ability to exercise the license privilege without creating an unreasonable risk of harm to the pilot or the person or property of others.

(5) The pilot has used alcohol, drugs, medications or controlled substances in a manner that, as the Board determines, casts substantial doubt on the ability of the pilot to exercise the level of sound judgment expected of a pilot, or has used prescription drugs in a manner inconsistent with warnings or instructions provided by the manufacturer or the prescribing physician.

(6) The pilot has failed to make a timely report to the board as required by these rules.

(7) The pilot when summoned to testify before the board has failed to appear before the board, or has failed to answer under oath any question touching on any matter connected with the pilot's service or the pilotage ground over which the pilot is licensed as a pilot.

(8) The pilot has been absent from the pilotage ground for a period of sixty (60) days without the express permission of the board.

(9) The pilot's federal license has been suspended, revoked or has lapsed.

(10) The pilot has engaged in conduct involving dishonesty or misrepresentation, the facts and circumstances of which bear a demonstrable relationship to the exercise of the license privilege.

(11) The pilot has failed to exercise the license privilege competently or diligently.

(12) The pilot has violated any provision of ORS 776.015 through 776.991 or any rule of the Board.

(13) The pilot has failed to post or maintain a surety bond or cash deposit.

(14) The pilot has failed to obey a directive issued by an officer of the United States Customs Service, the United States Coast Guard or other law enforcement agency when such a directive could have been complied with safely.

(15) The pilot or trainee has failed to comply with the provisions of an agreement in lieu of discipline, entered into pursuant to OAR 856-010-0041.

Stat. Auth.: ORS 670 & 776  
Stats. Implemented: ORS 670.280, 670.310 & 776.115  
Hist.: MP 1-1988(Temp), f. & cert. ef. 2-5-88; MP 2-1988, f. & cert. ef. 5-4-88; MP 1-1992, f. & cert. ef. 4-29-92; MP 1-1996, f. & cert. ef. 5-9-96; BMP 2-2001, f. & cert. ef. 5-21-01; BMP 3-2011, f. 6-28-11, cert. ef. 6-29-11

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**Rule Caption:** Amends training requirements and licensing restrictions for the Coos/Yaquina Bay bar pilotage grounds.

**Adm. Order No.:** BMP 4-2011

**Filed with Sec. of State:** 6-28-2011

**Certified to be Effective:** 6-29-11

**Notice Publication Date:** 6-1-2011

**Rules Amended:** 856-010-0010, 856-010-0011

**Subject:** Lengthens training requirements for the Yaquina Bay bar pilotage ground and expands restrictions on licenses for both Coos and Yaquina Bay bar pilotage grounds.

**Rules Coordinator:** Susan Johnson—(971) 673-1530

## 856-010-0010

### Original Licensing Requirements

In addition to the qualifications required for licensing of pilots under ORS 776, the applicant shall:

(1) Present an application in writing to the administrator of the board on the form provided by the board for the pilotage ground for which the applicant intends to become licensed. The application shall be filed not less than 30 days prior to appearance before the board for a written examination and may be supplemented at any time until the examination is taken. The board shall consider the application and upon approval, the written examination will be scheduled. The examination shall be proctored by the board's administrator. The examination for each pilotage ground shall be prepared by the board with the assistance of the board's licensed training organization for that pilotage ground. The examination will test for skill and knowledge of those factors identified in ORS 776.035(2) and 776.325(1)(b). The examination will be graded by the board member from the pilotage ground for which the applicant is seeking a license. If requested by the training course monitor and approved by the board may participate with the board member in grading the exam. The examination will be pass/fail.

(2) Accompany the application with a photocopy of a U.S. Coast Guard physical examination report and signed by an Oregon or Washington licensed physician verifying that the applicant meets the physical, medical and mental criteria required to qualify for a federal pilot's license.

(a) If the examining physician determines that the applicant is not competent to perform the duties of a pilot, the applicant is not then medically eligible to receive a license from the board.

(b) If the examining physician determines that the applicant is competent to perform the duties of a pilot, or if the examining physician determines that the applicant's physical, medical or mental condition is in need of further review, then the applicant is then considered medically eligible to receive a license from the board, subject to any later review and conclusion by the U.S. Coast Guard that the applicant is not competent for continued federal licensure as a pilot

(c) If the U.S. Coast Guard undertakes further medical review of an applicant's physical, medical or mental competency, either upon recommendation by the examining physician or otherwise, then the applicant shall report to the board at least every 30 days regarding the status of such further review. If, at the conclusion of such review process, the U.S. Coast Guard declines to approve the applicant for continued federal licensure as a pilot, the applicant shall immediately notify the board and the board will treat the decision as a suspension of the applicant's federal license. Any license issued by the board shall be automatically suspended as of the date the board receives notice of the U.S. Coast Guard's decision, notwithstanding any appeal that may be taken from such decision. If the Coast Guard concludes its review by issuing a waiver to the applicant, the terms of the waiver shall be immediately reported to the board, and the license issued by the board shall become subject to the terms of the waiver issued by the Coast Guard.

(3) Have actual experience as a pilot handling ships over the pilotage ground for which a state license is sought and state in the application the names of ships piloted, dates, draft, gross tonnage, and length over all, as specified in (but not limited to) (4), (5), (6) and/or (7) in this section, and:

(a) Hold a valid license as Master endorsed for Radar Observer issued by the U.S. Coast Guard;

(b) Hold an unlimited federal pilot's endorsement for the ground for which a state license is sought; and

(c) Have served at least two years as Master aboard vessels, or when applying for a license over the Columbia and Willamette River pilotage ground, have completed a program of apprenticeship training which has been approved by the Board.

(4) In addition to the requirements in OAR 856-010-0010(1), (2), (3), to qualify for a Grade "C" license over the Columbia and Willamette River pilotage ground, the applicant shall, prior to taking the board's examination required under section (1) above:

(a) Have served at least 730 active working days as captain of towing vessels on the Columbia River and its tributaries, or have completed a program of apprenticeship training which has been approved by the Board, as specified in OAR 856-010-0014;

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(b) Complete at least six trips under the supervision of an unlimited state-licensed pilot within 270 days preceding the examination while on the bridge of a ship of not less than 500 feet length over-all (L.O.A.) through the bridges in the upper harbor in Portland, up to and including the Broadway Bridge, which shall be made with and without the aid of a tug or towboat, including at least one trip in each direction, and also including at least six ship turns in the Willamette River;

(c) Complete at least 110 transits while on the bridge of a ship of not less than 500 feet L.O.A. within the 270 days preceding the examination, with at least 70 of these transits made under the supervision of an unlimited state-licensed pilot and at least 80 of the transits completed within 150 days after the first transit is completed;

(d) When combining trip segments to establish a transit, each trip segment may be used only once;

(e) Complete at least six trips under the supervision of an unlimited state-licensed pilot within the 270 days preceding the examination while on the bridge of a ship of not less than 500 feet L.O.A. in a combination of the following directions, with at least three trips in each direction:

(A) From the Willamette River, turning east (upstream) into the Columbia River; and

(B) From the Columbia River upstream of the mouth of the Willamette River, turning south into the Willamette River.

(f) Complete at least 10 trips in either direction between Astoria and Longview or Kalama under the supervision of an unlimited state-licensed pilot.

(g) Train at least 35 additional days as directed by the training course monitor, with assignments chosen at the discretion of the training course monitor that may include, but need not be limited to, shipboard training, electronic navigation training, manned model training, attendance at meetings with maritime-related governmental agencies or exposure to maritime related administrative activities.

(h) Present recommendations from the training course monitor and from at least ten unlimited state-licensed pilots who participated in the training, certifying that the applicant has demonstrated sufficient knowledge and shiphandling skills to pilot ocean-going ships up to 570 feet L.O.A. on the pilotage ground.

(5) When applying for a license on the Coos Bay bar pilotage ground, the applicant shall:

(a) Hold a valid license as Master endorsed for Radar Observer issued by the U.S. Coast Guard and shall have served at least two years as Master aboard vessels;

(b) Obtain an unlimited federal pilots endorsement for the Coos Bay bar pilotage ground;

(c) Complete at least one hundred (100) crossings of the Coos Bay bar while under the supervision of an unlimited state-licensed Coos Bay bar pilot, with at least ten crossings with each unlimited state-licensed Coos Bay bar pilot and with at least 25 of the bar crossings completed during hours of darkness;

(d) Dock and undock at least 25 ships under the supervision of an unlimited state-licensed pilot;

(e) Make at least 25 trips through each of the bridges; and

(f) Submit letters from each of the Coos Bay bar pilots who have supervised the training of the applicant, certifying that the applicant has demonstrated local knowledge of the pilotage ground and shiphandling skills sufficient to pilot ocean-going ships on the pilotage ground.

(6) When applying for a license on the Yaquina Bay bar pilotage ground the applicant shall:

(a) Hold a valid license as Master endorsed for Radar Observer issued by the U.S. Coast Guard and shall have served at least two years as Master aboard vessels;

(b) Obtain an unlimited federal pilots endorsement for the Yaquina Bay bar pilotage ground;

(c) Complete at least one hundred (100) crossings of the Yaquina Bay bar while under the supervision of an unlimited state-licensed Yaquina Bay bar pilot, or after completing two years of piloting with a state license in Coos Bay, the number of bar crossings at Yaquina Bay may be reduced to 12, with at least one such crossing with each unlimited state-licensed Yaquina Bay bar pilot and with at least twenty-five percent (25%) of the bar crossings completed during the hours of darkness;

(d) Dock and undock at least 25 ships under the supervision of an unlimited state-licensed Yaquina Bay bar pilot, or after completing two years of piloting with a state license in Coos Bay, the number of dockings and undockings may be reduced to 12;

(e) Make at least twenty-five (25) trips through the bridge, or after completing two years of piloting with a state license in Coos Bay, the number of trips may be reduced to 12; and

(f) Submit letters from each of the Yaquina Bay bar pilots who have supervised training of the applicant, certifying that the applicant has demonstrated local knowledge of the pilotage ground and shiphandling skills sufficient to pilot ocean-going ships on the pilotage ground.

(7) When applying for an original license on the Columbia River bar pilotage ground the applicant shall:

(a) Hold a valid license issued by the U.S. Coast Guard as "Unlimited Master any oceans — any tonnage", endorsed for Radar Observer;

(b) Have served at least two years as Master of an offshore merchant ship of 5,000 gross tons or more, certified by Certificates of Discharge or Continuous Discharge Book;

(c) Obtain a federal pilot's endorsement for the Columbia River bar pilotage ground, after which a minimum of one hundred (100) crossings of the Columbia River bar shall be made under the supervision of an unlimited state-licensed pilot, and make crossings with at least five unlimited state-licensed Columbia River bar pilots;

(d) Be on board a minimum of ten ships docking or undocking from the Astoria Port Docks, Tongue Point, and other facilities;

(e) Make approximately twenty-five percent (25%) of the crossings of the Columbia River bar during the hours of darkness.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 670 & 776

Stats. Implemented: ORS 670.310 & 776.115

Hist.: PC 1, f. 10-29-57, ef. 7-1-57; PC 7, f. 6-13-73, ef. 7-15-73; MP 2-1984, f. & ef. 10-4-84; MP 3-1988, f. & cert. ef. 11-9-88; MP 1-1992, f. & cert. ef. 4-29-92; MP 3-1995, f. & cert. ef. 3-16-95; MP 1-1996, f. & cert. ef. 5-9-96; BMP 2-1999, f. & cert. ef. 6-24-99; BMP 3-2001, f. & cert. ef. 10-30-01; BMP 1-2003, f. & cert. ef. 2-26-03; BMP 3-2006, f. 9-29-06, cert. ef. 10-1-06; BMP 1-2007, f. 1-25-07, cert. ef. 1-26-07; BMP 2-2007, f. & cert. ef. 5-22-07; BMP 4-2008, f. & cert. ef. 1-24-08; BMP 2-2009, f. 6-19-09, cert. ef. 6-23-09; BMP 4-2009, f. & cert. ef. 8-5-09; BMP 4-2011, f. 6-28-11, cert. ef. 6-29-11

## 856-010-0011

### Restrictions on Licenses

After receiving an original license the following restrictions shall apply:

(1) Columbia and Willamette River Grade "C" license holders shall not pilot tankers, or vessels with a draft of 38 feet or greater.

(2) Except for Columbia River bar pilots who have a minimum of two years experience on tankers as Master or pilot, no Columbia River bar pilot shall pilot a loaded tanker during the first two years as a licensee.

(3) Coos Bay bar pilots shall not move any ship exceeding 40,000 gross tons, or exceeding 700 feet in length, or exceeding 106 feet of beam, or any ship exceeding 300 feet in length with the wheelhouse forward of amidships, during the first two years as a licensee.

(4) Coos Bay bar pilots shall not move loaded tankers during the first two years as a licensee, nor shall Coos Bay bar pilots move any ship exceeding 23,000 gross tons through the bridges during the first two years as a licensee.

(5) Yaquina Bay bar pilots shall not move any ship exceeding 23,000 gross tons, or any ship exceeding 300 feet in length with the wheelhouse forward of amidships, during the first two years as a licensee.

(6) Yaquina Bay bar pilots shall not move loaded tankers during the first two years as a licensee.

(7) The Board may, upon application by the licensee, recognize any combination of master's tanker and pilot's experience to equal any time period required by this rule.

Stat. Auth.: ORS 670 & 776

Stats. Implemented: ORS 776.115 & 670.310

Hist.: MP 1-1992, f. & cert. ef. 4-29-92; MP 1-1996, f. & cert. ef. 5-9-96; BMP 1-2007, f. 1-25-07, cert. ef. 1-26-07; BMP 4-2011, f. 6-28-11, cert. ef. 6-29-11

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**Rule Caption:** Amends vessel length restriction for Grade "C" license holders on the Columbia-Willamette River pilotage ground.

**Adm. Order No.:** BMP 5-2011

**Filed with Sec. of State:** 6-28-2011

**Certified to be Effective:** 6-29-11

**Notice Publication Date:** 6-1-2011

**Rules Amended:** 856-010-0010, 856-010-0012

**Subject:** The number of vessels that meet the current length restrictions for limited license holders has been continually declining. The proposed amendment to increase the length restriction from under 570 feet to under 600 feet will allow "C" license holders better

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opportunity to accumulate the required number of transits within the time allotted to qualify for a license upgrade.

**Rules Coordinator:** Susan Johnson—(971) 673-1530

### 856-010-0010

#### Original Licensing Requirements

In addition to the qualifications required for licensing of pilots under ORS 776, the applicant shall:

(1) Present an application in writing to the administrator of the board on the form provided by the board for the pilotage ground for which the applicant intends to become licensed. The application shall be filed not less than 30 days prior to appearance before the board for a written examination and may be supplemented at any time until the examination is taken. The board shall consider the application and upon approval, the written examination will be scheduled. The examination shall be proctored by the board's administrator. The examination for each pilotage ground shall be prepared by the board with the assistance of the board's licensed training organization for that pilotage ground. The examination will test for skill and knowledge of those factors identified in ORS 776.035(2) and ORS 776.325(1)(b). The examination will be graded by the board member from the pilotage ground for which the applicant is seeking a license. If requested by the training course monitor, up to two additional pilots selected by the training course monitor and approved by the board may participate with the board member in grading the exam. The examination will be pass/fail.

(2) Accompany the application with a photocopy of a U.S. Coast Guard physical examination report and signed by an Oregon or Washington licensed physician verifying that the applicant meets the physical, medical and mental criteria required to qualify for a federal pilot's license.

(a) If the examining physician determines that the applicant is not competent to perform the duties of a pilot, the applicant is not then medically eligible to receive a license from the board.

(b) If the examining physician determines that the applicant is competent to perform the duties of a pilot, or if the examining physician determines that the applicant's physical, medical or mental condition is in need of further review, then the applicant is then considered medically eligible to receive a license from the board, subject to any later review and conclusion by the U.S. Coast Guard that the applicant is not competent for continued federal licensure as a pilot

(c) If the U.S. Coast Guard undertakes further medical review of an applicant's physical, medical or mental competency, either upon recommendation by the examining physician or otherwise, then the applicant shall report to the board at least every 30 days regarding the status of such further review. If, at the conclusion of such review process, the U.S. Coast Guard declines to approve the applicant for continued federal licensure as a pilot, the applicant shall immediately notify the board and the board will treat the decision as a suspension of the applicant's federal license. Any license issued by the board shall be automatically suspended as of the date the board receives notice of the U.S. Coast Guard's decision, notwithstanding any appeal that may be taken from such decision. If the Coast Guard concludes its review by issuing a waiver to the applicant, the terms of the waiver shall be immediately reported to the board, and the license issued by the board shall become subject to the terms of the waiver issued by the Coast Guard.

(3) Have actual experience as a pilot handling ships over the pilotage ground for which a state license is sought and state in the application the names of ships piloted, dates, draft, gross tonnage, and length over all, as specified in (but not limited to) (4), (5), (6) and/or (7) in this section, and:

(a) Hold a valid license as Master endorsed for Radar Observer issued by the U.S. Coast Guard;

(b) Hold an unlimited federal pilot's endorsement for the ground for which a state license is sought; and

(c) Have served at least two years as Master aboard vessels, or when applying for a license over the Columbia and Willamette River pilotage ground, have completed a program of apprenticeship training which has been approved by the Board.

(4) In addition to the requirements in OAR 856-010-0010(1), (2), (3), to qualify for a Grade "C" license over the Columbia and Willamette River pilotage ground, the applicant shall, prior to taking the board's examination required under section (1) above:

(a) Have served at least 730 active working days as captain of towing vessels on the Columbia River and its tributaries, or have completed a program of apprenticeship training which has been approved by the Board, as specified in OAR 856-010-0014;

(b) Complete at least six trips under the supervision of an unlimited state-licensed pilot within 270 days preceding the examination while on the

bridge of a ship of not less than 500 feet length over-all (L.O.A.) through the bridges in the upper harbor in Portland, up to and including the Broadway Bridge, which shall be made with and without the aid of a tug or towboat, including at least one trip in each direction, and also including at least six ship turns in the Willamette River;

(c) Complete at least 110 transits while on the bridge of a ship of not less than 500 feet L.O.A. within the 270 days preceding the examination, with at least 70 of these transits made under the supervision of an unlimited state-licensed pilot and at least 80 of the transits completed within 150 days after the first transit is completed;

(d) When combining trip segments to establish a transit, each trip segment may be used only once;

(e) Complete at least six trips under the supervision of an unlimited state-licensed pilot within the 270 days preceding the examination while on the bridge of a ship of not less than 500 feet L.O.A. in a combination of the following directions, with at least three trips in each direction:

(A) From the Willamette River, turning east (upstream) into the Columbia River; and

(B) From the Columbia River upstream of the mouth of the Willamette River, turning south into the Willamette River.

(f) Complete at least 10 trips in either direction between Astoria and Longview or Kalama under the supervision of an unlimited state-licensed pilot.

(g) Train at least 35 additional days as directed by the training course monitor, with assignments chosen at the discretion of the training course monitor that may include, but need not be limited to, shipboard training, electronic navigation training, manned model training, attendance at meetings with maritime-related governmental agencies or exposure to maritime related administrative activities.

(h) Present recommendations from the training course monitor and from at least ten unlimited state-licensed pilots who participated in the training, certifying that the applicant has demonstrated sufficient knowledge and shiphandling skills to pilot ocean-going ships up to 600 feet L.O.A. on the pilotage ground.

(5) When applying for a license on the Coos Bay bar pilotage ground, the applicant shall:

(a) Hold a valid license as Master endorsed for Radar Observer issued by the U.S. Coast Guard and shall have served at least two years as Master aboard vessels;

(b) Obtain an unlimited federal pilots endorsement for the Coos Bay bar pilotage ground;

(c) Complete at least one hundred (100) crossings of the Coos Bay bar while under the supervision of an unlimited state-licensed Coos Bay bar pilot, with at least ten crossings with each unlimited state-licensed Coos Bay bar pilot and with at least 25 of the bar crossings completed during hours of darkness;

(d) Dock and undock at least 25 ships under the supervision of an unlimited state-licensed pilot;

(e) Make at least 25 trips through each of the bridges; and

(f) Submit letters from each of the Coos Bay bar pilots who have supervised the training of the applicant, certifying that the applicant has demonstrated local knowledge of the pilotage ground and shiphandling skills sufficient to pilot ocean-going ships on the pilotage ground.

(6) When applying for a license on the Yaquina Bay bar pilotage ground the applicant shall:

(a) Hold a valid license as Master endorsed for Radar Observer issued by the U.S. Coast Guard and shall have served at least two years as Master aboard vessels;

(b) Obtain an unlimited federal pilots endorsement for the Yaquina Bay bar pilotage ground;

(c) Complete at least one hundred (100) crossings of the Yaquina Bay bar while under the supervision of an unlimited state-licensed Yaquina Bay bar pilot, or after completing two years of piloting with a state license in Coos Bay, the number of bar crossings at Yaquina Bay may be reduced to 12, with at least one such crossing with each unlimited state-licensed Yaquina Bay bar pilot and with at least twenty-five percent (25%) of the bar crossings completed during the hours of darkness;

(d) Dock and undock at least 25 ships under the supervision of an unlimited state-licensed Yaquina Bay bar pilot, or after completing two years of piloting with a state license in Coos Bay, the number of dockings and undockings may be reduced to 12;

(e) Make at least twenty-five (25) trips through the bridge, or after completing two years of piloting with a state license in Coos Bay, the number of trips may be reduced to 12; and



## ADMINISTRATIVE RULES

(f) Submit letters from each of the Yaquina Bay bar pilots who have supervised training of the applicant, certifying that the applicant has demonstrated local knowledge of the pilotage ground and shiphandling skills sufficient to pilot ocean-going ships on the pilotage ground.

(7) When applying for an original license on the Columbia River bar pilotage ground the applicant shall:

(a) Hold a valid license issued by the U.S. Coast Guard as “Unlimited Master any oceans — any tonnage”, endorsed for Radar Observer;

(b) Have served at least two years as Master of an offshore merchant ship of 5,000 gross tons or more, certified by Certificates of Discharge or Continuous Discharge Book;

(c) Obtain a federal pilot’s endorsement for the Columbia River bar pilotage ground, after which a minimum of one hundred (100) crossings of the Columbia River bar shall be made under the supervision of an unlimited state-licensed pilot, and make crossings with at least five unlimited state-licensed Columbia River bar pilots;

(d) Be on board a minimum of ten ships docking or undocking from the Astoria Port Docks, Tongue Point, and other facilities;

(e) Make approximately twenty-five percent (25%) of the crossings of the Columbia River bar during the hours of darkness.

Stat. Auth.: ORS 776, 670

Stats. Implemented: ORS 776.115, 670.310

Hist.: PC 1, f. 10-29-57, ef. 7-1-57; PC 7, f. 6-13-73, ef. 7-15-73; MP 2-1984, f. & ef. 10-4-84; MP 3-1988, f. & cert. ef. 11-9-88; MP 1-1992, f. & cert. ef. 4-29-92; MP 3-1995, f. & cert. ef. 3-16-95; MP 1-1996, f. & cert. ef. 5-9-96; BMP 2-1999, f. & cert. ef. 6-24-99; BMP 3-2001, f. & cert. ef. 10-30-01; BMP 1-2003, f. & cert. ef. 2-26-03; BMP 3-2006, f. 9-29-06, cert. ef. 10-1-06; BMP 1-2007, f. 1-25-07, cert. ef. 1-26-07; BMP 2-2007, f. & cert. ef. 5-22-07; BMP 4-2008, f. & cert. ef. 1-24-08; BMP 2-2009, f. 6-19-09, cert. ef. 6-23-09; BMP 4-2009, f. & cert. ef. 8-5-09; BMP 4-2011, f. 6-28-11, cert. ef. 6-29-11; BMP 5-2011, f. 6-28-11, cert. ef. 6-29-11

### 856-010-0012

#### Degrees of Licenses for the Columbia and Willamette River Pilotage Ground

(1) Grade “C” License: The initial license issued by the Board to a pilot for the Columbia and Willamette River pilotage ground shall only authorize the pilot to pilot vessels under 600 feet length over-all (L.O.A.).

(2) To obtain a Grade “B” License while holding a Grade “C” License: In order to obtain authority from the Board to pilot vessels from and including 600 feet L.O.A. up to 700 feet L.O.A. on the Columbia and Willamette River pilotage ground, an applicant must meet the following requirements:

(a) Complete at least 180 days service on the pilotage ground while holding a Grade “C” license;

(b) Complete at least 30 transits on the pilotage ground piloting ships of between 300 and 600 feet L.O.A.;

(c) Complete at least 25 transits on ships 600 feet L.O.A. or greater under the supervision of a minimum of ten different pilots, at least six of whom have held unlimited state licenses for at least 5 years;

(d) Complete at least 5 trips in either direction between Astoria and either Longview or Kalama on ships 600 feet L.O.A. or greater under the supervision of an unlimited state-licensed pilot;

(e) Train at least 5 additional days as directed by the training course monitor, with assignments chosen at the discretion of the training course monitor;

(f) Present recommendations from the training course monitor and from at least ten pilots holding unlimited or Grade “A” state licenses who participated in the training, certifying that the applicant has sufficient knowledge and shiphandling skills to pilot vessels from and including 600 feet L.O.A. up to 700 feet L.O.A.; and

(g) The requirements specified in subsections (b), (c), (d), and (e) of this section must have been met during the 180 days preceding application for authority to pilot vessels from and including 600 feet L.O.A. up to 700 feet L.O.A.; and

(h) When the foregoing requirements are met, the Board shall issue a license to the applicant authorizing the applicant to pilot vessels which are less than 700 feet L.O.A., except that the applicant shall not pilot tankers, or vessels with a draft of 38 feet or greater, on the pilotage ground.

(3) To obtain a Grade “A” License while holding a Grade “B” License: In order to obtain authority from the Board to pilot vessels from and including 700 feet L.O.A. up to 800 feet L.O.A. on the Columbia and Willamette River pilotage ground, an applicant must meet the following requirements:

(a) Complete at least 270 days service on the pilotage ground while holding a Grade “B” license;

(b) Complete at least 40 transits piloting ships of between 300 and 700 feet L.O.A. as a state-licensed pilot;

(c) Complete at least 20 transits on ships 700 feet L.O.A. or greater while under the supervision of at least ten unlimited state-licensed pilots;

(d) Complete 2 trips from dock to dock or from an anchorage to a dock under the supervision of unlimited state-licensed pilots while on ships 700 feet L.O.A. or greater, with each trip including a 180 degree turn before docking;

(e) Make at least 6 trips under the supervision of unlimited state-licensed pilots within the 270 days preceding the application while on the bridge of a ship 500 feet L.O.A. or greater, with at least three trips in each of the following directions:

(A) From the Willamette River, turning east (upstream) into the Columbia; and

(B) From the Columbia River upstream of the mouth of the Willamette River, turning south into the Willamette River;

(f) Train at least 5 additional days as directed by the training course monitor, with assignments chosen at the discretion of the training course monitor;

(g) Present recommendations from the training course monitor and from at least ten pilots who participated in the training, certifying that the applicant has sufficient knowledge and shiphandling skills to pilot vessels from and including 700 feet L.O.A. up to 800 feet L.O.A. on the pilotage ground;

(h) The requirements specified in subsections (b), (c), (d), (e) and (f) of this section must have been met during the 270 days preceding application for authority to pilot vessels from and including 700 feet L.O.A. up to 800 feet L.O.A.; and

(i) When the foregoing requirements are met, the Board shall issue a license to the applicant authorizing the applicant to pilot vessels which are less than 800 feet L.O.A. on the pilotage ground, except that the applicant shall not pilot tankers, or vessels with a draft of 38 feet or greater.

(4) To obtain an Unlimited License while holding a Grade “A” License: In order to obtain authority from the Board to pilot vessels on the Columbia and Willamette River pilotage ground without any limitation on the length and draft of the vessels, including tankers and vessels with a draft of 38 feet or deeper, an applicant must meet the following requirements:

(a) Complete at least 180 days service on the pilotage ground while holding a Grade “A” license;

(b) Complete at least 30 transits on ships of between 300 and 800 feet L.O.A. during the 180 days preceding application for an unlimited license;

(c) Complete 4 trips on ships 600 feet L.O.A. or greater from dock to dock or from an anchorage to a dock while under the supervision of unlimited state-licensed pilots, with each trip including a 180 degree turn before docking;

(d) Complete at least 6 trips within the 180 days preceding the application under the supervision of unlimited state-licensed pilots while on the bridge of a ship 500 feet L.O.A. or greater, with at least three trips in each of the following directions:

(A) From the Willamette River, turning east (upstream) into the Columbia; and

(B) From the Columbia River upstream of the mouth of the Willamette River, turning south into the Willamette River;

(e) Train at least 5 additional days as directed by the training course monitor, with assignments chosen at the discretion of the training course monitor;

(f) While holding a Grade “B” or Grade “A” license, complete at least ten transits on ships greater than 800 feet L.O.A. while under the supervision of ten different pilots. Five of these transits must be supervised by pilots with not less than five years experience as unlimited state-licensed pilots;

(g) Present recommendations from the training course monitor and from at least ten pilots who participated in training, certifying that the applicant has sufficient knowledge and shiphandling skills to pilot vessels 800 feet L.O.A. or greater on the pilotage ground;

(h) While holding a Grade “B” or Grade “A” license, complete at least 12 transits on tankers (including at least nine transits on loaded tankers) while under the supervision of at least six different state-licensed pilots with not less than five years’ experience as unlimited state-licensed pilots;

(i) Present recommendations from the training course monitor and from at least six pilots who participated in training on tankers, certifying that the applicant has sufficient knowledge and shiphandling skills to pilot tankers on the pilotage ground and understands the risks and hazards peculiar to piloting tankers on the pilotage ground;

(j) While holding a Grade “B” or a Grade “A” license, complete at least twelve transits on ships with drafts greater than 38 feet while under the supervision of at least six different state-licensed pilots with not less than five years’ experience as unlimited state-licensed pilots;

# ADMINISTRATIVE RULES

(k) Present recommendations from the training course monitor and from at least six pilots who participated in training on vessels with drafts greater than 38 feet, certifying that the applicant has sufficient knowledge and shiphandling skills to pilot vessels with drafts greater than 38 feet;

(l) While holding a Grade "C", Grade "B" or Grade "A" license, complete a United States Coast Guard approved course in automatic plotting aids.

(m) When the foregoing requirements are met, the Board shall issue an unlimited license to the applicant authorizing the applicant to pilot vessels of any length and draft, including tankers, on the pilotage ground.

(5) Each grade of license will be valid for one year. No license except an unlimited license may be renewed.

Stat. Auth.: ORS 776, 670

Stats. Implemented: ORS 776.115, 670.310

Hist.: MP 2-1985, f. & ef. 6-7-85; MP 3-1988, f. & cert. ef. 11-9-88; MP 1-1992, f. & cert. ef. 4-29-92; BMP 3-2001, f. & cert. ef. 10-30-01; BMP 1-2005, f. & cert. ef. 11-29-05; BMP 1-2007, f. 1-25-07, cert. 1-26-07; BMP 4-2008, f. & cert. ef. 1-24-08; BMP 5-2011, f. 6-28-11, cert. ef. 6-29-11

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**Real Estate Agency**  
**Chapter 863**

**Rule Caption:** Suspends temporary rule and amends same rule for Board approval of qualifications.

**Adm. Order No.:** REA 2-2011(Temp)

**Filed with Sec. of State:** 6-22-2011

**Certified to be Effective:** 6-22-11 thru 12-1-11

**Notice Publication Date:**

**Rules Amended:** 863-020-0025

**Rules Suspended:** 863-020-0025(T)

**Subject:** OAR 863-020-0025 establishes the requirements for a petitioner who wishes to petition the Real Estate Board for the Board to approve the petitioner's qualifications to apply to become a continuing education provider. On February 3, 2011, the Agency filed a temporary rule that was effective from 2-4-11 thru 8-3-11. The Board used the temporary rule during Board meetings as a basis for considering the qualifications of a continuing education provider. The Board found that the rule did not adequately reflect the Board's determinations and, at the June 6, 2011 Board meeting, requested that the rule be amended to conform to the Board's determinations. A person not otherwise qualified to be a continuing education provider must apply to the Board and request the Board's approval of the person's qualifications. The temporary rule filed on February 3, 2011 is suspended and the new temporary rule filed with this filing replaces that temporary rule.

The text of the rule is posted on the Agency's website at [www.rea.state.or.us](http://www.rea.state.or.us), and click on "Statutes and Rules."

**Rules Coordinator:** Laurie Skillman—(503) 378-4630

## 863-020-0025

### Board Approval of Continuing Education Provider Qualification

(1) A person not otherwise qualified under OAR 863-020-0020(1)(a) through (g) seeking the Board's approval as an applicant for certification must petition the Board under this rule.

(2) The person must submit a petition for approval to the Agency on an Agency-approved form at least 21 days before the scheduled Board meeting at which the applicant wishes the Board to act. The petition must include the following:

(a) The petitioner's name, address, and phone number.

(b) Sufficient information about the petitioner named in the application to allow the Board to determine whether the petitioner qualifies for certification, including specifics about one or both of the following:

(A) Petitioner's demonstrated expertise and experience in providing educational courses to real estate licensees;

(B) Petitioner's demonstrated experience and expertise in at least two course topics eligible for continuing education credit under OAR 863-020-0035(4)(a)-(gg).

(c) Attestation by the petitioner that the petitioner knows and understands:

(A) The responsibilities of a continuing education provider under OAR 863-020-0050;

(B) The requirements of an instructor under ORS 696.186 and the information required on a continuing education instructor form under OAR 863-020-0060.

(3) If the Board approves the petition, the Agency will mail a letter to the petitioner confirming the Board's approval, and the petitioner may apply for certification as a course provider under OAR 863-020-0030.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.182

Hist.: REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 1-2011(Temp), f. 2-3-11, cert. ef. 2-4-11 thru 8-3-11; REA 2-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11

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**Rule Caption:** Amends licensing rules to implement new electronic licensing processes.

**Adm. Order No.:** REA 3-2011(Temp)

**Filed with Sec. of State:** 6-22-2011

**Certified to be Effective:** 6-22-11 thru 12-1-11

**Notice Publication Date:**

**Rules Adopted:** 863-014-0066, 863-022-0060, 863-024-0066

**Rules Amended:** 863-014-0003, 863-014-0010, 863-014-0015, 863-014-0020, 863-014-0030, 863-014-0035, 863-014-0040, 863-014-0050, 863-014-0062, 863-014-0063, 863-014-0065, 863-014-0076, 863-014-0095, 863-022-0010, 863-022-0015, 863-022-0025, 863-024-0003, 863-024-0010, 863-024-0015, 863-024-0020, 863-024-0030, 863-024-0045, 863-024-0050, 863-024-0062, 863-024-0063, 863-024-0065, 863-024-0076, 863-024-0095

**Subject:** These rules amend the real estate broker, principal broker and property manager licensing rules in OAR chapter 863, divisions 14 and 24 and implement the statutory changes in SB 156, which became effective May 27, 2011. The purposes of these amendments are to align the license application process with the Agency's new electronic licensing system. Changes to processes and requirements include: (1) the license application processes and payment of fees for fingerprinting and examination services, which have been contracted to a service provider; (2) the requirement of a licensee to renew online; (3) new requirement to maintain a license applicant or licensee's email address; (4) establishes the Agency's primary and preferred method of notification, correspondence or confirmation is to a licensee's email address; and (5) allows the Agency to require an original or electronic signature. New rules in division 14 and 24 establish the new requirements for a licensee's name change. A new rule in Division 14 establishes new requirements of the pre-license education providers to certify course completion to the examination service provider. The text of the rule is posted on the Agency's website at [www.rea.state.or.us](http://www.rea.state.or.us), and click on "Statutes and Rules."

**Rules Coordinator:** Laurie Skillman—(503) 378-4630

## 863-014-0003

### Definitions

As used in this division, unless the context requires otherwise, the following definitions apply:

(1) "Agency" is defined in ORS 696.010.

(2) "Agency-approved form" means an electronic or paper form approved by the Real Estate Agency.

(3) "Board" means the Real Estate Board established pursuant to ORS 696.405.

(4) "Branch office" is defined in ORS 696.010.

(5) "Commissioner" is defined in ORS 696.010.

(6) "Incapacitated" means the physical or mental inability to perform the professional real estate activities described in ORS 696.010.

(7) "Legal name" means the first name, middle name and last or surname, without the use of initials or nicknames and is the name given at birth or subsequently acquired through marriage, court order or adoption.

(8) "Licensed Name" means the name of a real estate licensee as it appears on the current, valid real estate license issued to the licensee pursuant to ORS 696.020.

(9) "Principal broker" means "principal real estate broker," as defined in ORS 696.010.

(10) "Real estate activity," "professional real estate activity," and "real estate business" mean "professional real estate activity" as defined in ORS 696.010.

(11) "Real estate broker" is defined in ORS 696.010 and includes a principal real estate broker, as that term is defined in ORS 696.010, unless the context requires otherwise.

(12) "Real estate licensee" and "licensee" mean a "real estate licensee" as defined in ORS 696.010, unless the context requires otherwise.

# ADMINISTRATIVE RULES

(13) "Registered business name" is defined in ORS 696.010.

(14) "Signed" or "Signature" means original or electronic signature as provided by OAR-014-0076.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 5-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10; REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11

## 863-014-0010

### License Application Form and Content

(1) Effective July 1, 2011, before the Agency will accept any documents or information relating to an applicant's qualifications, an applicant for a real estate broker or principal broker license must submit an application and fee required under this rule.

(2) Effective September 15, 2011, before the Agency will accept any documents or information relating to an applicant's qualifications, an applicant for a real estate broker license or principal broker license must submit an application and pay the fee required under this rule using an online application process that is available through the Agency's website.

(3) The license application includes:

(a) The applicant's legal name as defined in OAR 863-014-0003, mailing address, email address and phone number.

(b) The applicant's date and place of birth.

(c) The applicant's Social Security Number.

(d) Certification by the applicant that the applicant has a high school diploma, General Educational Development (GED) certificate or the international equivalent.

(e) Certification by the applicant that the applicant is at least 18 years of age.

(f) For a real estate broker license applicant or a principal broker license applicant, who is not an active or inactive Oregon real estate licensee, whether the applicant:

(A) Has ever been convicted of or is under arrest, investigation, or indictment for a felony or misdemeanor;

(B) Has ever been refused a real estate license or any other occupational or professional license in any other state or country;

(C) Has ever had any real estate license or other occupational or professional license revoked or suspended; or

(D) Has ever been fined or reprimanded as such a licensee.

(g) Any other information the commissioner considers necessary to evaluate the applicant's trustworthiness and competency to engage in professional real estate activity in a manner that protects the public interest.

(h) Certification by the applicant that all information provided by the applicant is true and correct.

(4) In addition to the requirements of (3) of this rule, a real estate broker license applicant, who is basing the applicant's examination qualifications on a broker license from another state, must provide the applicant's certified license history from the state where such examination was taken.

(5) In addition to the requirements in (3) of this rule, a principal broker license applicant must provide proof that the applicant has three years of active real estate experience.

(6) Every license application must be accompanied by the license fee authorized by ORS 696.270. At all periods of the year, the fee for all licenses issued is as authorized by 696.270. That is, the Agency does not pro-rate license fees.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; Renumbered from 863-015-0010, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10; REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11

## 863-014-0015

### Background Check Application and Fingerprint

(1) An applicant for real estate broker or principal real estate broker license must submit to a background check, except an applicant who is currently licensed as a real estate broker, principal real estate broker, or real estate property manager or who is eligible for renewal of such licenses.

(2) The background check includes a criminal background check as provided in OAR chapter 863, division 005, which requires the applicant to provide fingerprints.

(3) Effective July 1, 2011, the Agency and a vendor for fingerprinting services ("fingerprint service provider") have contractually agreed that:

(a) The fingerprint service provider will provide fingerprint services to license applicants and submit the fingerprints to the Oregon State Police for Oregon and nationwide criminal history checks.

(b) A license applicant may only submit fingerprints required by the Agency through the fingerprint services provider.

(c) A license applicant must pay the fee for fingerprinting, authorized under ORS 696.270, directly to the fingerprint services provider.

(d) A license applicant must provide fingerprints according to the requirements and instructions of the fingerprint services provider.

(e) A license applicant must have submitted a license application to the Agency before providing fingerprints.

(4) As provided in ORS 181.540, all fingerprint cards, photographs, records, reports, and criminal offender information obtained or compiled by the Agency are confidential and exempt from public inspection. The commissioner will keep such information segregated from other information on the applicant or licensee and maintain such information in a secure place.

(5) If the Agency determines that additional information is necessary to conduct a background check, the Agency may request such information in writing, and the applicant must provide the requested information. If the applicant fails to provide the requested information, the Agency may determine that the license application is incomplete and terminate the application.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 4-2003(Temp), f. 12-18-03, cert. ef. 1-1-04 thru 6-29-04; REA 3-2004, f. 4-28-04 cert. ef. 5-3-04; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; Renumbered from 863-015-0015, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10; REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11

## 863-014-0020

### Examinations

(1) For purposes of this rule, "examination provider" means the vendor, under a contract with the Agency, which provides licensing examination services and collects the fee for such services directly from a license applicant.

(2) In addition to any other licensing eligibility requirements:

(a) A real estate broker license applicant must pass a real estate broker examination, consisting of a state portion and a national portion.

(b) A principal broker license applicant must pass a principal real estate broker examination.

(c) A principal broker license applicant who was licensed in Oregon as a salesperson prior to July 1, 2002 is not required to take the real estate broker examination, but must pass the principal broker examination.

(d) A real estate broker or principal broker who has not held an active license for two or more consecutive years must pass a reactivation examination.

(3) To be eligible to take an examination:

(a) A license applicant must have submitted a license application and fee to the Agency required under OAR 863-014-0010 or a license reactivation application and fee required under OAR 863-014-0065;

(b) A real estate broker license applicant must have successfully completed the required courses of study for a real estate broker license under OAR 863-022-0010 from an approved school(s);

(c) A principal broker license applicant, who has never held an Oregon real estate broker license and who has not completed the required courses of study for a real estate broker license, must have successfully completed the required courses of study for a real estate broker license under OAR 863-022-0010 from an approved school(s);

(d) A principal real estate broker license applicant must have successfully completed the brokerage administration and sales supervision course required under OAR 863-022-0025 from an approved school; and

(e) The school providing the course(s) under (b), (c) or (d) of this section, must have certified to the examination provider that the applicant completed the course(s) as provided in OAR 863-022-0060.

(4) To be admitted to an examination site:

(a) A license applicant must be eligible to take an examination under section (3) of this rule;

(b) The applicant must register with the examination provider in advance of the examination and comply with the provider's requirements and instructions; and

(c) The examination provider will collect the examination fee under ORS 696.270 directly from the applicant.

(5) An applicant must pay a separate examination fee for each examination.

(6) If an applicant for a principal real estate broker license passes an examination but is not issued a license within one year from the date of the examination:

(a) The applicant is no longer qualified for the license on the basis of the examination; and

(b) The applicant must retake and pass the examination as required by this rule.



# ADMINISTRATIVE RULES

(7) If an applicant for a real estate broker license passes both the national and the state portions of an examination but is not issued a license within one year from the date of the examination:

(a) The applicant is no longer qualified for the license on the basis of the examination; and

(b) The applicant must retake and pass the examination as required by this rule.

(8) A real estate broker license applicant who passes only one portion of a license examination (state or national portion) must pass the remaining portion within one year from the examination date of the passed portion in order to qualify for a license on the basis of the examination.

(9) In lieu of the national portion of the examination required for a real estate broker license in this rule, the Board may accept an applicant's passing results of the national portion of a broker examination taken in another state if:

(a) The examination was taken after November 1, 1973 and the license issued as a result of that examination has not been expired for more than one year; or

(b) The examination was taken within the 12 months before the license application date and

(c) The applicant provides the Agency with the applicant's certified license history from the state where such examination was taken.

Stat. Auth.: ORS 696.385 & 696.425

Stats. Implemented: ORS 696.020, 696.022 & 696.425

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 3-2004, f. 4-28-04, cert. ef. 5-3-04; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 2-2005(Temp), f. 6-9-05, cert. ef. 7-1-05 thru 12-26-05; Administrative correction 1-20-06; REA 2-2007(Temp), f. & cert. ef. 3-21-07 thru 9-16-07; REA 4-2007, f. & cert. ef. 9-26-07; Renumbered from 863-015-0020, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 2-2010, f. 12-15-10, cert. ef. 1-1-11; REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11

## 863-014-0030

### License Issue, Term and Form

(1) The Agency will issue a real estate license to an applicant after determining that the applicant meets the license requirements contained in ORS 696.022 and 696.790, has paid all required fees, and meets:

(a) The requirements under OAR 863-014-0035 for real estate broker license applicant; or

(b) The requirements under OAR 863-014-0040 for a principal broker license applicant.

(2) A licensee may engage in professional real estate activities allowed for that license by ORS Chapter 696 and OAR chapter 863 from the date the license is issued until the license expires, becomes inactive, or is revoked, surrendered, or suspended.

(3) A licensee may hold only one of the following Oregon real estate licenses at any time:

(a) Real estate broker,

(b) Principal real estate broker, or

(c) Property manager.

(4) The license expiration date is the last day of the month of a licensee's birth month.

(5) The license term is not more than 24 months plus the number of days between the date the license is issued or renewed and the last day of the month of the licensee's birth month.

(6) The license will include the following information:

(a) The licensee's legal name,

(b) The license number, effective date, and expiration date,

(c) The name under which the licensee conducts real estate business or the registered business name,

(d) The licensee's business address,

(e) The seal of the Real Estate Agency, and

(f) Any other information the Agency deems appropriate.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 2-2007(Temp), f. & cert. ef. 3-21-07 thru 9-16-07; REA 4-2007, f. & cert. ef. 9-26-07; Renumbered from 863-015-0030, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10; REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11

## 863-014-0035

### Real Estate Broker Licensing Requirements

(1) Effective July 1, 2011, to be eligible for a real estate broker's license, an individual must complete the following steps in the order listed:

(a) Submit a license application and pay the fee to the Agency required by OAR 863-014-0010.

(b) Successfully complete the required courses of study for a real estate broker license required by OAR 863-022-0010.

(c) Ensure that the school providing the required course of study certifies to the examination provider that the applicant completed the course as required by OAR 863-014-0020.

(d) Pass the real estate broker licensing examination and pay the fee to the examination provider as required by OAR 863-014-0020.

(e) Provide fingerprints for a criminal background check and pay the fee to the fingerprint services provider as required by OAR 863-0014-0015.

(2) If the applicant's qualifications for the required examination under (1) of this rule are based upon an active real estate license held in another state, the applicant must furnish a certificate of active license history from the other state.

(3) After the applicant meets the requirements under (1) and (2) of this rule, the Agency will complete a background check on the applicant, which includes a criminal background check under OAR 863-014-0015.

(4) A real estate broker must be associated with a principal broker. Effective July 1, 2011 until September 14, 2011, after the requirements in (1) and (2) of this rule are met, the applicant must submit to the Agency:

(a) The name and address of the principal broker who will supervise the applicant's professional real estate activity and name and address of the registered business name of the principal broker; and

(b) The written authorization of the principal broker to be associated with the principal broker and use the principal broker's registered business name.

(5) Effective September 15, 2011, after the requirements in (1) and (2) of this rule are met:

(a) The applicant must submit to the Agency the name and address of the principal broker who will supervise the applicant's professional real estate activity and name and address of the registered business name of the principal broker; and

(b) The Agency will contact the principal broker for authorization for the applicant to be associated with the principal broker and to use the registered business name.

(6) Effective September 15, 2011, a currently licensed principal broker who wishes to be licensed as a real estate broker must submit a license application and pay the fee to the Agency required by OAR 863-014-0010.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; Renumbered from 863-015-0035, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11

## 863-014-0040

### Principal Real Estate Broker Licensing Requirements

(1) Effective July 1, 2011, to be eligible for a principal real estate broker's license, an individual must complete the following steps in the order listed:

(a) Submit a license application and pay the fee to the Agency required by OAR 863-014-0010. The license application includes proof satisfactory to the Agency that the applicant has three years of active real estate experience.

(b) If the applicant has never held an Oregon real estate broker license and has not completed the required courses of study for a real estate broker license, the applicant must complete such required courses under OAR 863-022-0010 from an approved school(s).

(c) Ensure that the school providing the courses of study for a real estate broker license under (b) of this section, certifies to the examination provider that the applicant completed the course as required by OAR 863-014-0020.

(d) Successfully complete the brokerage administration and sales supervision course required by OAR 863-022-0025.

(e) Ensure that the school providing the brokerage administration and sales supervision course certifies to the examination provider that the applicant completed the course as required by OAR 863-014-0020.

(f) Pass the principal broker licensing examination and pay the fee to the examination provider required by OAR 863-014-0020.

(g) If the applicant is not an active or inactive Oregon real estate licensee, provide fingerprints for a criminal background check and pay the fee to the fingerprint services provider as required by OAR 863-0014-0015.

(2) If the applicant is required to submit fingerprints under (1) of this rule, the Agency will complete a background check on the applicant, which includes a criminal background check, as required by OAR 863-014-0015.

(3) Effective July 1, 2011 to September 14, 2011, after the requirements in (1) and (2) of this rule are met:

(a) The applicant must state that the applicant will be conducting professional real estate activity under the applicant's licensed name or is registering a business name as provided in (5) of this rule; or

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(b) The applicant must submit to the Agency the name, address and authorization of a principal broker with whom the applicant will be associated, and the authorization of the principal broker to use the principal broker's registered business name.

(4) Effective September 15, 2011, after the requirements in (1) and (2) of this rule are met:

(a) The applicant must state whether the applicant will be conducting professional real estate activity under the applicant's licensed name or is registering a business name as provided in (5) of this rule; or

(b) After the applicant has submitted the following, the Agency will contact the principal broker for authorization for the applicant to be associated with the principal broker and to use the registered business name:

(A) The name and address of a principal broker with whom the applicant will be associated; and

(B) The address of the registered business name.

(5) If an applicant wishes to conduct professional real estate activity under a registered business name registered by the applicant, the applicant must first obtain the principal broker license and then register a business name under 863-014-0095.

(6) If the applicant's qualifications for three years of active experience are based wholly or partially upon an active real estate license held in another state, the applicant must furnish with the application a certificate of active license history from the other state.

(7) Effective September 15, 2011, a currently licensed real estate broker who has held a principal broker license and who wishes to be licensed as a principal broker must apply for a principal broker license, pay the required fee and meet all the qualifications for a principal broker license under this rule.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 2-2005(Temp), f. 6-9-05, cert. ef. 7-1-05 thru 12-26-05; Administrative correction 1-20-06; Renumbered from 863-015-0040, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11

## 863-014-0050

### License Renewal

(1) Effective July 1, 2011 a licensee may only submit a license renewal application and pay the fee using an online application process, which will be available through the Agency's website.

(2) For purposes of this rule, "received by the Agency" means the date a licensee completed the online renewal process and paid the fee required under ORS 696.270.

(3) A real estate broker or principal broker license expires if a licensee fails to renew the license on or before the license expiration date. A real estate licensee may not engage in any professional real estate activity after a license expires. A real estate licensee may renew an expired license as provided in this rule.

(4) The Agency will renew an active real estate license to active status for the term prescribed in OAR 863-014-0030 when the Agency has received the following:

(a) The renewal fee authorized by ORS 696.270; and

(b) An active renewal application that includes certification by the licensee that the licensee has met the continuing education renewal requirements under section OAR 863-020-0010.

(5) The Agency will renew an active real estate license to inactive status for the term prescribed in OAR 863-014-0030, when the Agency has received the following:

(a) The renewal fee authorized by ORS 696.270; and

(b) An inactive renewal application.

(6) The Agency will renew an inactive active real estate license to inactive status for the term prescribed in OAR 863-014-0030, when the Agency has received the following:

(a) The renewal fee authorized by ORS 696.270; and

(b) An inactive renewal application.

(7) The Agency will renew an inactive real estate license to active status for the term prescribed in OAR 863-014-0030, when the Agency has received the following:

(a) The renewal fee authorized by ORS 696.270; and

(b) An Agency-approved active renewal application form that includes certification by the licensee that the licensee has met the real estate continuing education renewal requirements under OAR 863-020-0010.

(8) The Agency will renew an expired real estate license to active status when the Agency receives, within one year of the date the license expired, the following:

(a) The renewal fee and a late fee authorized by ORS 696.270; and

(b) An Agency-approved active renewal application form that includes certification by the licensee that the licensee met the real estate continuing education renewal requirements under OAR 863-020-0010.

(9) The Agency will renew an expired real estate license to inactive license status when the Agency receives, within one year of the date the license expired, the following:

(a) The renewal fee and a late fee authorized by ORS 696.270; and

(b) An Agency-approved inactive renewal application form.

(10) When the Agency renews an expired license, the renewed license is effective the date the renewal requirements are met. The renewal is not retroactive to the date the license expired and an expired license retains the status of expired during the expiration period.

(11) A license renewed under this rule expires two years from the date of the original expiration date.

(12) A real estate license that has expired for more than one year is lapsed, as defined in ORS 696.010.

(13) A license may not be renewed if it is lapsed, surrendered, suspended, or revoked. Except as provided in 863-014-0075, the former licensee must reapply and meet all the licensing qualifications required of new license applicants.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 3-2004, f. 4-28-04 cert. ef. 5-3-04; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 2-2007(Temp), f. & cert. ef. 3-21-07 thru 9-16-07; REA 4-2007, f. & cert. ef. 9-26-07; Renumbered from 863-015-0050, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11

## 863-014-0062

### Mailing Address, Email Address, Address Change, Service of Notice

(1) Each active, inactive and expired real estate licensee must maintain on file with the Agency a current mailing address and email address and notify the Agency within 10 calendar days of a change to a mailing or email address.

(2) A forwarding address is effective as a "current mailing address" when the Agency receives notice of the forwarding address by the United States Postal Service.

(3) Agency notice by mail, whether registered, certified, or regular, to the real estate licensee's current mailing address on file with the Agency constitutes service on the licensee.

(4) The Agency is not required by law to send notification or correspondence by regular mail to a licensee or license applicant regarding license or application status. The Agency may send notification or correspondence to a licensee or license applicant to the email address of the licensee or applicant on file with the Agency. Failure by a licensee or applicant to receive notification or correspondence provided via email does not relieve the licensee or applicant of the responsibility to maintain a current license or complete an application process.

(5) Effective September 15, 2011, the Agency's primary and preferred method of notification and correspondence is to the licensee or license applicant's email address.

(6) For purposes of this rule, "notification or correspondence" in (4) and (5) of this rule means:

(a) Notification, correspondence or confirmation to licensees about license renewal, change of license status to active or inactive, license transfers, registered business name, branch office registration, license reactivation, license expiration, and name and address changes.

(b) Notification, correspondence or confirmation to license applicants about license application status, receipt of documents or information from third parties on license qualifications, and license issuance.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; Renumbered from 863-015-0062, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09; REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11

## 863-014-0063

### Real Estate License Transfers, Principal Brokers' Responsibilities, Authority to Use Registered Business Name

(1) As used in this rule:

(a) "Authorized licensee" means a principal broker who has authority and is responsible for a registered business name;

(b) "License transfer form" means a completed and signed form that does one of the following:

(A) Transfers a real estate broker license to a receiving principal broker in order to become associated with the receiving principal broker, or

(B) Authorizes a real estate licensee to use a registered business name to conduct professional real estate activity.

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(c) "Sending principal broker" means the authorized licensee or principal broker with whom an active real estate broker is associated before the license transfer;

(d) "Receiving principal broker" means the authorized licensee or principal broker with whom an active real estate broker will be associated after the license transfer.

(2) A license transfer form includes:

(a) The name, mailing address, email address and license number of the licensee who is transferring the license or documenting the authorized use of a registered business name;

(b) The current status of the license, whether active or inactive;

(c) If the real estate broker is associated with a sending principal broker, certification that the real estate broker provided written notice of the transfer to the sending principal broker, and that such notice was provided before the date the transfer form is submitted to the Agency, including:

(A) The date of personal service of such notice; or

(B) The date a certified letter was delivered by the post office to the sending principal broker's address;

(d) If the form is used to authorize the use of a different registered business name, certification that the licensee provided written notice of such change to the authorized licensee for the current registered business name, and that such notice was provided before the date the license transfer form is submitted to the Agency, including:

(A) The date of personal service of such notice; or

(B) The date a certified letter was delivered to the authorized licensee's address;

(e) If applicable, the receiving principal broker's registered business name, street address, and registered business name identification number;

(f) If applicable, the street address, registered business name identification number, and the registered business name under which the real estate licensee will be authorized to conduct professional real estate activity; and

(g) The receiving broker's or authorized licensee's name, license number, telephone number, date, and signature.

(3) The Agency will transfer the license of an active real estate broker associated with a sending principal broker to a receiving principal broker when the Agency receives a license transfer form and the transfer fee authorized by ORS 696.270.

(4) The Agency will transfer the license of an active principal real estate broker to a receiving principal broker when the Agency receives a license transfer form and the transfer fee authorized by ORS 696.270.

(5) The Agency will transfer the license of an inactive real estate licensee, who has been inactive for a period of 30 days or less, to a receiving principal broker when the Agency receives a license transfer form and the transfer fee authorized by ORS 696.270.

(6) A principal real estate broker with whom a licensee is associated remains responsible for the licensee's professional real estate activity until the Agency receives one of the following:

(a) An Agency-approved form submitted by the principal real estate broker terminating the relationship with the licensee under OAR 863-014-0065; or

(b) A license transfer form and fee.

(7) If a principal real estate broker with whom a real estate broker is associated voluntarily gives the license to the real estate broker named in the license, the principal real estate broker remains responsible for the licensee's subsequent professional real estate activity until the Agency receives one of the following:

(a) An Agency-approved form submitted by the principal real estate broker terminating the relationship with the licensee under OAR 863-014-0065;

(b) An Agency-approved form submitted by the licensee terminating the relationship with the principal real estate broker under OAR 863-014-0065; or

(c) A license transfer form and fee.

(8) The Agency will document the registered business name under which a real estate licensee is authorized to conduct professional real estate activity when the Agency receives a license transfer form and the transfer fee authorized by ORS 696.270.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 4-2007, f. & cert. ef. 9-26-07; Renumbered from 863-015-0063, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10; REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11

## 863-014-0065

### Inactive License, Change License Status to Active, Change License Category, License Reactivation

(1) A real estate licensee whose license is on inactive status may not engage in professional real estate activity.

(2) The commissioner may reprimand, suspend, revoke, or impose a civil penalty against an inactive licensee under ORS 696.301.

(3) The Agency will change an active real estate license to inactive license status when the Agency actually receives the following:

(a) The license;

(b) A request by the licensee submitted on an Agency-approved form to change the license status to inactive; or

(c) An Agency-approved form submitted by the licensee terminating the relationship with the principal real estate broker under this rule.

(4) The Agency will change the status of an active real estate broker who is associated with a principal real estate broker to inactive status when the Agency receives one of the following:

(a) The real estate broker license, submitted by the licensee;

(b) The real estate broker license, submitted by the principal real estate broker;

(c) An Agency-approved form, submitted by the principal real estate broker, terminating the principal real estate broker's relationship with the real estate broker; or

(d) An Agency-approved form submitted by the real estate broker terminating the relationship with the principal real estate broker.

(5) An inactive real estate licensee may renew such license under OAR 863-014-0050.

(6) For a period of 30 days after a real estate broker license becomes inactive, the licensee may change such license status from inactive to active and transfer the license to a principal real estate broker under OAR 863-014-0063.

(7) Except as provided in section (8) of this rule, for a period of 30 days after the real estate license becomes inactive, the licensee may change such license category to an active principal real estate broker only if:

(a) The licensee is qualified for such license and

(b) The licensee submits to the Agency:

(A) An Agency-approved application form to change the license category and to change the license status to active,

(B) A license transfer form under OAR 863-014-0063, if applicable, and

(C) Payment of the transfer fee authorized by ORS 696.270.

(8) If the licensee under section (7) of this rule is changing license category to a principal real estate broker and has never been licensed as a principal real estate broker, the licensee must submit to the Agency:

(a) An Agency-approved broker license application form and

(b) The licensing fee authorized by ORS 696.270.

(9) If a license has not been on active status for two or more consecutive years, the licensee must complete the following steps in the order listed to reactivate the license:

(a) Submit a reactivation application and pay the fee to the Agency required under ORS 696.270.

(b) Pass the real estate reactivation examination and pay the fee to the examination provider as required by OAR 863-014-0020.

(10) After the 30-day period specified in sections (6) and (7) of this rule, and subject to the examination requirements in section (9) of this rule, a licensee may change the license status from inactive to active only by submitting to the Agency:

(a) An application for license reactivation; and

(b) Payment of the reactivation fee authorized by ORS 696.270.

(11) Subject to the examination requirements in section (9) of this rule, if an inactive licensee renews a license and maintains inactive status under section (5) of this rule, the licensee may, within 60 days of the date of renewal, change the license status to active by submitting to the Agency:

(a) An Agency-approved application for license reactivation that includes certification that the licensee met the real estate continuing education renewal requirements under OAR 863-020-0008 or 863-020-0010; and

(b) Payment of the active renewal fee authorized by ORS 696.270, less the amount of the inactive renewal fee already paid by the licensee.

(12) The change of license status, transfer, change of license category or the reactivation of a license is effective when the Agency actually receives all required forms and fees.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 1-1991, f. & cert. ef. 11-4-91; REA 1-2002, f. 5-31-02, cert. ef. 7-1-02, Renumbered from 863-010-0081; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 3-2004, f. 4-28-04 cert. ef. 5-3-04; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 2-2007(Temp), f. & cert. ef. 3-21-07 thru 9-16-07;



# ADMINISTRATIVE RULES

REA 4-2007, f. & cert. ef. 9-26-07; Renumbered from 863-015-0065, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10; REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11

## 863-014-0066

### Licensee Name Change

A licensee may apply for a name change by submitting to the Agency:

(1) A name change application and payment of the fee authorized under ORS 696.270; and

(2) Legal proof of the name change, which must be in the form of an official record such as a marriage certificate, divorce certificate, or a court order/decree.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11

## 863-014-0076

### Signature Requirements

(1) Subject to ORS 84.001 to 84.061, the Agency may, but is not required to, accept any electronic or facsimile signature created, generated, sent, communicated, received, or stored regarding licensing documents including, but not limited to, background check applications, examination applications, license applications, license change forms, and license surrender forms.

(2) The Agency may require an individual to submit an original or electronic signature on any document or Agency-approved form.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; Renumbered from 863-015-0076, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09; REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11

## 863-014-0095

### Business Name Registration

(1) If a principal real estate broker wishes to conduct real estate business in a name other than the licensee's legal name, the principal broker must first register the business name with the Agency. For the purposes of this rule, "business name" means an assumed name or the name of a business entity, such as a corporation, partnership, limited liability company, or other business entity recognized by law. A licensee must maintain the registered business name in active status with the Oregon Secretary of State's Corporation Division.

(2) To register a business name, the principal broker must submit to the Agency on an Agency-approved form the following:

(a) The business name in which the licensee wishes to conduct real estate business, which must be the exact name on file with the Oregon Secretary of State.

(b) Written authority to register the business name;

(c) A copy of the registration on file with the Oregon Secretary of State Business Registry showing the business name is active; and

(d) The fee authorized by ORS 696.270.

(3) A licensee who wishes to use a registered business name must submit to the Agency the following:

(a) The registered business name the licensee wishes to use; and

(b) Authorization from the principal broker who is responsible for the registered business name on the records of the Agency to use the name.

(4) Business names registered with the Agency do not expire and need not be renewed by the licensee. Any change in the business name registered with the Agency will be treated as the registration of a new business name, and an application for the change in business name must be submitted to the Agency together with the fee authorized by ORS 696.270.

(5) If a principal broker wishes to transfer the right to use and the responsibility for a business name that is registered with the Agency, the principal broker acquiring the right to use the name must file a change of business name registration with the Agency together with the fee authorized by ORS 696.270. A licensee must notify the Agency in writing if the licensee terminates its use of a business name.

(6) A business name registration becomes void when the Agency receives notice of termination of the use of a business name. A business name registration becomes void when no licensees are affiliated with the registered business name. A business name registration may be reactivated within one year from the voiding of a registration, unless a new user has registered the business name, without paying the fee authorized by ORS 696.270.

(7) Except as provided in OAR 863-014-0085 and this section, no real estate broker or principal broker may engage in professional real estate activities under more than one registered business name. A principal broker may engage in professional real estate activities under more than one regis-

tered business name if the business entity is an affiliated or subsidiary organization as described in OAR 863-014-0061.

Stat. Auth.: ORS 696.026 & 696.385

Stats. Implemented: ORS 696.026

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; Renumbered from 863-015-0095, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10; REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11

## 863-022-0010

### Course Requirements for Real Estate Broker License Applicants

(1) The real estate broker license applicant course of study required by OAR 863-014-0035 must include 150 clock-hours in the seven courses listed in section (2) of this rule.

(a) Courses offered by private career schools must be approved by the Agency under OAR 863-022-0030.

(b) Courses offered by community colleges, colleges, and universities must be approved by the Agency under OAR 863-022-0035.

(c) To be eligible for credit, all courses must be presented for the designated number of hours and according to the percentages allocated for each topic.

(2) The courses required for real estate broker license applicants are:

(a) Real Estate Law (30 hours).

(b) Oregon Real Estate Practice (30 hours).

(c) Real Estate Finance (30 hours).

(d) Contracts (15 hours).

(e) Agency Law (15 hours).

(f) Property Management (10 hours).

(g) Real Estate Brokerage (20 hours).

(3) The seven required courses must include the following number of hours and percentages allocated for the topics within each course:

(a) Real Estate Law Course (30 hours). This course covers general real estate law with an emphasis on Oregon real property law and includes the following topics:

(A) (20% or 6 hours) Basic real property law, types of estates and forms of ownership, such as fee simple absolute, severalty, various concurrent estates, trust, by business organizations; the nature of real property versus the nature of personal property; fixtures, emblements, water rights (riparian rights, natural drainage rights, state ownership of navigable riverbed), estoppel, condemnation, and severance.

(B) (10% or 3 hours) Ways to legally describe real property, including the proper and complete writing of legal descriptions for real estate transaction documents commonly used in Oregon.

(C) (10% or 3 hours) Transfer of title, including voluntary and involuntary transfers and proper deed conveyance (types and their requirements, statutory deed forms, recording requirements, acknowledgment).

(D) (15% or 4.5 hours) Encumbrances, including easements, such as easement appurtenant, easements in gross, easement by necessity, easements by prescription, as well as how easements are created and terminated; voluntary and involuntary encumbrances, especially statutory liens, such as mechanic's liens, tax liens, judgment liens, and federal income tax liens.

(E) (10% or 3 hours) Title insurance and escrow recording, including types of coverage and exclusions in title insurance policies; escrow procedures; requirements for recording documents.

(F) (10% or 3 hours) Taxes and assessments, especially the levy and collection process; foreclosure and redemption rights, exemptions, special assessments, and the Bancroft Bonding Act.

(G) (25% or 7.5 hours) Land use control, including private controls such as covenants, conditions and restrictions; public controls such as planning, zoning, city and county subdivision platting, building regulations, implied warranties on new homes, consumer protection in land sales through recording land sales contracts, public reporting under Oregon Subdivision Control Law; and condominiums, including their creation and statutory obligations of condominium developers.

(b) Oregon Real Estate Practice Course (30 hours). This course covers the requirements for Oregon real estate licensees contained in the Oregon Revised Statutes chapter 696 and the Oregon Administrative Rules chapter 863 and includes the following topics:

(A) (5% or 1.5 hours) The basic business relationships between principal brokers and associated brokers including, for example, the agency relationship and the principal broker's supervisory responsibilities, duties, and liabilities to third parties.

(B) (25% or 7.5 hours) The Oregon real estate license requirements and the limitations on licensing as set forth in the Oregon Real Estate License Law; also the rules and regulations, especially their applications to

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real estate transactional documents, advertising, competitive market analyses, property management, and licensees.

(C) (20% or 6 hours) Listing agreements, specifically the Oregon administrative rules concerning marketing and advertising listed properties.

(D) (20% or 6 hours) Sale agreements, such as offers to purchase and seller's counter offers, earnest money agreements, options to buy real property, the statutes and rules affecting sale agreements.

(E) (15% or 4.5 hours) The Civil Rights Act and real estate-related provisions of the Americans with Disabilities Act and their administration and enforcement.

(F) (15% or 4.5 hours) The basic roles of the real estate broker, including additional requirements, liabilities, and needs for advanced training in related activities, such as competitive market analyses, property management (including renting and leasing), exchanging, securities, business opportunities (i.e., business chance brokering.); auctions, farms, vacation homes, and campgrounds.

(c) Real Estate Finance Course (30 hours). This course covers real estate finance and appraisal methods, including the methods for performing mathematical computations commonly required of real estate licensees, and includes the following topics:

(A) (10% or 3 hours) Lending laws, including federal laws and regulations such as Regulation Z, the Federal Equal Credit Opportunity Act, and the Real Estate Settlement Procedures Act.

(B) (10% or 3 hours) The money market and sources of financing; private versus government sources, the primary and secondary mortgage market, the federal money market, and federal monetary controls.

(C) (10% or 3 hours) Financing documents, including mortgages, trust deeds, and land sale contracts.

(D) (10% or 3 hours) Foreclosure; terms, methods, procedures and remedies.

(E) (10% or 3 hours) Governmental loan programs; FHA, federal VA, Oregon DVA.

(F) (10% or 3 hours) Non-governmental loan programs, such as conventional loans, construction loans, and mobile home loans.

(G) (10% or 3 hours) Competitive market analyses; principles, terminology, processes, and approaches commonly used.

(H) (15% or 4.5 hours) Mathematical calculations used in financing real estate transactions.

(I) (10% or 3 hours) Other methods of financing, including wrap-around mortgages, second mortgages, sale-leasebacks, collateral assignments, and use of personal property.

(J) (5% or 1.5 hours) Taxation and its impact in financing arrangements.

(d) Contracts Course (15 hours). This course covers the basic requirements for common real estate contracts, including listings, offers to purchase, leases, and land sales contracts. The course highlights Oregon-specific contract requirements and includes the following topics:

(A) (40% or 6 hours) Basic contract law, including the elements necessary to form a contract, breaches, and interference with an existing contract.

(B) (40% or 6 hours) Real estate contracts, especially required provisions and suggested language for listing agreements, earnest money/sale agreements, options land sales contracts, leases, and escrow agreements.

(C) (20% or 3 hours) Special requirements and limitations on contracts for the sale of subdivided lands, condominiums, and planned developments under Oregon law.

(e) Agency Law Course (15 hours). This course covers agency law, both its common law aspects and Oregon's statutory requirements for real estate licensees and includes the following topics:

(A) (40% or 6 hours) The common law of agency, including an in-depth study of the fiduciary requirements and its application to real estate brokerage.

(B) (60% or 9 hours) ORS 696.800 to 696.880 generally, with an emphasis on the obligations and duties of an agent to clients and others, as set out in ORS 696.805 to 696.815.

(f) Property Management Course (10 hours). This course covers basic property management law and includes the following topics:

(A) (35% or 3.5 hours) Oregon real estate license statutes and administrative rules as applied to property management activity.

(B) (10% or 1 hour) Oregon Residential Landlord and Tenant Act, including tenants' and landlords' rights and obligations; evictions, forcible entry, and detainer procedures.

(C) (10% or 1 hour) Economics of property management, including analysis of markets, properties, and evaluating the owner's objectives.

(D) (5% or .5 hours) Leases, including leaseholds, types of leases, and common lease clauses.

(E) (10% or 1 hour) Agency relationship between property owner and property manager.

(F) (5% or .5 hours) Tenant relations, including maintenance.

(G) (20% or 2 hours) Property management recordkeeping, including operating reports, budgets, income tax records, types of insurance, trust accounts, and trust account reconciliation.

(H) (5% or .5 hours) Anti-discrimination statutes, federal and state, that apply to tenant selection and advertising; Fair Credit Reporting Act and its application to tenant selection.

(g) Real Estate Brokerage Course (20 hours). This covers basic real estate brokerage, including the legal requirements for record-keeping and clients' trust account reconciliation and includes the following topics:

(A) (10% or 2 hours) Advertising, including supervising content, format, and layout; public relations, image development, the Internet, and relations between competitors; office policy on private transactions of licensees; effect of disciplinary action on licensees.

(B) (20% or 4 hours) Financial records, such as general checking account and its use for paying commissions; receipt of competitive market analysis fees; legal requirements for the clients' trust account, including documentation required, reconciliation, use of interest-bearing accounts, commingling of funds, the trust account's use in cooperative transactions, earnest money, advance fees, and rental fees.

(C) (10% or 2 hours) Office facilities and the regulatory requirement for real estate offices, including site selection, space and office layout, furniture and equipment; broker license requirements; regulations affecting the office, such as signs; requirements for branch offices, limitations on licenses, effect of actions on licenses, and reporting of adverse litigation.

(D) (15% or 3 hours) The legal requirements for neutral escrows and co-op transactions; the mathematics of a real estate closing, such as tax proration, computing commission splits, and making closing estimates; closing procedures, such as title insurance, recording, and acknowledging documents.

(E) (10% or 2 hours) Financial reports, such as income statements, balance sheets, tax returns, and payroll records.

(F) (15% or 3 hours) Non-financial records, such as listing files, transaction records, cooperative transaction records, advertising folders, showing reports, competitive market analysis records and reports; legal requirements, such as management review of broker transactions.

(G) (10% or 2 hours) Office manuals that specify office policy and procedures; use of the manual in training and to set out grievance procedures.

(H) (10% or 2 hours) Office activity other than real estate sales; property management, competitive market analyses, investment counseling, construction and development, including supervisory requirements, as well as the nature of the activities in relation to real estate law and rules.

(4) Except for Real Estate Finance courses, as provided in section (7) of this rule,, an applicant must complete the required courses through Agency-approved private career schools or in-state community colleges, colleges, or universities, as those terms are defined in OAR 863-022-0005.

(5) To receive credit for courses provided by private career schools, the following provisions apply:

(a) License applicants must complete the course of study and receive a passing score of at least 75% on a final examination for each course.

(b) Except for Real Estate Finance, only courses completed on or after July 1, 2002 are eligible for credit.

(c) Real Estate Finance courses must have been completed on or after July 1, 1978 to be eligible for credit.

(6) To receive credit for courses provided by in-state community colleges, colleges, and universities, the following provisions apply:

(a) License applicants must complete the course of study, including a final examination for each course and achieve a minimum grade of "C."

(b) Except for Real Estate Finance, only courses completed on or after July 1, 2002 are eligible for credit.

(c) Real Estate Finance courses must have been completed on or after July 1, 1973 to be eligible for credit.

(7) To receive credit for Real Estate Finance courses taken through out-of-state community colleges, colleges, and universities:

(a) The courses must have been completed on or after July 1, 1973,

(b) The applicant must have achieved a minimum grade of "C;" and

(c) The applicant must obtain a transcript and submit it to the Agency as part of the application process.

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(8) The real estate broker license applicant course of study is not eligible for continuing education credit under OAR 863-020-0008 or 863-020-0010.

Stat. Auth.: ORS 696.385  
Stats. Implemented: ORS 696.174, 696.182, & 696.184  
Hist.: REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11

## 863-022-0015

### Course Requirements for Property Manager License Applicants

(1) The course required by OAR 863-024-0045 for real estate property manager license applicants consists of a 60-hour Agency-approved real estate property manager course. The property manager course covers the specialized area of the management of rental real estate, including Oregon's legal requirements.

(2) To be eligible for credit, the 60-hour course must include 60 clock-hours allocated among topics in the number of hours and percentages as follows:

(a) (30% or 18 hours) Oregon real estate license statutes and administrative rules applicable to the management of rental real estate.

(b) (15% or 9 hours) Clients' trust accounts and account reconciliation.

(c) (10% or 6 hours) Oregon Residential Landlord and Tenant Act, including tenants' and landlords' rights and obligations; evictions, forcible entry and detainer procedures.

(d) (5% or 3 hours) Economics of property management, including analysis of markets, properties, and evaluating the owner's objectives.

(e) (5% or 3 hours) Leases, including leaseholds, types of leases and common lease clauses.

(f) (5% or 3 hours) Agency relationship between property owner and property manager and tenant relations, including maintenance.

(g) (15% or 9 hours) Management recordkeeping, including operating reports, budgets, income tax records, insurance types.

(h) (5% or 3 hours) Federal and state anti-discrimination laws and their applicability to tenant selection and advertising; the Fair Credit Reporting Act and its applicability to tenant selection.

(i) (10% or 6 hours) General real estate law applicable to property management activity, including types of estates and forms of ownership; transfer of title; taxes and assessments, including the levy and collection process, foreclosure and redemption rights, exemptions, and special assessments; land use controls, including private controls such as covenants, conditions, and restrictions, and public controls such as planning and zoning.

(3) The course must be completed through either Agency-approved private career schools or in-state community colleges, colleges, and universities, as those terms are defined in OAR 863-022-0005.

(4) To receive credit for a course provided by a private career school, applicants must complete the course, including a final examination, and receive a passing score of at least 75% on a final exam.

(5) To receive credit for a course provided by an in-state community college, college, or university, applicants must complete the course, including a final examination and achieve a minimum grade of "C."

(6) Only courses completed on or after July 1, 2002 are eligible for credit.

(7) The property manager license applicant course is not eligible for continuing education credit under OAR 863-020-0008 or 863-020-0010.

Stat. Auth.: ORS 696.385  
Stats. Implemented: ORS 696.174, 696.182, & 696.184  
Hist.: REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11

## 863-022-0025

### Education Course Requirements for Principal Broker License Applicants

(1) The course required by OAR 863-014-0040 for principal real estate broker license applicants is a 40-hour Agency-approved brokerage administration and sales supervision course.

(2) The brokerage administration and sales supervision course covers legal requirements unique to principal brokers and reviews the material introduced in the 150-hour real estate broker applicant course of study described in OAR 863-022-0010.

(3) To be eligible for credit, the 40-hour course must include 40 clock-hours, allocated among topics in the number of hours and percentages as follows:

(a) (10% or 4 hours) Introduction to management theory, characteristics of successful management, the functions of management, organizational formats such as corporate, partnerships, and proprietorship, various prob-

lems associated with management, and types of licenses and their legal requirements.

(b) (10% or 4 hours) Planning, including management objectives, planning under the employer-employee relationship versus independent contractor relationship, individual and office planning, budget planning, market research, growth, and anticipation of expansion, and bottom line planning.

(c) (15% or 6 hours) Selecting, training, and supervising real estate personnel, including job descriptions, recruiting, interviewing, and characteristics of a successful real estate broker; training in Oregon real estate law, real estate documents; supervising transactions, performance evaluations, commission arrangements; major theories of human motivation, for example, those of Maslow, Herzberg, and McClelland; selecting, training, and evaluating office support personnel.

(d) (5% or 2 hours) Leadership, authority, discipline; office regulations, relationships between office personnel; office policy on private transactions of licensees; effect of disciplinary action on licensees.

(e) (5% or 2 hours) Communication methods; formal versus informal; verbal versus non-verbal; reading, writing, listening, speaking; office sales meetings.

(f) (5% or 2 hours) Advertising, including supervising content, format, and layout; public relations, image development, and relations between competitors.

(g) (5% or 2 hours) Office facilities, including legal requirements for real estate offices, such as site selection, space and office layout, furniture and equipment, signs; broker license requirements; legal requirements concerning branch offices; limitations on licenses, effect of actions on licenses, and reporting of adverse litigation.

(h) (20% or 8 hours) Financial records, such as general checking account and its use for paying commissions, receipt of competitive market analysis fees; the clients' trust account, legal requirements concerning its use, including required documentation, use of interest-bearing accounts, commingling of funds, the trust account's use in cooperative transactions, earnest money, advance fees, and rental fees.

(i) (5% or 2 hours) Financial reports, such as income statements, balance sheets, tax returns, and payroll records.

(j) (5% or 2 hours) Non-financial records, such as listing files, transaction records, cooperative transaction records, advertising folders, showing reports, competitive market analysis records and reports; legal requirements, such as broker review of salesperson transactions.

(k) (5% or 2 hours) Office manuals that specify office policy and procedures, use of the manual in training and to set out grievance procedures.

(l) (5% or 2 hours) Office activity other than real estate sales; competitive market analyses, investment counseling, construction, and development, including supervisory requirements, and the nature of the activities relative to real estate legal requirements.

(m) (5% or 2 hours) Property management: legal requirements for accounting and record keeping, Oregon Landlord Tenant Law.

(4) License applicants must complete the course, including a final examination, and receive a passing score of at least 75% on a final exam.

(5) An Agency-approved brokerage administration and sales supervision course is eligible for continuing education credit for licensees renewing under OAR 863-020-0008 or 863-020-0010 as follows:

(a) If the licensee completed the course on or before December 31, 2010; or

(b) If the licensee completed the course on or after January 1, 2011 and the course provider was a certified continuing education course provider.

Stat. Auth.: ORS 696.385  
Stats. Implemented: ORS 696.174, 696.182, & 696.184  
Hist.: REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11

## 863-022-0060

### Responsibilities of Providers of Real Estate Broker, Principal Broker and Property Manager License Application Courses

(1) This rule is effective July 1, 2011.

(2) For purposes of this rule, a "course provider" is:

(a) A private career school, in-state community college, college, and university that provides the 150-hour real estate broker license applicant course of study under OAR 863-022-0010, the 60-hour property manager license applicant course under OAR 863-022-0015; or the 40-hour brokerage administration and sales supervision course under OAR 863-022-0025; and



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(b) A continuing education provider who provides the 40-hour brokerage administration and sales supervision course under OAR 863-022-0025.

(3) For purposes of this rule, "examination provider" means the vendor, under a contract with the Agency, which provides licensing examination services and collects the fee for such services directly from a license applicant.

(4) A course provider must certify to the examination provider that an applicant for a real estate license has successfully completed the course or courses according to the requirements and instructions of the examination provider.

(5) Before certifying completion of a course as provided in (4) of this rule, a course provider must obtain proof from a license applicant that the applicant has submitted a license application to the Agency.

(6) A course provider must inform each student taking a course that:

(a) The course provider will certify to the examination provider that an applicant for a real estate license has successfully completed the course or courses; and

(b) Before a course provider may certify successful course completion, a student must provide proof to the provider that the student has made application to the Agency for a real estate broker, principal broker or property manager license.

(7) In addition to the requirements under this rule, a course provider must provide a certificate of completion to each student.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11

## 863-024-0003

### Definitions

As used in this division, unless the context requires otherwise, the following definitions apply to this division:

(1) "Agency" is defined in ORS 696.010.

(2) "Agency-approved form" means an electronic or paper form approved by the Real Estate Agency.

(3) "Board" means the Real Estate Board established pursuant to ORS 696.405.

(4) "Branch office" is defined in ORS 696.010.

(5) "Commissioner" is defined in ORS 696.010.

(6) "Legal name" means the first name, middle name and last or surname, without the use of initials or nicknames and is the name given at birth or subsequently acquired through marriage, court order or adoption.

(7) "Licensed Name" means the name of a real estate licensee as it appears on the current, valid real estate license issued to the licensee pursuant to ORS 696.020.

(8) "Management of rental real estate" is defined in ORS 696.010.

(9) "Principal broker" means "principal real estate broker," as defined in ORS 696.010.

(10) "Property manager" means "real estate property manager," as defined in ORS 696.010.

(11) "Real estate activity," "professional real estate activity," and "real estate business" mean "professional real estate activity" as defined in ORS 696.010, which includes managing rental real estate.

(12) "Real estate broker" is defined in ORS 696.010.

(13) "Real estate licensee" and "licensee" mean a "real estate licensee" as defined in ORS 696.010.

(14) "Registered business name" is defined in ORS 696.010.

(15) "Signed" or "Signature" means original or electronic signature as provided by OAR-024-0076.

Stat. Auth.: ORS 696.385

Stat. Implemented: ORS 696.010 & 696.020

Hist.: REA 7-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10; REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11

## 863-024-0010

### License Application Form and Content

(1) Effective July 1, 2011, before the Agency will accept any documents or information relating to an applicant's qualifications, an property manager license applicant must submit an application and fee required under this rule.

(2) Effective September 15, 2011, before the Agency will accept any documents or information relating to an applicant's qualifications, an property manager license applicant must submit an application and pay the fee required under this rule using an online application process that is available through the Agency's website.

(3) The license application includes:

(a) The applicant's legal name as defined in OAR 863-024-0003, mailing address, email address and phone number;

(b) The applicant's date and place of birth;

(c) The applicant's Social Security Number;

(d) Certification by the applicant that the applicant has a high school diploma, General Educational Development (GED) certificate or the international equivalent.

(e) Certification by the applicant that the applicant is at least 18 years of age.

(f) Whether the applicant:

(A) Has ever been convicted of or is under arrest, investigation, or indictment for a felony or misdemeanor;

(B) Has ever been refused a real estate license or any other occupational or professional license in any other state or country;

(C) Has ever had a real estate or any other occupational or professional license revoked or suspended; or

(D) Has ever been fined or reprimanded as such a licensee; and

(g) Any other information the commissioner considers necessary to evaluate the applicant's trustworthiness and competency to engage in the management of rental real estate in a manner that protects the public interest.

(h) Certification by the applicant that all information provided by the applicant is true and correct.

(4) Every license application must be accompanied by the license fee authorized by ORS 696.270. At all periods of the year, the fee for all licenses issued is as authorized by 696.270. That is, the Agency does not pro-rate license fees.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 7-2008, f. 12-15-08, cert. ef. 1-1-09; REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11

## 863-024-0015

### Background Check and Fingerprint Requirements

(1) An applicant for a property manager license must submit to a background check, except an applicant who is currently licensed as a real estate broker or principal real estate broker or who is eligible for renewal of such licenses.

(2) The background check includes a criminal background check as provided in OAR chapter 863, division 005, which requires the applicant to provide fingerprints.

(3) Effective July 1, 2011, the Agency and a vendor for fingerprinting services ("fingerprint service provider") have contractually agreed that:

(a) The fingerprint service provider will provide fingerprint services to license applicants and submit the fingerprints to the Oregon State Police for Oregon and nationwide criminal history checks.

(b) A license applicant may only submit fingerprints required by the Agency through the fingerprint services provider.

(c) A license applicant must pay the fee for fingerprinting, authorized under ORS 696.270, directly to the fingerprint services provider.

(d) A license applicant must provide fingerprints according to the requirements and instructions of the fingerprint services provider.

(e) A license applicant must have submitted a license application to the Agency before providing fingerprints.

(4) As provided in ORS 181.540, all fingerprint cards, photographs, records, reports, and criminal offender information obtained or compiled by the Agency are confidential and exempt from public inspection. The commissioner will keep such information segregated from other information on the applicant or licensee and maintain such information in a secure place.

(5) If the Agency determines that additional information is necessary in order to conduct a background check, the Agency may request such information in writing, and the applicant must provide the requested information. If the applicant fails to provide the requested information, the Agency may determine that the license application is incomplete and terminate the application.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 7-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10; REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11

## 863-024-0020

### Examinations

(1) For purposes of this rule, "examination provider" means the vendor, under a contract with the Agency, which provides licensing examination services and collects the fee for such services directly from a license applicant.

(2) In addition to any other licensing eligibility requirements:

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(a) A property manager license applicant must pass a property manager examination.

(b) A property manager who has not held an active license for two or more consecutive years must pass a reactivation examination.

(3) To be eligible to take an examination:

(a) A license applicant must have submitted a license application and fee to the Agency required under OAR 863-024-0010 or a license reactivation application and fee required under OAR 863-024-0065;

(b) A license applicant must have successfully completed the required course of study for a property manager license under OAR 863-022-0015 from an approved school; and

(c) The school providing the course under (b) of this section must have certified to the examination provider that the applicant completed the course as provided in OAR 863-022-0060;

(4) To be admitted to an examination site:

(a) A license applicant must be eligible to take an examination under section (3) of this rule;

(b) The applicant must register with the examination provider in advance of the examination and comply with the provider's requirements and instructions; and

(c) The examination provider will collect the examination fee under ORS 696.270 directly from the applicant.

(5) An applicant must pay a separate examination fee for each examination.

(6) If an applicant for a property manager license examination passes the examination but is not issued a license within one year from the date of the examination:

(a) The applicant is no longer qualified for the license on the basis of the examination; and

(b) The applicant must retake and pass the examination as required by this rule.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.020, 696.022 & 696.425

Hist.: REA 7-2008, f. 12-15-08, cert. ef. 1-1-09; REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11

### 863-024-0030

#### License Issue, Term, Form

(1) The Agency will issue a property manager license to an applicant after determining that the applicant meets the license requirements contained in ORS 696.022 and 696.790, has paid all required fees and meets the requirements under OAR 863-024-0045.

(2) A licensee may engage in property management from the date the license is issued until the license expires, becomes inactive, or is revoked, surrendered, or suspended.

(3) A licensee may hold only one of the following Oregon real estate licenses at any time:

(a) Real estate broker;

(b) Principal real estate broker; or

(c) Property manager.

(4) The license expiration date is the last day of the month of a licensee's birth month.

(5) The license term is not more than 24 months plus the number of days between the date the license is issued or renewed and the last day of the month of the licensee's birth month.

(6) The license will include the following information:

(a) The licensee's legal name;

(b) The license number, effective date, and expiration date,

(c) The name under which the licensee conducts real estate business or the registered business name;

(d) The licensee's business address;

(e) The seal of the Real Estate Agency; and

(f) Any other information the Agency deems appropriate.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.020, 696.022 & 696.270

Hist.: REA 7-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10; REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11

### 863-024-0045

#### Property Manager Licensing Requirements

(1) Effective July 1, 2011, to be eligible for a property manager license, an individual must complete the following steps in the order listed:

(a) Submit a license application and pay the fee to the Agency required by OAR 863-024-0010.

(b) Successfully complete the required courses of study for a property manager license required by OAR 863-022-0015.

(c) Ensure that the school providing the required course of study certifies to the examination provider that the applicant completed the course as required by OAR 863-024-0020.

(d) Pass the property manager licensing examination and pay the fee to the examination provider as required by OAR 863-012-0020.

(e) Provide fingerprints for a criminal background check and pay the fee to the fingerprint services provider as required by OAR 863-0014-0015.

(2) After the applicant meets the requirements under (1) of this rule, the Agency will complete a background check on the applicant, which includes a criminal background check under OAR 863-024-0015.

(3) Effective July 1, 2011 to September 14, 2011, after the requirements in (1) and (2) of this rule are met:

(a) The applicant must state that the applicant will be conducting professional real estate activity under the applicant's licensed name or is registering a business name as provided in (5) of this rule; or

(b) The applicant must submit to the Agency the name and address and authorization of a property manager or principal broker with whom the applicant will be associated and the authorization of the property manager or principal broker to use the registered business name.

(4) Effective September 15, 2011, after the requirements in (1) and (2) of this rule are met:

(a) The applicant must state whether the applicant will be conducting professional real estate activity under the applicant's licensed name or is registering a business name as provided in (5) of this rule; or

(b) After the applicant has submitted the following, the Agency will contact the property manager or principal broker for authorization for the applicant to be associated with the property manager or principal broker and to use the registered business name:

(A) The name and address of a property manager or principal broker with whom the applicant will be associated; and

(B) The address of the registered business name.

(5) If an applicant wishes to conduct professional real estate activity under a registered business name registered by the applicant, the applicant must first obtain a property manager license and then register a business name under 863-024-0095.

(6) A real estate property manager may only engage in the management of rental real estate. The licensee may not offer to, negotiate, attempt to, or engage in the sale, purchase, lease-option, appraisal, or exchange of real estate for another individual for compensation. The licensee may not charge, pay, receive, or accept a referral fee, finder's fee, or compensation from or share in a commission paid to a real estate broker for any activity involving the sale, purchase, lease-option, appraisal, or exchange of real estate. However, the licensee may charge, pay, receive, or accept a referral fee or finder's fee from or to a real estate broker or another real estate property manager for finding or referring an owner, renter, or lessee in real estate property management activity.

(7) A real estate property manager is responsible for all property management activity conducted under the property manager's license and for the actions of the property manager's nonlicensed property management employees. A licensed property manager may not authorize an unlicensed individual to supervise that property manager's licensed activity in the manager's absence. Except as provided for in OAR 863-024-0085, a property manager may not authorize another real estate licensee to supervise that property manager's licensed activity in the property manager's absence.

(8) A real estate property manager may be associated with a principal real estate broker to engage in property management activity on behalf of the principal real estate broker and under the supervision of that principal real estate broker. However, a property manager may not act in the broker's absence under OAR 863-024-0085.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 2-2005(Temp), f. 6-9-05, cert. ef. 7-1-05 thru 12-26-05; Administrative correction 1-20-06; Renumbered from 863-015-0045, REA 7-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11

### 863-024-0050

#### License Renewal

(1) Effective July 1, 2011 a licensee may only submit a license renewal application and pay the fee using an online application process, which will be available through the Agency's website.

(2) For purposes of this rule, "received by the Agency" means the date a license renewal is received by the Agency or the postmarked date.

(3) A property manager license expires if a licensee fails to renew the license on or before the license expiration date. A licensee may not engage

# ADMINISTRATIVE RULES

in any professional real estate activity after a license expires. A property manager may renew an expired license as provided in this rule.

(4) The Agency will renew an active property manager license to active status for the term prescribed in OAR 863-024-0030 when the Agency has received the following:

(a) The renewal fee authorized by ORS 696.270; and

(b) An Agency-approved active renewal application form requesting active license status that includes certification by the licensee that the licensee has met the real estate continuing education renewal requirements under section OAR 863-020-0010.

(5) The Agency will renew an active property manager license to inactive status for the term prescribed in OAR 863-024-0030, when the Agency has received the following:

(a) The renewal fee authorized by ORS 696.270; and

(b) An Agency-approved inactive renewal application form.

(6) The Agency will renew an inactive property manager license to inactive status for the term prescribed in OAR 863-024-0030 when the Agency has received the following:

(a) The renewal fee authorized by ORS 696.270; and

(b) An Agency-approved inactive renewal application form.

(7) The Agency will renew an inactive property manager license to active status for the term prescribed in OAR 863-024-0030, when the Agency has received the following:

(a) The renewal fee authorized by ORS 696.270; and

(b) An Agency-approved active renewal application form requesting active license status that includes certification by the licensee that the licensee has met the real estate continuing education renewal requirements under section (3) or (4) of this rule.

(8) The Agency will renew an expired property manager license to active status when the Agency receives, within one year of the date the license expired, the following:

(a) The renewal fee and a late fee authorized by ORS 696.270; and

(b) An Agency-approved active renewal application form that includes certification by the licensee that the licensee met the real estate continuing education renewal requirements under section OAR 863-020-0010.

(9) The Agency will renew an expired property manager license to inactive status when the Agency receives, within one year of the date the license expired, the following:

(a) The renewal fee and a late fee authorized by ORS 696.270; and

(b) An Agency-approved inactive renewal application form.

(10) When the Agency renews an expired license, the renewed license is effective the date the renewal requirements are met. The renewal is not retroactive to the date the license expired, and the expired license retains the status of expired during the expiration period.

(11) A license renewed under this rule expires two years from the date of the original expiration date.

(12) A real estate license that has expired for more than one year is lapsed, as defined in ORS 696.010.

(13) A license may not be renewed if it is lapsed, surrendered, suspended, or revoked. Except as provided in OAR 863-024-0075, the former licensee must reapply and meet all the licensing qualifications required of new license applicants.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.020, 696.022 & 696.270

Hist.: REA 7-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11

## 863-024-0062

### Mailing Address, Email Address, Address Change, Service of Notice

(1) Each active, inactive and expired property manager licensee must maintain on file with the Agency a current mailing address and email and notify the Agency within 10 calendar days of a change of mailing or email address.

(2) A forwarding address is effective as a "current mailing address" when the Agency receives notice of the forwarding address by the United States Postal Service.

(3) Agency notice by mail, whether registered, certified, or regular, to the real estate licensee's current mailing address on file with the Agency constitutes service on the licensee.

(4) The Agency is not required by law to send notification or correspondence by regular mail to a licensee or license applicant regarding license or application status. The Agency may send notification or correspondence to a licensee or license applicant to the email address of the licensee or applicant on file with the Agency. Failure by a licensee or applicant to receive notification or correspondence provided via email does not

relieve the licensee or applicant of the responsibility to maintain a current license or complete an application process.

(5) Effective September 15, 2011, the Agency's primary and preferred method of notification and correspondence is to the licensee or license applicant's email address.

(6) For purposes of this rule, "notification or correspondence" in (4) and (5) of this rule means:

(a) Notification, correspondence or confirmation to licensees about license renewal, change of license status to active or inactive, license transfers, registered business name, branch office registration, license reactivation, license expiration, and name and address changes.

(b) Notification, correspondence or confirmation to license applicants about license application status, receipt of documents or information from third parties on license qualifications, and license issuance.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 7-2008, f. 12-15-08, cert. ef. 1-1-09; REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11

## 863-024-0063

### Property Manager License Transfers, Principal Brokers' Responsibilities, Authority to Use Registered Business Name

(1) As used in this rule:

(a) "Authorized licensee" means a property manager or principal broker who has authority over the use of a registered business name;

(b) "License transfer form" means a completed and signed Agency-approved form that does one of the following:

(A) Transfers a property manager license to a receiving principal broker in order to become associated with the receiving principal broker, or

(B) Authorizes a property manager to use a registered business name to conduct management of rental real estate.

(c) "Sending principal broker" means the principal real estate broker with whom an active property manager license is associated before the license transfer;

(d) "Receiving principal broker" means the principal real estate broker with whom an active property manager license will be associated after the license transfer.

(2) The property manager licensee must provide the following information on a license transfer form:

(a) The name, mailing address, email address and license number of the property manager licensee who is transferring the license or documenting the authorized use of a registered business name;

(b) The current status of the license, whether active or inactive;

(c) If the property manager is associated with a sending principal broker, certification that the property manager provided written notice of the transfer to the sending principal broker, and that such notice was provided before the date the transfer form is submitted to the Agency, including:

(A) The date of personal service of such notice; or

(B) The date a certified letter was delivered by the post office to the sending principal broker's address;

(d) If the form is used to authorize the use of a different registered business name, certification that the property manager licensee provided written notice of such change to the authorized licensee for the current registered business name, and that such notice was provided before the date the license transfer form is submitted to the Agency, including:

(A) The date of personal service of such notice; or

(B) The date a certified letter was delivered to the authorized licensee's address;

(e) If applicable, the receiving principal broker's registered business name, street address, and registered business name identification number;

(f) If applicable, the street address, registered business name identification number, and the registered business name under which the property manager licensee will be authorized to conduct management of rental real estate; and

(g) The receiving broker's or authorized licensee's name, license number, telephone number, date, and signature.

(3) The Agency will transfer the license of an active property manager associated with a sending principal broker to a receiving principal broker when the Agency receives a license transfer form and the transfer fee authorized by ORS 696.270.

(4) The Agency will transfer the license of a property manager to a receiving principal broker when the Agency receives a license transfer form and the transfer fee authorized by ORS 696.270.

(5) The Agency will transfer the license of an inactive property manager licensee, who has been inactive for a period of 30 days or less, to a



# ADMINISTRATIVE RULES

receiving principal broker when the Agency receives a license transfer form and the transfer fee authorized by ORS 696.270.

(6) A principal real estate broker with whom a property manager licensee is associated remains responsible for the licensee's management of rental real estate until the Agency receives one of the following:

(a) An Agency-approved form submitted by the principal real estate broker terminating the relationship with the licensee under OAR 863-024-0065; or

(b) A license transfer form and fee.

(7) If a principal real estate broker with whom a property manager is associated voluntarily gives the license to the property manager named in the license, the principal real estate broker remains responsible for the licensee's subsequent management of rental real estate until the Agency receives one of the following:

(a) An Agency-approved form submitted by the principal real estate broker terminating the relationship with the licensee under OAR 863-024-0065;

(b) An Agency-approved form submitted by the licensee terminating the relationship with the principal real estate broker under OAR 863-024-0065; or

(c) A license transfer form and fee.

(8) The Agency will document the registered business name under which a property manager licensee is authorized to conduct management of rental real estate when the Agency receives a license transfer form and the transfer fee authorized by ORS 696.270.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 7-2008, f. 12-15-08, cert. ef. 1-1-09; REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11

## 863-024-0065

### Inactive License, Change License Status to Active, License Reactivation

(1) A property manager licensee whose license is on inactive status may not engage in management of rental real estate.

(2) The commissioner may reprimand, suspend, revoke, or impose a civil penalty against an inactive licensee under ORS 696.301.

(3) The Agency will change an active property manager license to inactive license status when the Agency actually receives a request by the licensee submitted on an Agency-approved form to change the license status to inactive.

(4) An inactive property manager licensee may renew such license under OAR 863-024-0050.

(5) For a period of 30 days after a property manager license becomes inactive, a property manager may change such license status from inactive to active under OAR 863-024-0063.

(6) If a property manager license has not been on active status for two or more consecutive years, the licensee must complete the following steps in the order listed to reactivate the license:

(a) Submit an application for licensing reactivation examination and pay the fee to the Agency authorized by ORS 696.270; and

(b) Pass the property manager reactivation examination and pay the fee to the examination provider as required by OAR 863-024-0020.

(7) After the 30-day period in section (5) of this rule, and subject to the examination requirements in section (6) of this rule, a property manager may change the license status from inactive to active only by submitting to the Agency:

(a) An application for license reactivation; and

(b) Payment of the reactivation fee authorized by ORS 696.270.

(8) Subject to the examination requirements in section (6) of this rule, if an inactive licensee renews a license and maintains inactive status, the licensee may, within 60 days of the date of renewal, change the license status to active by submitting to the Agency:

(a) An Agency-approved application for license reactivation that includes certification that the licensee met the real estate continuing education renewal requirements under OAR 863-020-0010; and

(b) Payment of the active renewal fee authorized by ORS 696.270, less the amount of the inactive renewal fee already paid by the licensee.

(9) The change of license status, transfer of license, or the reactivation of a license is effective when the Agency actually receives all required forms and fees.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 7-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11

## 863-024-0066

### Licensee Name Change

A licensee may apply for a name change by submitting to the Agency:

(1) A name change application and payment of the fee authorized under ORS 696.270; and

(2) Legal proof of the name change, which must be in the form of an official record such as a marriage certificate, divorce certificate, or a court order/decre.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11

## 863-024-0076

### Signature Requirements

(1) Subject to ORS 84.001 to 84.061, the Agency may, but is not required to, accept any electronic or facsimile signature created, generated, sent, communicated, received, or stored regarding licensing documents including, but not limited to, background check applications, examination applications, license applications, license change forms, and license surrender forms.

(2) The Agency may require an individual to submit an original or electronic signature on any document or Agency-approved form.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 7-2008, f. 12-15-08, cert. ef. 1-1-09; REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11

## 863-024-0095

### Business Name Registration

(1) Before conducting business in a name other than the licensee's legal name, the property manager must register the business name with the Agency. For the purposes of this rule, "business name" means an assumed name or the name of a business entity, such as a corporation, partnership, limited liability company, or other business entity recognized by law. A licensee must maintain the registered business name with the Oregon Secretary of State's Corporation Division.

(2) To register a business name, the property manager must submit to the Agency, on a Agency-approved form, the following:

(a) The business name in which the licensee wishes to conduct business, which must be the exact name on file with the Oregon Secretary of State;

(b) Written authority by which the licensee is authorized to use the business name;

(c) A copy of the registration on file with the Oregon Secretary of State Business Registry, showing the business name is active; and

(d) The fee authorized by ORS 696.270.

(3) A property manager who wishes to use a registered business name must submit to the Agency the following:

(a) The registered business name the licensee wishes to use; and

(b) Authorization from the property manager or principal broker who is responsible for the registered business name on the records of the Agency to use the name.

(4) Business names registered with the Agency do not expire and need not be renewed by the licensee. Any change in the business name registered with the Agency will be treated as the registration of a new business name, and the change in business name must be registered with the Agency together with the fee authorized by ORS 696.270.

(5) If a licensee wishes to transfer the right to use a business name that is registered with the Agency, the licensee acquiring the right to use the name must file a change of business name registration with the Agency together with the fee authorized by ORS 696.270. A licensee must notify the Agency in writing if the licensee terminates its use of a business name.

(6) A business name registration becomes void when the Agency receives notice of termination of the use of a business name. A business name registration becomes void when no licensees are affiliated with the registered business name. A business name registration may be reactivated within one year from the voiding of a registration, unless a new user has registered the business name, without paying the fee set forth in ORS 696.270.

(7) No real estate property manager may engage in professional real estate activities under more than one registered business name. An exception to this requirement is that a real estate property manager may engage in the management of rental real estate under more than one registered business name if the business entity is an affiliated or subsidiary organization as described in OAR 863-024-0061.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.026

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Hist.: REA 7-2008, f. 12-15-08, cert. ef. 1-1-09; REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11

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**Secretary of State,  
Archives Division  
Chapter 166**

**Rule Caption:** Clarifying Agencies adopting or amending rules incorporating published standards by reference.

**Adm. Order No.:** OSA 2-2011(Temp)

**Filed with Sec. of State:** 7-1-2011

**Certified to be Effective:** 7-1-11 thru 12-7-11

**Notice Publication Date:**

**Rules Amended:** 166-500-0040

**Rules Suspended:** 166-500-0040(T)

**Subject:** This rule amendment eliminates a discrepancy found between ORS 183.355 and OAR 166-500-0040(1)(C).

**Rules Coordinator:** Julie Yamaka—(503) 378-5199

## 166-500-0040

### Components of a Permanent Administrative Rule Filing

(1) Permanent Administrative Rule filings have these three components:

(a) Two Certificate and Order for Filing Permanent Administrative Rules forms, including:

(A) One original filing form bearing the original signature of the agency's authorized signer; and

(B) One photocopy of the original filing form.

(b) One 8 1/2 by 11 inch paper copy of the complete and final rule text for each rule listed on the Certificate:

(A) Agencies shall number paper copy pages consecutively and note any special instructions where needed.

(B) Agencies shall include tables, appendices and other specially formatted material in the original paper copy filed with the Administrative Rules Unit. These items may be omitted from print Oregon Administrative Rule publications per ORS 183.360(2)(a).

(C) Agencies adopting or amending rules incorporating published standards by reference may omit copies of the publications per ORS 183.355(1)(b).

(c) A diskette or CD that contains:

(A) The final rule text as described in 166-500-0055;

(B) A Word copy of the Certificate and Order for Filing Administrative Rules; and

(C) PDFs of any tables, appendices or other specially formatted material appearing in the rule text, submitted as described in 166-500-0055(2). These items may be omitted from print publications, but when possible the Administrative Rules Unit will include these items in the on-line Administrative Rules Compilation.

(2) Each Certificate and Order for Filing Permanent Administrative Rules shall be comprised only of administrative rules for which prior notice was published in the Oregon Bulletin. This provision does not apply in the case of rules being renumbered only.

(3) Forms are available from the Administrative Rules Unit or downloadable from the Administrative Rules Unit Web Site at <<http://arcweb.sos.state.or.us/banners/rules.htm>>.

Stat. Auth.: ORS 183.360

Stats. Implemented: ORS 183.325, 183.330, 183.335, 183.355 & 183.360

Hist.: OSA 9-1997(Temp), f. & cert. ef. 10-6-97; [OSA 4-1995, f. 8-15-95, cert. ef. 9-1-95; Suspended by OSA 9-1997(Temp), f. & cert. ef. 10-6-97]; OSA 13-1997, f. & cert. ef. 11-3-97, Renumbered from 166-510-0011; OSA 3-2003, f. & cert. ef. 11-20-03; OSA 2-2007, f. & cert. ef. 7-31-07; OSA 5-2009, f. & cert. ef. 7-1-09; OSA 1-2011(Temp), f. & cert. ef. 6-10-11 thru 12-7-11; OSA 2-2011(Temp), f. & cert. ef. 7-1-11 thru 12-7-11

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**Rule Caption:** Removing reference to additional destruction requirements found in OAR 166-017-0061, which has not yet been adopted.

**Adm. Order No.:** OSA 3-2011(Temp)

**Filed with Sec. of State:** 7-15-2011

**Certified to be Effective:** 7-15-11 thru 1-11-12

**Notice Publication Date:**

**Rules Amended:** 166-030-0060

**Subject:** This rule amendment removes a reference to additional destruction requirements in OAR 166-017-0061, which has not yet

been adopted. It is anticipated that 166-017-0061 will be adopted by the conclusion of the effective dates of this temporary rule change.  
**Rules Coordinator:** Julie Yamaka—(503) 378-5199

## 166-030-0060

### Public Records Disposition and Destruction (State and Local Agencies)

A Special Schedule approved by the State Archivist, or an applicable General Schedule published in OAR Chapter 166, authorizes disposition of public records. Disposition includes:

(1) Transfer to the custody of the State Archivist. When the scheduled retention period specifies transfer to the State Archives, an agency shall transfer its custody of the specified records to the custody of the State Archivist.

(2) Shredding, Pulping, or Incineration. Public Records which are confidential by law and negotiable instruments (even when cancelled or satisfied in writing) must be destroyed by shredding, pulping, or incineration. The destruction should be supervised and witnessed by a responsible employee of the agency. When using a contractor to destroy public records, the state or local agency must require posting of a bond or undertaking by the contractor to indemnify the state or local agency against any claims or actions resulting from his failure to protect the confidentiality of the public records, and must require a provision precluding sale, transfer, or delivery of the public records to a third party prior to data obliteration. The agreement shall also include provisions requiring secure transit to and handling by the contractor; and prompt processing of the public records by the contractor to fully obliterate the data they contain by shredding, pulping, or incineration.

(3) Recycling. Records which are not confidential by law may be sold or traded for recycling of the fiber or chemical they contain, provided that the sale or trade agreement includes provisions to ensure that the public records are promptly converted into a form which precludes use of the information they contain.

(4) Deposit in a Library, Museum, or Historical Society with the permission of the State Archivist. The originals of public records that have been microfilmed in compliance with ORS 192.040 to 192.070 and OAR 166-025, and other public records which have continuing local historical value although destruction is authorized, may be deposited in a Library, Museum, or Historical Society if disclosure of the record is not prohibited by law and the depository agrees to comply with ORS 162.305, 192.420, and 192.430. Agreements for such deposits must stipulate that the depository cannot sell or otherwise dispose of the records except by lawful and complete destruction or by returning them to the depositing agency. Permission of the State Archivist is required prior to transfer of records.

Stat. Auth.: ORS 192 & 357

Stats. Implemented: ORS 192, 357.855 & 357.895

Hist.: OSA 5, f. 12-30-77, ef. 1-1-78; OSA 3-1988, f. & cert. ef. 10-20-88; OSA 3-1996, f. 4-9-96, cert. ef. 4-15-96; OSA 9-2009, f. & cert. ef. 10-15-09; OSA 3-2011(Temp), f. & cert. ef. 7-15-11 thru 1-11-12

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**Secretary of State,  
Elections Division  
Chapter 165**

**Rule Caption:** Amending rules involving contested case hearings.

**Adm. Order No.:** ELECT 10-2011

**Filed with Sec. of State:** 7-12-2011

**Certified to be Effective:** 7-12-11

**Notice Publication Date:** 5-1-2011

**Rules Amended:** 165-001-0015, 165-001-0050

**Subject:** OAR 165-001-0015 is proposed for amendment to remove reference to a political committee being represented by any individual identified as the candidate, treasurer, alternate transaction filer, person designated as the correspondence recipient or director in the most recent statement of organization filed with the filing officer in contested case hearings.

OAR 165-001-0050 is proposed for amendment to clarify and make uniform the rule language.

**Rules Coordinator:** Brenda Bayes—(503) 986-1518

## 165-001-0015

### Notice of Opportunity for Hearing

When the Secretary of State proposes to impose a civil penalty or find a violation of an election law, or both, under ORS 260.232 or 260.995, the

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Secretary of State shall cause a notice to be served by regular mail on the person(s) subject to the penalty. The notice shall include:

(1) A statement of the person's right to a hearing before an Administrative Law Judge with the Office of Administrative Hearings.

(2) A statement that if the person desires a hearing, the agency must be notified within the number of days provided by statute from the date of receiving the notice.

(3) A statement of the authority and jurisdiction under which the hearing is to be held.

(4) A reference to the particular sections of the statutes and rules involved.

(5) A short and plain statement of the matters asserted or charged as a violation.

(6) A statement of the amount of penalty that may be imposed.

(7) A statement that the person may be represented by counsel at the hearing.

(8) If the person is an agency, corporation or an unincorporated association, that such person must be represented by an attorney licensed in Oregon.

(9) A statement that the record of the proceeding to date, including the agency file or 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.

(10) A statement that the person against whom a penalty may be assessed need not appear in person at a hearing held under ORS 260.232 or 260.995, but instead may submit written testimony and other evidence, sworn to before a notary public, to the Secretary of State for entry in the hearing record. Such documents must be received by the Secretary of State not later than three business days prior to the hearing as provided by 260.232(6).

(11) A statement that unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default.

Stat. Auth.: ORS 183.090, 183.470 & 246.150

Stats. Implemented: ORS 183.341, 183.470, 260.232 & 260.995

Hist.: ELECT 15-1988(Temp), f. & cert. ef. 1-27-88; ELECT 26-1988, f. & cert. ef. 8-1-88; ELECT 27-1993, f. & cert. ef. 7-1-93; ELECT 9-1999, f. & cert. ef. 9-29-99; ELECT 7-2003, f. & cert. ef. 9-3-03; ELECT 19-2009, f. & cert. ef. 12-31-09; ELECT 7-2011, f. & cert. ef. 4-8-11; ELECT 10-2011, f. & cert. ef. 7-12-11

## 165-001-0050

### Proposed Orders in Contested Cases, Filing of Exceptions, Argument, and Adoption of Order

(1) The administrative law judge shall prepare a proposed order and serve the proposed order on the agency and each party. The proposed order shall be served not later than 30 calendar days after the hearing is adjourned. The proposed order shall also include information about when and where written exceptions to the proposed order must be filed to be considered by the agency.

(2) If the administrative law judge's proposed order recommended a decision favorable to a party and the agency intends to reject that recommendation and issue an order adverse to that party, the agency shall issue an amended proposed order. When the agency serves an amended proposed order on the party, the agency shall, at the same time notify the party when and where written exceptions for the amended order must be filed to be considered by the agency.

(3) The agency decision maker, after considering any of the written exceptions may adopt the proposed order, amended proposed order or prepare a new order.

Stat. Auth.: ORS 183.090, 183.470, 246.150, 260.232 & 260.995

Stats. Implemented: ORS 183.470, 260.232 & 260.995

Hist.: ELECT 15-1988(Temp), f. & cert. ef. 1-27-88; ELECT 26-1988, f. & cert. ef. 8-1-88; ELECT 7-2003, f. & cert. ef. 9-3-03; ELECT 19-2009, f. & cert. ef. 12-31-09; ELECT 10-2011, f. & cert. ef. 7-12-11

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**Rule Caption:** Updating NVRA Agency designations and compiling and reporting requirements.

**Adm. Order No.:** ELECT 11-2011

**Filed with Sec. of State:** 7-12-2011

**Certified to be Effective:** 7-12-11

**Notice Publication Date:** 5-1-2011

**Rules Amended:** 165-005-0055, 165-005-0065

**Subject:** These rules are proposed for amendment to update the designated NVRA agencies to their correct names, and to provide

clarification to how to counties must track noter registration cards for reporting purposes.

**Rules Coordinator:** Brenda Bayes—(503) 986-1518

## 165-005-0055

### Designating NVRA Voter Registration Agencies

(1) "Voter Registration Agency" means one of the following:

(a) Armed Forces recruitment offices operated by the U.S. Department of Defense;

(b) Commission for the Blind;

(c) Children, Adults and Families Division;

(d) Addictions and Mental Health Division;

(e) Office of Family Health Services WIC;

(f) Seniors and People with Disabilities Division;

(g) Office of Vocational Rehab Services;

(h) Oregon Department of Transportation;

(i) Oregon University System;

(2) "Agency Site" means any voter registration location named by a voter registration agency designated in section (2) of this rule.

(3) "County Elections Official" means the official responsible for voter registration in any county.

(4) Some voter registration agencies are not required under the National Voter Registration Act to be designated as voter registration agencies. A volunteer agency, the following agency is exempt from the requirements of ORS 247.208(2) and (4): Oregon University System.

(5) The Armed Forces recruitment offices, operated by the U.S. Department of Defense, are exempt from reporting statistical information to the Secretary of State and report directly to the Election Assistance Commission.

Stat. Auth.: ORS 246.150 & 247.208

Stats. Implemented: ORS 247.208

Hist.: ELECT 10-1991(Temp), f. & cert. ef. 9-27-91; ELECT 18-1992, f. & cert. ef. 7-1-92; ELECT 25-1994, f. & cert. ef. 10-27-94; ELECT 20-2000, f. & cert. ef. 12-8-00; ELECT 8-2003, f. & cert. ef. 9-3-03; ELECT 11-2011, f. & cert. ef. 7-12-11

## 165-005-0065

### Compiling and Reporting Registrations

(1) The Secretary of State shall print and provide to Voter Registration Agencies a form to use to report the number of voter registration cards sent to the County Elections Official.

(2) At least monthly, on the form or in the manner provided by the Secretary of State, each agency site shall report to the Secretary of State the number of voter registration cards sent to the county elections office since the last report.

(3) County Elections Officials shall record the following voter registration information in the Oregon Centralized Voter Registration System (OCVR) allowing the Secretary of State to compile the information and report to the Election Assistance Commission:

(a) The number of voters registered "active" and the number of voters registered "inactive" at the close of the previous general election;

(b) The number of registrations cancelled between the two most recent federal general elections;

(c) The number of confirmation notices mailed out between the two most recent federal general elections and the number of responses to these notices received during that same period;

(d) The number of valid registrations for people not previously registered to vote in Oregon or who is currently cancelled (New);

(e) The number of registration applications that update an existing registration including the residential address from one county to another (Update); and

(f) The number of registration applications submitted by persons already registered to vote at the same address, under the same name, with the same personal information and the same political party (Duplicate).

(4) New, updated or duplicate registrations shall be recorded in the following categories:

(a) By mail all cards received from individuals that arrive by United States Postal Service;

(b) By other means all cards received from individuals arriving in person or another method, other than by United States Postal Service;

(c) From the Department of Transportation (DMV) — all cards received from DMV offices regardless of how the cards arrive;

(d) From a #3 — agency all cards received from a #3 agency regardless of how the cards arrive. #3 agencies include Addictions and Mental Health Division, Children, Adults & Families Division; and the Office of Family Health Services — WIC;

(e) From a #4 — agency all cards received from a #4 agency regardless of how the cards arrive. #4 agencies include the Commission for the



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Blind; Seniors & People with Disabilities; and the Office of Vocational Rehab Services;

(f) From Armed Forces Recruitment offices — all cards received from Armed Forces offices regardless of how the cards arrive;

(g) From all other designated voter registration agencies — all cards received from the Oregon University System, Secretary of State or other County Elections Office regardless of how the cards arrive; and

(h) Received on a Federal Voting Assistance Program (FVAP) registration application regardless of how the cards arrive.

Stat. Auth.: ORS 246.150, 247.012 & 247.208

Stats. Implemented: ORS 247.208

Hist.: ELECT 10-1991(Temp), f. & cert. ef. 9-27-91; ELECT 18-1992, f. & cert. ef. 7-1-92; ELECT 25-1994, f. & cert. ef. 10-27-94; ELECT 22-2000, f. & cert. ef. 12-8-00; ELECT 11-2011, f. & cert. ef. 7-12-11

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**Rule Caption:** Amendment of the 2010 Campaign Finance Manual.

**Adm. Order No.:** ELECT 12-2011

**Filed with Sec. of State:** 7-12-2011

**Certified to be Effective:** 7-12-11

**Notice Publication Date:** 5-1-2011

**Rules Amended:** 165-012-0005

**Subject:** This proposed amendment revises the *2010 Campaign Finance Manual* by updating the maximum penalty assessed for late filings of contributions received during a legislative session.

**Rules Coordinator:** Brenda Bayes—(503) 986-1518

## 165-012-0005

### Designating the Campaign Finance Manual and Forms; Late Penalty Matrix

(1) Pursuant to ORS 260.156, the Secretary of State designates the 2010 Campaign Finance Manual and associated forms as the procedures and guidelines to be used for compliance with Oregon campaign finance regulations.

(2) The following amendments to the 2010 Campaign Finance Manual will apply to all ORESTAR late and insufficient penalty cases under ORS 260.232. The amendments to this rule with the exception of sections (7) and (9) go into effect upon the adoption of this rule. Sections (7), (9) and (12) apply to late or insufficient cases occurring May 2011 forward.

(3) Pg 64 right column, replace all paragraphs under the heading Late and Insufficient Penalty Cases (ORS 260.232) with the following:

(a) If the Secretary of State determines that a committee is in violation of Oregon election law for a late or insufficient filing, the treasurer, and candidate, if applicable, of the committee is sent a notice of proposed civil penalty (the charging document) that informs them of the potential civil penalty and provides them with an opportunity to request a hearing. This notice is sent by both certified and regular mail to the committee treasurer or, in the case of a candidate committee, by both certified and regular mail to the candidate with a copy by regular mail to the treasurer, and correspondence recipient, if applicable.

(b) Late and insufficient violations will be processed by calendar month. Each case for a given month will include late violations (transactions that are filed late in that particular month) and insufficient violations. (Transactions that are not sufficiently corrected by the exam response due date in that particular month.)

(c) For example, a transaction is due on April 15, 2009. The transaction isn't filed until May 1, 2009. This violation will be part of the May case.

(d) A transaction is identified as insufficient on an exam letter, with a response due date of May 10, 2009. The transactions isn't corrected until May 15, 2009, this violation will also be part of the May case.

(e) If the total calculated penalty for a case is less than \$50, a proposed penalty will not be issued and there will be no violation found.

(f) If a person is not going to contest the proposed penalty, payment may be made payable to the Secretary of State and mailed to the Elections Division prior to the issuance of a default final order or not later than 60 days after the default final order is issued.

(4) Pg 65 left column, replace all language beginning with heading Request for Hearing through the language under the heading Hearing by Telephone located in the right column with the following:

(a) **STEP ONE: RESPONDING TO PROPOSED PENALTY NOTICE.**

(A) When a person receives a proposed penalty notice, they can either pay the penalty, or contest the charges by submitting notarized testimony in lieu of a hearing or requesting an in person or telephone hearing.

(B) To pay the penalty the following must occur:

(i) Payment is made payable to the Secretary of State.

(ii) Payment may be mailed to the Elections Division prior to the issuance of the default final order, at any time after the proposed penalty notice is issued.

(iii) Payment must be received not later than 60 days after the default final order is issued.

(iv) If necessary, the person may contact the Elections Division at 503-986-1518 to discuss payment plan options.

(C) To submit notarized testimony in lieu of an in person or telephone hearing to contest the case the following must occur:

(i) The person must submit a signed Hearing Request Form and an answer to the violations within 20 days of the receipt of the certified mail notice of proposed civil penalty. If the certified letter is refused or left unclaimed at the post office, the 20 day period begins on the day the post office indicates it has given first notice of the certified letter.

(ii) The answer must include an admission or denial of each factual matter alleged in the proposed penalty notice.

(iii) The answer must identify any mitigating circumstance that applies and indicate specifically what facts or transactions the mitigating circumstance applies to.

(iv) If the person has evidence of a mitigating circumstance, or other relevant evidence, this can be submitted with the answer as exhibits.

(v) Except for good cause shown to the administrative law judge, factual matters alleged in the penalty notice and not denied in the answer will be deemed admitted by the party.

(vi) The testimony must be notarized by a licensed Notary Public.

(vii) A worksheet is available on the back of the Hearing Request Form and may be used to complete the answer. Additional copies may be obtained by emailing your request to elec-hearings@sos.state.or.us or by contacting the Elections Division at 503-986-1518.

(viii) The testimony may be mailed to the Elections Division at 255 Capitol St NE, Ste 501, Salem OR 97310 or may be faxed to 503-373-7414.

(D) To request an in person or telephone hearing to contest the case the following must occur:

(i) The person must submit a signed Hearing Request Form and an answer to the violations within 20 days of the receipt of the certified mail notice of proposed civil penalty. If the certified letter is refused or left unclaimed at the post office, the 20 day period begins on the day the post office indicates it has given first notice of a certified letter.

(ii) The person must elect whether or not they want the hearing by telephone or in person on the Hearing Request Form, and sign where indicated.

(iii) The answer must include an admission or denial of each factual matter alleged in the proposed penalty notice.

(iv) The answer must identify any mitigating circumstance that applies and indicate specifically what facts or transactions the mitigating circumstance applies to.

(v) If the person has evidence of a mitigating circumstance, or other relevant evidence, this can be submitted with the answer as exhibits.

(vi) Except for good cause shown to the administrative law judge, factual matters alleged in the penalty notice and not denied in the answer will be deemed admitted by the party.

(b) **STEP TWO: CONTESTED CASE PROCESS** — If a person submits the Hearing Request Form, the hearing will be conducted by an administrative law judge with the Office of Administrative Hearings through one of the following processes:

(A) **NOTARIZED TESTIMONY PROCESS** — If the person has timely submitted the signed Hearing Form designating the submission of notarized testimony, the Elections Division will refer the case and forward the person's notarized testimony to the Office of Administrative Hearings. The following process then applies:

(i) When the Elections Division Submits Testimony — The Elections Division may submit notarized testimony (and any exhibits) to the Office of Administrative Hearings and to the person that filed the notarized testimony. The Elections Division's notarized testimony will be sent via email to the email address provided on the request form. The Secretary of State, Elections Division may mail its notarized testimony to the party's last known address if the party's email address is unknown or does not accept the Secretary of State's email.

(ii) Opportunity for Rebuttal Testimony — The person may, but is not required to, respond to the Elections Division testimony by submitting rebuttal notarized testimony. The rebuttal testimony is limited to issues raised in the person's original testimony and the Elections Division's testimony. The rebuttal testimony must be received not later than five business

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days from the date of service of the Division's testimony (the date the testimony was emailed or mailed). The notarized testimony "hearing" is deemed closed the day after the deadline for the person to submit rebuttal testimony.

(B) **IN PERSON OR TELEPHONE HEARING PROCESS** — If the person has timely submitted the signed Hearing Form designating an in person or telephone hearing, the following process applies:

(i) **Scheduling a Hearing** — The Elections Division will refer the hearing request, including the party's answer and hearing request form, to the Office of Administrative Hearings. The Office of Administrative Hearings will schedule a hearing not later than 45 days after the deadline for requesting a hearing. A 15 day extension may be granted if requested in writing by the person subject to the civil penalty.

(ii) **Submitting Exhibits** — Not less than five business days prior to the commencement of the hearing, each party, including the Elections Division, must deliver copies of the exhibits it intends to offer into evidence at the hearing. Exhibits must be delivered to the Administrative Law Judge, all parties, and the Elections Division. Delivery of the exhibits may be accomplished by any of the following means, or by other means of similar nature: Hand delivery; First class or certified mail; Facsimile; Professional delivery service; or Emailed in a pdf format to elec-hearings@sos.state.or.us. Nothing precludes any party or the Elections Division from seeking to introduce documentary evidence in addition to evidence described above during a telephone or in person hearing. The Administrative Law Judge shall receive such evidence, subject to the applicable rules of evidence, only if inclusion of the evidence in the record is necessary to conduct a full and fair hearing.

(iii) **Conduct of In Person or Telephone Hearing** — If the hearing is in person, it will be conducted at the time scheduled and held in a hearing room at the Office of Administrative Hearings in Salem. If the hearing is by telephone, the parties will call the phone number provided in the Notice of Hearing sent by the Office of Administrative Hearings. The hearing will be presided over by an Administrative Law Judge. The Administrative Law Judge will describe the hearing process at the beginning of each hearing. The parties will then be given the opportunity to give opening statements, present and examine witnesses, and give closing statements.

(iv) **Opportunity to Opt Out of In Person or Telephone Hearing** — If a person requests an in person or telephone hearing and the hearing is scheduled by the Office of Administrative Hearings, then subsequently decides they do not want to appear at the hearing, but still wants to contest the penalty, the person may submit notarized testimony and other evidence for entry into the hearing record before the Administrative Law Judge. The Elections Division must receive the testimony no later than three business days before the day of the scheduled hearing. The Elections Division may submit notarized testimony. The testimony must be received by the Office of Administrative Hearings not later than 5:00 pm on the hearing scheduled date. If the Elections Division does not submit notarized testimony, the Agency file will become a part of the case file and establish the basis for liability. This process is separate and distinct from the Notarized Testimony process discussed above and applies only when a party requests an in person or telephone hearing and later decides not to appear at the hearing and instead provide notarized testimony and evidence.

(c) **STEP THREE: PROPOSED AND FINAL ORDERS.**

(A) **Proposed Order** — After the hearing is closed, the Office of Administrative Hearings sends the treasurer, candidate, and the Elections Division the administrative law judge's proposed order. The administrative law judge's proposed order will provide a deadline to file written exceptions to the proposed order. If the Elections Division chooses to amend the proposed order issued by the administrative law judge, the Elections Division will send an amended proposed order which will provide a deadline to file written exceptions to the amended proposed order.

(B) **Final Order** — After reviewing and considering the written exceptions, the Elections Division will issue a final order no later than 90 days after the hearing is closed. If the order imposes a civil penalty, the party has 60 days to pay the penalty or file an appeal. If necessary, the person may contact the Elections Division at 503-986-1518 to discuss payment plan options.

(d) **Judicial Review of a Final or Default Order** — After the issuance of a final order or default final order, a candidate or treasurer is entitled to judicial review of the order. Judicial review may be obtained by filing a petition for review with the Oregon Court of Appeals within 60 days of the service date of the order.

(5) Page 65 right column, under heading **Mitigating Circumstances**, replace the first paragraph with the following: If an in person, telephone or notarized testimony hearing is requested and testimony is provided regard-

ing the mitigating circumstance that directly caused the late or insufficient filing, the Administrative Law Judge and the Secretary of State may consider reducing in whole or in part, the civil penalty, based on the facts presented by the testimony.

(6) Page 66 right column, delete all language under headings **Final Order** and **Default Final Order**.

(7) Page 67 left column under the heading **Penalties for Late Transactions**, replace the paragraph with: The treasurer responsible for a late filed transaction is the treasurer of record at the time the transaction is due. The liability for the civil penalty remains with the treasurer, and the candidate, if applicable, even if the late transaction is filed by the designated alternate transaction filer.(8) Page 68 left column under the heading **Penalty Matrix Late Filings** should be replaced with the following: Penalties may be assessed for any contribution or expenditure transaction that is filed late or any cash balance adjustment transaction. A transaction is considered late in any of the following circumstances:

(a) A transaction is not filed by the due date for the transaction;

(b) A change is made to the name of the contributor or payee after the transaction due date, resulting in an entirely different contributor or payee being associated with the transaction (the transaction is considered late from the transaction due date to the date the amended transaction changing the contributor or payee is filed);

(c) A change is made to the date of the transaction resulting in a due date that is prior to the date the transaction was originally filed (the transaction is considered late from the date the transaction should have been filed to the date the transaction was originally filed);

(d) A change (increase or decrease) is made to the amount of a previously reported transaction after the transaction due date (the amount of the change is late from the transaction due date to the date the amended transaction changing the amount is filed) no penalty will be imposed for a change in the amount of an expenditure made by an agent transaction;

(e) A previously reported transaction is deleted after the transaction due date (the transaction is considered late from the transaction due date to the date the transaction deletion is filed);

(f) a cash balance adjustment transaction is filed because the committee is unable to reconcile the calculated cash balance based on transactions filed with the Secretary of State with the committee's bank balance; or

(g) The transaction type is amended from any transaction type other than a contribution or expenditure to a contribution or expenditure, and the original transaction was filed after the deadline (the transaction is considered late from the transaction due date to the date the original transaction is filed).

(9) Page 69 under the heading **Maximum Penalties** should be replaced with the following:

(a) The maximum penalty for each late transaction, except for a change in a transaction amount, is 10% of the amount of the transaction. The maximum penalty for a change in a transaction amount is 10% of the change in amount.

(b) The maximum penalty for a late Certificate of Limited Contributions and Expenditures is \$100.

(c) The maximum penalty for each cash balance adjustment is 10% of the amount of the transaction.

(d) The maximum penalty for a late Statement of Independent Expenditures (form PC 10) is 10% of the total amount reported on form PC 10.

(10) Page 71 right column under the heading **Penalties** should be replaced with the following:

(a) for all missing or insufficient items, other than those listed below: **\$10 per item;**

(b) failure to provide the terms of a loan: **1% of the loan.**

(c) Omitted or insufficient information submitted after the amendment deadline but prior to the deadline for a candidate or treasurer to request a hearing will result in a 50% per item reduction of the penalty, if the information is deemed sufficient. If a public hearing is requested, the omitted or insufficient information may be submitted up to the date of the hearing and if deemed sufficient will result in a 50% per item reduction of the penalty.

(11) Amend all references in the 2010 Campaign Finance Manual regarding the requirement for a candidate to file a candidate committee from \$350 to \$750, including Pages 13, 41, 59 and form SEL 220, Statement of Organization for Candidate Committee.

(12) Page 70 under the heading **Maximum Penalties** should be replaced with the following: The maximum penalty for each late transaction, except for a change in a transaction amount, is 10% of the amount of

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the transaction. The maximum penalty for a change in a transaction amount is 10% of the change in amount.

[Publications: Publications and Forms referenced are available from the agency.]

Stat. Auth.: ORS 246.120, 246.150, 260.156 & 260.200

Stats. Implemented: ORS 246.120, 246.150, 260.156 & 260.200

Hist.: SD 101, f. & ef. 12-3-75; SD 120, f. & ef. 12-21-77; SD 34-1980, f. & ef. 3-6-80; SD 28-1983, f. & ef. 12-20-83; SD 3-1986, f. & ef. 2-26-86; ELECT 32-1988(Temp), f. & cert. ef. 8-26-88; ELECT 22-1989(Temp), f. & cert. ef. 11-9-89; ELECT 19-1990, f. & cert. ef. 6-4-90; ELECT 14-1992 (Temp), f. & cert. ef. 6-10-92; ELECT 37-1992, f. & cert. ef. 12-15-92; ELECT 34-1993, f. & cert. ef. 11-1-93; ELECT 1-1995(Temp), f. & cert. ef. 2-23-95; ELECT 15-1995, f. & cert. ef. 12-18-95; ELECT 9-1996, f. & cert. ef. 7-26-96; ELECT 5-1997, f. & cert. ef. 3-24-97; ELECT 6-1997(Temp), f. & cert. ef. 4-18-97; ELECT 15-1997, f. & cert. ef. 12-31-97; ELECT 5-1998, f. & cert. ef. 2-26-98; ELECT 8-1998, f. & cert. ef. 6-2-98; ELECT 9-1998, f. & cert. ef. 9-11-98; ELECT 13-1998(Temp), f. & cert. ef. 12-15-98 thru 6-13-99; ELECT 2-1999(Temp), f. & cert. ef. 1-15-99 thru 7-14-99; ELECT 3-1999, f. & cert. ef. 3-1-99; ELECT 1-2000, f. & cert. ef. 1-3-00; ELECT 3-2002, f. & cert. ef. 3-13-02; ELECT 23-2003, f. & cert. ef. 12-12-03; ELECT 13-2005, f. & cert. ef. 12-30-05; ELECT 1-2007, f. & cert. ef. 1-5-07; ELECT 2-2007(Temp), f. & cert. ef. 5-2-07 thru 10-29-07; ELECT 4-2007(Temp), f. & cert. ef. 7-16-07 thru 12-31-07; ELECT 13-2007, f. & cert. ef. 12-31-07; ELECT 8-2009, f. & cert. ef. 5-4-09; ELECT 16-2009, f. & cert. ef. 7-30-09; ELECT 27-2009, f. & cert. ef. 12-31-09; ELECT 3-2010, f. & cert. ef. 4-22-10; ELECT 8-2011, f. & cert. ef. 4-8-11; ELECT 12-2011, f. & cert. ef. 7-12-11



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111-005-0020	5-3-2011	Amend	6-1-2011	111-050-0001(T)	2-11-2011	Repeal	3-1-2011
111-005-0040	12-13-2010	Amend(T)	1-1-2011	111-050-0010	2-11-2011	Amend	3-1-2011
111-005-0040	5-3-2011	Amend	6-1-2011	111-050-0010(T)	2-11-2011	Repeal	3-1-2011
111-005-0042	12-13-2010	Amend(T)	1-1-2011	111-050-0015	2-11-2011	Amend	3-1-2011
111-005-0042	5-3-2011	Amend	6-1-2011	111-050-0015(T)	2-11-2011	Repeal	3-1-2011
111-005-0044	12-13-2010	Amend(T)	1-1-2011	111-050-0016	2-11-2011	Amend	3-1-2011
111-005-0044	5-3-2011	Amend	6-1-2011	111-050-0016(T)	2-11-2011	Repeal	3-1-2011
111-005-0046	12-13-2010	Amend(T)	1-1-2011	111-050-0020	2-11-2011	Amend	3-1-2011
111-005-0046	5-3-2011	Amend	6-1-2011	111-050-0020(T)	2-11-2011	Repeal	3-1-2011
111-005-0047	12-13-2010	Adopt(T)	1-1-2011	111-050-0025	2-11-2011	Amend	3-1-2011
111-005-0047	5-3-2011	Adopt	6-1-2011	111-050-0025(T)	2-11-2011	Repeal	3-1-2011
111-005-0050	12-13-2010	Amend(T)	1-1-2011	111-050-0030	2-11-2011	Amend	3-1-2011
111-005-0050	5-3-2011	Amend	6-1-2011	111-050-0030(T)	2-11-2011	Repeal	3-1-2011
111-005-0055	12-13-2010	Adopt(T)	1-1-2011	111-050-0035	2-11-2011	Amend	3-1-2011
111-005-0055	5-3-2011	Adopt	6-1-2011	111-050-0035(T)	2-11-2011	Repeal	3-1-2011
111-005-0060	12-13-2010	Suspend	1-1-2011	111-050-0045	2-11-2011	Amend	3-1-2011
111-005-0060	5-3-2011	Repeal	6-1-2011	111-050-0045(T)	2-11-2011	Repeal	3-1-2011
111-005-0070	5-3-2011	Repeal	6-1-2011	111-050-0050	2-11-2011	Amend	3-1-2011

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111-050-0050(T)	2-11-2011	Repeal	3-1-2011	123-155-0000	1-3-2011	Am. & Ren.	2-1-2011
111-050-0060	2-11-2011	Amend	3-1-2011	123-155-0100	1-3-2011	Am. & Ren.	2-1-2011
111-050-0060(T)	2-11-2011	Repeal	3-1-2011	123-155-0150	1-3-2011	Am. & Ren.	2-1-2011
111-050-0065	2-11-2011	Amend	3-1-2011	123-155-0175	1-3-2011	Am. & Ren.	2-1-2011
111-050-0065(T)	2-11-2011	Repeal	3-1-2011	123-155-0200	1-3-2011	Am. & Ren.	2-1-2011
111-050-0070	2-11-2011	Amend	3-1-2011	123-155-0250	1-3-2011	Am. & Ren.	2-1-2011
111-050-0070(T)	2-11-2011	Repeal	3-1-2011	123-155-0270	1-3-2011	Am. & Ren.	2-1-2011
111-050-0075	2-11-2011	Amend	3-1-2011	123-155-0300	1-3-2011	Am. & Ren.	2-1-2011
111-050-0075(T)	2-11-2011	Repeal	3-1-2011	123-155-0350	1-3-2011	Am. & Ren.	2-1-2011
111-050-0080	2-11-2011	Amend	3-1-2011	123-155-0400	1-3-2011	Am. & Ren.	2-1-2011
111-050-0080(T)	2-11-2011	Repeal	3-1-2011	123-450-0000	1-3-2011	Adopt	2-1-2011
111-070-0030	2-11-2011	Amend	3-1-2011	123-635-0050	1-3-2011	Repeal	2-1-2011
111-070-0030(T)	2-11-2011	Repeal	3-1-2011	125-700-0012	6-30-2011	Repeal	8-1-2011
111-070-0040	2-11-2011	Amend	3-1-2011	125-700-0015	6-30-2011	Amend	8-1-2011
111-070-0040(T)	2-11-2011	Repeal	3-1-2011	125-700-0020	6-30-2011	Repeal	8-1-2011
111-080-0040	12-10-2010	Adopt	1-1-2011	125-700-0025	6-30-2011	Repeal	8-1-2011
111-080-0040	2-15-2011	Amend(T)	3-1-2011	125-700-0030	6-30-2011	Repeal	8-1-2011
111-080-0040	6-22-2011	Amend	8-1-2011	125-700-0035	6-30-2011	Repeal	8-1-2011
111-080-0040(T)	6-22-2011	Repeal	8-1-2011	125-700-0040	6-30-2011	Repeal	8-1-2011
111-080-0045	12-10-2010	Adopt	1-1-2011	125-700-0045	6-30-2011	Repeal	8-1-2011
111-080-0045	2-15-2011	Amend(T)	3-1-2011	125-700-0050	6-30-2011	Repeal	8-1-2011
111-080-0045	6-22-2011	Amend	8-1-2011	125-700-0055	6-30-2011	Repeal	8-1-2011
111-080-0045(T)	6-22-2011	Repeal	8-1-2011	125-700-0060	6-30-2011	Repeal	8-1-2011
111-080-0050	12-10-2010	Adopt	1-1-2011	125-700-0120	6-30-2011	Adopt	8-1-2011
111-080-0050	2-15-2011	Amend(T)	3-1-2011	125-700-0125	6-30-2011	Adopt	8-1-2011
111-080-0050	6-22-2011	Amend	8-1-2011	125-700-0130	6-30-2011	Adopt	8-1-2011
111-080-0050(T)	6-22-2011	Repeal	8-1-2011	125-700-0135	6-30-2011	Adopt	8-1-2011
115-035-0000	7-1-2011	Amend(T)	8-1-2011	125-700-0140	6-30-2011	Adopt	8-1-2011
115-035-0035	7-1-2011	Amend(T)	8-1-2011	125-700-0145	6-30-2011	Adopt	8-1-2011
115-035-0045	7-1-2011	Amend(T)	8-1-2011	125-700-0150	6-30-2011	Adopt	8-1-2011
115-040-0005	7-1-2011	Amend(T)	8-1-2011	125-700-0155	6-30-2011	Adopt	8-1-2011
115-070-0000	7-1-2011	Amend(T)	8-1-2011	137-020-0150	1-1-2011	Amend	2-1-2011
115-070-0035	7-1-2011	Amend(T)	8-1-2011	137-020-0160	1-1-2011	Amend	2-1-2011
115-070-0050	7-1-2011	Amend(T)	8-1-2011	137-050-0700	1-4-2011	Amend	2-1-2011
115-080-0010	7-1-2011	Amend(T)	8-1-2011	137-050-0700(T)	1-4-2011	Repeal	2-1-2011
123-001-0700	12-1-2010	Amend	1-1-2011	137-050-0745	1-26-2011	Amend(T)	3-1-2011
123-001-0725	12-1-2010	Amend	1-1-2011	137-050-0745	7-1-2011	Amend	8-1-2011
123-001-0750	12-1-2010	Amend	1-1-2011	137-050-0745(T)	7-1-2011	Repeal	8-1-2011
123-042-0010	12-1-2010	Amend	1-1-2011	137-055-1020	3-31-2011	Amend(T)	5-1-2011
123-042-0020	12-1-2010	Amend	1-1-2011	137-055-1020	7-1-2011	Amend	8-1-2011
123-042-0026	12-1-2010	Amend	1-1-2011	137-055-1020(T)	7-1-2011	Repeal	8-1-2011
123-042-0036	12-1-2010	Amend	1-1-2011	137-055-1090	3-31-2011	Amend(T)	5-1-2011
123-042-0038	12-1-2010	Amend	1-1-2011	137-055-1090	7-1-2011	Amend	8-1-2011
123-042-0045	12-1-2010	Amend	1-1-2011	137-055-1090(T)	7-1-2011	Repeal	8-1-2011
123-042-0055	12-1-2010	Amend	1-1-2011	137-055-1120	3-31-2011	Amend(T)	5-1-2011
123-042-0065	12-1-2010	Amend	1-1-2011	137-055-1120	7-1-2011	Amend	8-1-2011
123-042-0076	12-1-2010	Amend	1-1-2011	137-055-1120(T)	7-1-2011	Repeal	8-1-2011
123-042-0122	12-1-2010	Amend	1-1-2011	137-055-1145	3-31-2011	Amend(T)	5-1-2011
123-042-0132	12-1-2010	Amend	1-1-2011	137-055-1145	7-1-2011	Amend	8-1-2011
123-042-0155	12-1-2010	Amend	1-1-2011	137-055-1145(T)	7-1-2011	Repeal	8-1-2011
123-042-0165	12-1-2010	Amend	1-1-2011	137-055-3220	3-31-2011	Amend(T)	5-1-2011
123-042-0175	12-1-2010	Amend	1-1-2011	137-055-3220	7-1-2011	Amend	8-1-2011
123-042-0180	12-1-2010	Amend	1-1-2011	137-055-3220(T)	7-1-2011	Repeal	8-1-2011
123-042-0190	12-1-2010	Amend	1-1-2011	137-055-3240	3-31-2011	Amend(T)	5-1-2011
123-043-0025	12-1-2010	Amend	1-1-2011	137-055-3240	7-1-2011	Amend	8-1-2011
123-090-0050	7-1-2011	Amend	8-1-2011	137-055-3240(T)	7-1-2011	Repeal	8-1-2011

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137-055-3400	3-31-2011	Amend(T)	5-1-2011	137-055-7140	7-1-2011	Amend	8-1-2011
137-055-3400	7-1-2011	Amend	8-1-2011	137-055-7140(T)	7-1-2011	Repeal	8-1-2011
137-055-3400(T)	7-1-2011	Repeal	8-1-2011	137-055-7160	3-31-2011	Amend(T)	5-1-2011
137-055-3420	3-31-2011	Amend(T)	5-1-2011	137-055-7160	7-1-2011	Amend	8-1-2011
137-055-3420	7-1-2011	Amend	8-1-2011	137-055-7160(T)	7-1-2011	Repeal	8-1-2011
137-055-3420(T)	7-1-2011	Repeal	8-1-2011	137-055-7180	3-31-2011	Amend(T)	5-1-2011
137-055-3430	12-27-2010	Amend	2-1-2011	137-055-7180	7-1-2011	Amend	8-1-2011
137-055-3430(T)	12-27-2010	Repeal	2-1-2011	137-055-7180(T)	7-1-2011	Repeal	8-1-2011
137-055-4040	3-31-2011	Amend(T)	5-1-2011	137-055-7190	3-31-2011	Amend(T)	5-1-2011
137-055-4040	7-1-2011	Amend	8-1-2011	137-055-7190	7-1-2011	Amend	8-1-2011
137-055-4040(T)	7-1-2011	Repeal	8-1-2011	137-055-7190(T)	7-1-2011	Repeal	8-1-2011
137-055-4060	7-1-2011	Amend	8-1-2011	137-078-0000	12-1-2010	Amend	1-1-2011
137-055-4080	7-1-2011	Amend(T)	8-1-2011	137-078-0000(T)	12-1-2010	Repeal	1-1-2011
137-055-4100	7-1-2011	Repeal	8-1-2011	137-078-0005	12-1-2010	Amend	1-1-2011
137-055-4110	7-1-2011	Repeal	8-1-2011	137-078-0005(T)	12-1-2010	Repeal	1-1-2011
137-055-4120	7-1-2011	Repeal	8-1-2011	137-078-0010	12-1-2010	Amend	1-1-2011
137-055-4180	7-1-2011	Repeal	8-1-2011	137-078-0010(T)	12-1-2010	Repeal	1-1-2011
137-055-4455	3-31-2011	Amend(T)	5-1-2011	137-078-0015	12-1-2010	Amend	1-1-2011
137-055-4455	7-1-2011	Amend	8-1-2011	137-078-0015(T)	12-1-2010	Repeal	1-1-2011
137-055-4455(T)	7-1-2011	Repeal	8-1-2011	137-078-0020	12-1-2010	Amend	1-1-2011
137-055-4540	3-31-2011	Amend(T)	5-1-2011	137-078-0020(T)	12-1-2010	Repeal	1-1-2011
137-055-4540	7-1-2011	Amend	8-1-2011	137-078-0025	12-1-2010	Amend	1-1-2011
137-055-4540(T)	7-1-2011	Repeal	8-1-2011	137-078-0025(T)	12-1-2010	Repeal	1-1-2011
137-055-5020	7-1-2011	Repeal	8-1-2011	137-078-0030	12-1-2010	Amend	1-1-2011
137-055-5060	7-1-2011	Amend	8-1-2011	137-078-0030(T)	12-1-2010	Repeal	1-1-2011
137-055-5080	3-31-2011	Amend(T)	5-1-2011	137-078-0035	12-1-2010	Amend	1-1-2011
137-055-5080	7-1-2011	Amend	8-1-2011	137-078-0035(T)	12-1-2010	Repeal	1-1-2011
137-055-5080(T)	7-1-2011	Repeal	8-1-2011	137-078-0040	12-1-2010	Amend	1-1-2011
137-055-5220	3-31-2011	Amend(T)	5-1-2011	137-078-0040(T)	12-1-2010	Repeal	1-1-2011
137-055-5220	7-1-2011	Amend	8-1-2011	137-078-0041	12-1-2010	Adopt	1-1-2011
137-055-5220(T)	7-1-2011	Repeal	8-1-2011	137-078-0041(T)	12-1-2010	Repeal	1-1-2011
137-055-5240	3-31-2011	Amend(T)	5-1-2011	137-078-0045	12-1-2010	Amend	1-1-2011
137-055-5240	7-1-2011	Amend	8-1-2011	137-078-0045(T)	12-1-2010	Repeal	1-1-2011
137-055-5240(T)	7-1-2011	Repeal	8-1-2011	137-078-0050	12-1-2010	Amend	1-1-2011
137-055-6023	7-1-2011	Amend	8-1-2011	137-078-0050(T)	12-1-2010	Repeal	1-1-2011
137-055-6120	3-31-2011	Amend(T)	5-1-2011	137-078-0051	12-1-2010	Adopt	1-1-2011
137-055-6120	7-1-2011	Amend	8-1-2011	137-078-0051(T)	12-1-2010	Repeal	1-1-2011
137-055-6120(T)	7-1-2011	Repeal	8-1-2011	137-082-0210	4-1-2011	Amend	5-1-2011
137-055-7020	3-31-2011	Amend(T)	5-1-2011	137-082-0220	4-1-2011	Amend	5-1-2011
137-055-7020	7-1-2011	Amend	8-1-2011	137-082-0230	4-1-2011	Amend	5-1-2011
137-055-7020(T)	7-1-2011	Repeal	8-1-2011	137-082-0240	4-1-2011	Amend	5-1-2011
137-055-7040	3-31-2011	Amend(T)	5-1-2011	137-082-0250	4-1-2011	Amend	5-1-2011
137-055-7040	7-1-2011	Amend	8-1-2011	137-082-0260	4-1-2011	Amend	5-1-2011
137-055-7040(T)	7-1-2011	Repeal	8-1-2011	137-082-0270	4-1-2011	Amend	5-1-2011
137-055-7060	3-31-2011	Amend(T)	5-1-2011	137-082-0280	4-1-2011	Amend	5-1-2011
137-055-7060	7-1-2011	Amend	8-1-2011	137-083-0000	4-1-2011	Amend	5-1-2011
137-055-7060(T)	7-1-2011	Repeal	8-1-2011	137-083-0010	4-1-2011	Amend	5-1-2011
137-055-7080	3-31-2011	Suspend	5-1-2011	137-083-0020	4-1-2011	Amend	5-1-2011
137-055-7080	7-1-2011	Repeal	8-1-2011	137-083-0040	4-1-2011	Amend	5-1-2011
137-055-7100	3-31-2011	Amend(T)	5-1-2011	137-083-0050	4-1-2011	Amend	5-1-2011
137-055-7100	7-1-2011	Amend	8-1-2011	141-040-0211	1-1-2011	Amend	1-1-2011
137-055-7100(T)	7-1-2011	Repeal	8-1-2011	141-040-0212	1-1-2011	Amend	1-1-2011
137-055-7120	3-31-2011	Amend(T)	5-1-2011	141-040-0213	1-1-2011	Amend	1-1-2011
137-055-7120	7-1-2011	Amend	8-1-2011	141-040-0214	1-1-2011	Amend	1-1-2011
137-055-7120(T)	7-1-2011	Repeal	8-1-2011	141-040-0220	1-1-2011	Amend	1-1-2011
137-055-7140	3-31-2011	Amend(T)	5-1-2011	141-085-0506	3-1-2011	Amend	4-1-2011





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141-089-0635	3-1-2011	Adopt	4-1-2011	141-093-0150	3-1-2011	Adopt	4-1-2011
141-089-0640	3-1-2011	Adopt	4-1-2011	141-093-0151	3-1-2011	Adopt	4-1-2011
141-089-0645	3-1-2011	Adopt	4-1-2011	141-093-0155	3-1-2011	Adopt	4-1-2011
141-089-0650	3-1-2011	Adopt	4-1-2011	141-093-0160	3-1-2011	Adopt	4-1-2011
141-089-0655	3-1-2011	Adopt	4-1-2011	141-093-0165	3-1-2011	Adopt	4-1-2011
141-089-0656	3-1-2011	Adopt	4-1-2011	141-093-0170	3-1-2011	Adopt	4-1-2011
141-089-0660	3-1-2011	Adopt	4-1-2011	141-093-0175	3-1-2011	Adopt	4-1-2011
141-089-0665	3-1-2011	Adopt	4-1-2011	141-100-0000	3-1-2011	Am. & Ren.	4-1-2011
141-089-0670	3-1-2011	Adopt	4-1-2011	141-100-0010	3-1-2011	Amend	4-1-2011
141-089-0675	3-1-2011	Adopt	4-1-2011	141-100-0020	3-1-2011	Amend	4-1-2011
141-089-0680	3-1-2011	Adopt	4-1-2011	141-100-0030	3-1-2011	Amend	4-1-2011
141-089-0685	3-1-2011	Adopt	4-1-2011	141-100-0035	3-1-2011	Adopt	4-1-2011
141-089-0690	3-1-2011	Adopt	4-1-2011	141-100-0040	3-1-2011	Amend	4-1-2011
141-089-0695	3-1-2011	Adopt	4-1-2011	141-100-0050	3-1-2011	Am. & Ren.	4-1-2011
141-089-0700	3-1-2011	Adopt	4-1-2011	141-100-0052	3-1-2011	Adopt	4-1-2011
141-089-0705	3-1-2011	Adopt	4-1-2011	141-100-0055	3-1-2011	Amend	4-1-2011
141-089-0710	3-1-2011	Adopt	4-1-2011	141-100-0060	3-1-2011	Amend	4-1-2011
141-089-0715	3-1-2011	Adopt	4-1-2011	141-100-0070	3-1-2011	Amend	4-1-2011
141-089-0720	3-1-2011	Adopt	4-1-2011	141-100-0080	3-1-2011	Amend	4-1-2011
141-089-0725	3-1-2011	Adopt	4-1-2011	141-100-0090	3-1-2011	Amend	4-1-2011
141-089-0730	3-1-2011	Adopt	4-1-2011	150-280.075	1-1-2011	Amend	2-1-2011
141-089-0735	3-1-2011	Adopt	4-1-2011	150-293.525(1)(b)	1-1-2011	Amend	2-1-2011
141-089-0740	3-1-2011	Adopt	4-1-2011	150-294.175(2)-(B)	1-1-2011	Amend	2-1-2011
141-089-0745	3-1-2011	Adopt	4-1-2011	150-307.126	1-1-2011	Adopt	2-1-2011
141-089-0750	3-1-2011	Adopt	4-1-2011	150-311.160	1-1-2011	Repeal	2-1-2011
141-089-0755	3-1-2011	Adopt	4-1-2011	150-314.402(1)	1-1-2011	Amend	2-1-2011
141-089-0760	3-1-2011	Adopt	4-1-2011	150-314.665(2)-(A)	12-1-2010	Amend(T)	1-1-2011
141-089-0765	3-1-2011	Adopt	4-1-2011	150-314.665(2)-(A)	3-21-2011	Amend	5-1-2011
141-089-0770	3-1-2011	Adopt	4-1-2011	150-314.665(2)-(A) (Temp)	3-21-2011	Repeal	5-1-2011
141-089-0775	3-1-2011	Adopt	4-1-2011	150-314.665(2)-(C)	12-1-2010	Suspend	1-1-2011
141-089-0780	3-1-2011	Adopt	4-1-2011	150-314.665(2)-(C)	3-21-2011	Adopt	5-1-2011
141-089-0785	3-1-2011	Adopt	4-1-2011	150-314.665(2)-(C) (Temp)	3-21-2011	Repeal	5-1-2011
141-089-0790	3-1-2011	Adopt	4-1-2011	150-314.760	1-1-2011	Repeal	2-1-2011
141-089-0795	3-1-2011	Adopt	4-1-2011	150-315.354	12-17-2010	Amend(T)	2-1-2011
141-089-0800	3-1-2011	Adopt	4-1-2011	150-316.587(8)-(A)	1-1-2011	Amend	2-1-2011
141-089-0805	3-1-2011	Adopt	4-1-2011	150-316.OL2010.CH66	1-1-2011	Adopt	2-1-2011
141-089-0810	3-1-2011	Adopt	4-1-2011	150-323.500(9)	1-1-2011	Amend	2-1-2011
141-089-0815	3-1-2011	Adopt	4-1-2011	150-323.500(9) (T)	1-1-2011	Repeal	2-1-2011
141-089-0820	3-1-2011	Adopt	4-1-2011	150-465.101(5)-(B)	1-1-2011	Adopt	2-1-2011
141-089-0825	3-1-2011	Adopt	4-1-2011	150-465.101(5)-(B) (T)	1-1-2011	Repeal	2-1-2011
141-089-0830	3-1-2011	Adopt	4-1-2011	161-006-0025	7-1-2011	Amend(T)	6-1-2011
141-089-0835	3-1-2011	Adopt	4-1-2011	162-001-0010	1-27-2011	Repeal	3-1-2011
141-093-0100	3-1-2011	Adopt	4-1-2011	162-010-0030	1-27-2011	Amend	3-1-2011
141-093-0103	3-1-2011	Adopt	4-1-2011	162-011-0000	1-27-2011	Repeal	3-1-2011
141-093-0104	3-1-2011	Adopt	4-1-2011	162-011-0010	1-27-2011	Repeal	3-1-2011
141-093-0105	3-1-2011	Adopt	4-1-2011	162-011-0020	1-27-2011	Repeal	3-1-2011
141-093-0107	3-1-2011	Adopt	4-1-2011	162-011-0030	1-27-2011	Repeal	3-1-2011
141-093-0110	3-1-2011	Adopt	4-1-2011	162-011-0040	1-27-2011	Repeal	3-1-2011
141-093-0115	3-1-2011	Adopt	4-1-2011	162-012-0000	1-27-2011	Repeal	3-1-2011
141-093-0120	3-1-2011	Adopt	4-1-2011	162-012-0010	1-27-2011	Repeal	3-1-2011
141-093-0125	3-1-2011	Adopt	4-1-2011	162-012-0020	1-27-2011	Repeal	3-1-2011
141-093-0130	3-1-2011	Adopt	4-1-2011	162-012-0030	1-27-2011	Repeal	3-1-2011
141-093-0135	3-1-2011	Adopt	4-1-2011	162-012-0040	1-27-2011	Repeal	3-1-2011
141-093-0140	3-1-2011	Adopt	4-1-2011	162-012-0050	1-27-2011	Repeal	3-1-2011
141-093-0141	3-1-2011	Adopt	4-1-2011	162-013-0000	1-27-2011	Repeal	3-1-2011

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162-013-0010	1-27-2011	Repeal	3-1-2011	165-010-0005	2-4-2011	Amend	3-1-2011
162-013-0020	1-27-2011	Repeal	3-1-2011	165-012-0005	4-8-2011	Amend	5-1-2011
162-013-0030	1-27-2011	Repeal	3-1-2011	165-012-0005	7-12-2011	Amend	8-1-2011
162-013-0040	1-27-2011	Repeal	3-1-2011	165-013-0010	4-8-2011	Amend	5-1-2011
162-013-0050	1-27-2011	Repeal	3-1-2011	165-020-0005	2-4-2011	Amend	3-1-2011
162-013-0060	1-27-2011	Repeal	3-1-2011	165-020-2027	2-11-2011	Adopt(T)	3-1-2011
162-014-0000	1-27-2011	Repeal	3-1-2011	165-020-2028	2-18-2011	Adopt(T)	4-1-2011
162-014-0010	1-27-2011	Repeal	3-1-2011	165-020-2029	2-18-2011	Adopt(T)	4-1-2011
162-014-0020	1-27-2011	Repeal	3-1-2011	165-020-2030	2-22-2011	Adopt(T)	4-1-2011
162-014-0030	1-27-2011	Repeal	3-1-2011	165-020-2031	3-8-2011	Adopt(T)	4-1-2011
162-014-0040	1-27-2011	Repeal	3-1-2011	166-030-0060	7-15-2011	Amend(T)	8-1-2011
162-014-0050	1-27-2011	Repeal	3-1-2011	166-500-0040	6-10-2011	Amend(T)	7-1-2011
162-014-0060	1-27-2011	Repeal	3-1-2011	166-500-0040	7-1-2011	Amend(T)	8-1-2011
162-014-0070	1-27-2011	Repeal	3-1-2011	166-500-0040(T)	7-1-2011	Suspend	8-1-2011
162-014-0080	1-27-2011	Repeal	3-1-2011	170-061-0015	2-28-2011	Amend	4-1-2011
162-014-0090	1-27-2011	Repeal	3-1-2011	170-062-0000	12-1-2010	Amend(T)	1-1-2011
162-014-0100	1-27-2011	Repeal	3-1-2011	170-062-0000	4-1-2011	Amend	5-1-2011
162-014-0110	1-27-2011	Repeal	3-1-2011	170-062-0000(T)	4-1-2011	Repeal	5-1-2011
162-014-0120	1-27-2011	Repeal	3-1-2011	172-001-0005	1-10-2011	Amend	2-1-2011
162-014-0130	1-27-2011	Repeal	3-1-2011	172-005-0000	1-10-2011	Amend	2-1-2011
162-014-0140	1-27-2011	Repeal	3-1-2011	172-005-0010	1-10-2011	Amend	2-1-2011
162-014-0150	1-27-2011	Repeal	3-1-2011	172-005-0020	1-10-2011	Amend	2-1-2011
162-014-0160	1-27-2011	Repeal	3-1-2011	172-005-0030	1-10-2011	Amend	2-1-2011
162-014-0170	1-27-2011	Repeal	3-1-2011	172-005-0040	1-10-2011	Amend	2-1-2011
162-014-0180	1-27-2011	Repeal	3-1-2011	172-005-0050	1-10-2011	Amend	2-1-2011
162-014-0190	1-27-2011	Repeal	3-1-2011	172-005-0060	1-10-2011	Amend	2-1-2011
162-014-0200	1-27-2011	Repeal	3-1-2011	172-005-0065	1-10-2011	Adopt	2-1-2011
162-014-0210	1-27-2011	Repeal	3-1-2011	172-005-0070	1-10-2011	Amend	2-1-2011
162-014-0220	1-27-2011	Repeal	3-1-2011	177-040-0000	1-1-2011	Amend	2-1-2011
162-014-0230	1-27-2011	Repeal	3-1-2011	177-040-0001	1-1-2011	Amend	2-1-2011
162-014-0240	1-27-2011	Repeal	3-1-2011	177-040-0003	1-1-2011	Amend	2-1-2011
162-015-0000	1-27-2011	Repeal	3-1-2011	177-040-0005	5-1-2011	Amend	6-1-2011
162-015-0010	1-27-2011	Repeal	3-1-2011	177-040-0024	1-1-2011	Adopt	2-1-2011
162-015-0020	1-27-2011	Repeal	3-1-2011	177-040-0070	1-1-2011	Amend	2-1-2011
162-015-0030	1-27-2011	Repeal	3-1-2011	177-045-0000	5-1-2011	Amend	6-1-2011
162-015-0040	1-27-2011	Repeal	3-1-2011	177-045-0010	5-1-2011	Amend	6-1-2011
162-015-0050	1-27-2011	Repeal	3-1-2011	177-085-0065	12-12-2010	Amend	1-1-2011
162-015-0060	1-27-2011	Repeal	3-1-2011	177-094-0080	12-1-2010	Amend	1-1-2011
162-015-0070	1-27-2011	Repeal	3-1-2011	177-098-0010	12-12-2010	Amend	1-1-2011
162-015-0080	1-27-2011	Repeal	3-1-2011	177-098-0040	12-12-2010	Amend	1-1-2011
162-015-0090	1-27-2011	Repeal	3-1-2011	177-098-0060	12-12-2010	Amend	1-1-2011
162-015-0100	1-27-2011	Repeal	3-1-2011	177-098-0110	12-12-2010	Amend	1-1-2011
162-015-0110	1-27-2011	Repeal	3-1-2011	177-099-0100	3-1-2011	Adopt	4-1-2011
162-015-0120	1-27-2011	Repeal	3-1-2011	190-001-0000	12-1-2010	Repeal	1-1-2011
162-015-0130	1-27-2011	Repeal	3-1-2011	190-001-0005	12-1-2010	Repeal	1-1-2011
162-016-0000	1-27-2011	Repeal	3-1-2011	190-010-0000	1-3-2011	Repeal	2-1-2011
165-001-0009	4-8-2011	Adopt	5-1-2011	190-010-0005	1-3-2011	Repeal	2-1-2011
165-001-0015	4-8-2011	Amend	5-1-2011	190-010-0010	1-3-2011	Repeal	2-1-2011
165-001-0015	7-12-2011	Amend	8-1-2011	190-010-0015	1-3-2011	Repeal	2-1-2011
165-001-0016	4-8-2011	Adopt	5-1-2011	190-010-0020	1-3-2011	Repeal	2-1-2011
165-001-0034	4-8-2011	Adopt	5-1-2011	190-010-0025	1-3-2011	Repeal	2-1-2011
165-001-0036	4-8-2011	Adopt	5-1-2011	190-010-0030	1-3-2011	Repeal	2-1-2011
165-001-0040	4-8-2011	Amend	5-1-2011	190-010-0035	1-3-2011	Am. & Ren.	2-1-2011
165-001-0050	7-12-2011	Amend	8-1-2011	190-010-0040	1-3-2011	Repeal	2-1-2011
165-005-0055	7-12-2011	Amend	8-1-2011	213-013-0010	1-1-2012	Amend	1-1-2011
165-005-0065	7-12-2011	Amend	8-1-2011	213-017-0006	12-26-2010	Amend	1-1-2011



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213-017-0006(T)	12-26-2010	Repeal	1-1-2011	257-010-0055(T)	2-28-2011	Repeal	3-1-2011
213-070-0000	1-1-2011	Adopt	1-1-2011	257-050-0200	3-8-2011	Amend	4-1-2011
213-070-0005	1-1-2011	Adopt	1-1-2011	259-008-0010	6-28-2011	Amend	8-1-2011
213-070-0010	1-1-2011	Adopt	1-1-2011	259-008-0011	12-23-2010	Amend	2-1-2011
213-070-0020	1-1-2011	Adopt	1-1-2011	259-008-0011	6-28-2011	Amend	8-1-2011
213-070-0030	1-1-2011	Adopt	1-1-2011	259-008-0011(T)	12-23-2010	Repeal	2-1-2011
213-070-0040	1-1-2011	Adopt	1-1-2011	259-008-0025	5-1-2011	Amend	5-1-2011
213-070-0050	1-1-2011	Adopt	1-1-2011	259-008-0060	6-24-2011	Amend	8-1-2011
250-010-0430	2-1-2011	Amend	2-1-2011	259-008-0070	7-1-2011	Amend	8-1-2011
250-010-0450	2-1-2011	Amend	2-1-2011	259-008-0072	6-30-2011	Repeal	8-1-2011
250-010-0650	2-1-2011	Amend	2-1-2011	259-009-0005	5-1-2011	Amend	5-1-2011
250-020-0151	1-3-2011	Amend(T)	2-1-2011	259-009-0062	5-1-2011	Amend	5-1-2011
250-020-0151	5-2-2011	Amend	6-1-2011	259-009-0070	4-1-2011	Amend	4-1-2011
250-020-0151(T)	5-2-2011	Repeal	6-1-2011	259-009-0070	7-1-2011	Amend	8-1-2011
250-020-0221	4-8-2011	Amend(T)	5-1-2011	259-009-0072	6-30-2011	Repeal	8-1-2011
250-020-0221	7-1-2011	Amend(T)	8-1-2011	259-020-0030	6-23-2011	Amend	8-1-2011
250-020-0241	5-2-2011	Amend	6-1-2011	259-020-0031	6-13-2011	Amend(T)	7-1-2011
250-020-0280	5-25-2011	Amend	4-1-2011	259-025-0000	6-1-2011	Amend	6-1-2011
250-020-0280	6-1-2011	Amend	6-1-2011	259-060-0305	6-30-2011	Repeal	8-1-2011
250-020-0280	6-15-2011	Amend(T)	6-1-2011	259-060-0500	7-1-2011	Amend(T)	7-1-2011
250-021-0040	1-3-2011	Amend(T)	2-1-2011	274-031-0001	3-24-2011	Adopt	5-1-2011
250-021-0040	5-2-2011	Amend	6-1-2011	274-031-0002	3-24-2011	Adopt	5-1-2011
250-021-0040(T)	5-2-2011	Repeal	6-1-2011	274-031-0003	3-24-2011	Adopt	5-1-2011
255-001-0005	1-11-2011	Amend	2-1-2011	274-031-0004	3-24-2011	Adopt	5-1-2011
255-001-0010	1-11-2011	Amend	2-1-2011	274-031-0005	3-24-2011	Adopt	5-1-2011
255-001-0016	1-11-2011	Amend	2-1-2011	274-031-0006	3-24-2011	Adopt	5-1-2011
255-005-0005	12-1-2010	Amend	1-1-2011	274-031-0007	3-24-2011	Adopt	5-1-2011
255-005-0005(T)	12-1-2010	Repeal	1-1-2011	274-031-0008	3-24-2011	Adopt	5-1-2011
255-015-0015	12-1-2010	Amend	1-1-2011	274-031-0009	3-24-2011	Adopt	5-1-2011
255-020-0005	3-4-2011	Amend	4-1-2011	291-006-0005	3-1-2011	Amend	4-1-2011
255-020-0015	3-4-2011	Amend	4-1-2011	291-006-0011	3-1-2011	Adopt	4-1-2011
255-030-0027	12-1-2010	Amend	1-1-2011	291-006-0012	3-1-2011	Adopt	4-1-2011
255-030-0027(T)	12-1-2010	Repeal	1-1-2011	291-006-0015	3-1-2011	Amend	4-1-2011
255-032-0036	5-26-2011	Adopt(T)	7-1-2011	291-006-0020	3-1-2011	Repeal	4-1-2011
255-036-0005	6-23-2011	Amend	8-1-2011	291-006-0025	3-1-2011	Repeal	4-1-2011
255-036-0010	6-23-2011	Amend	8-1-2011	291-006-0031	3-1-2011	Adopt	4-1-2011
255-036-0020	6-23-2011	Amend	8-1-2011	291-006-0035	3-1-2011	Adopt	4-1-2011
255-036-0025	6-23-2011	Amend	8-1-2011	291-006-0040	3-1-2011	Adopt	4-1-2011
255-036-0030	6-23-2011	Amend	8-1-2011	291-006-0045	3-1-2011	Adopt	4-1-2011
255-060-0018	1-11-2011	Adopt	2-1-2011	291-015-0100	11-19-2010	Amend	1-1-2011
255-080-0001	12-1-2010	Amend	1-1-2011	291-015-0100(T)	11-19-2010	Repeal	1-1-2011
255-080-0005	12-1-2010	Amend	1-1-2011	291-015-0105	11-19-2010	Amend	1-1-2011
255-080-0008	12-1-2010	Adopt	1-1-2011	291-015-0105(T)	11-19-2010	Repeal	1-1-2011
255-080-0008	12-1-2010	Amend	1-1-2011	291-015-0110	11-19-2010	Amend	1-1-2011
255-080-0011	12-1-2010	Amend	1-1-2011	291-015-0110(T)	11-19-2010	Repeal	1-1-2011
257-010-0015	2-28-2011	Amend	3-1-2011	291-015-0115	11-19-2010	Amend	1-1-2011
257-010-0015(T)	2-28-2011	Repeal	3-1-2011	291-015-0115(T)	11-19-2010	Repeal	1-1-2011
257-010-0020	2-28-2011	Amend	3-1-2011	291-015-0120	11-19-2010	Amend	1-1-2011
257-010-0020(T)	2-28-2011	Repeal	3-1-2011	291-015-0120(T)	11-19-2010	Repeal	1-1-2011
257-010-0025	2-28-2011	Amend	3-1-2011	291-015-0125	11-19-2010	Amend	1-1-2011
257-010-0025(T)	2-28-2011	Repeal	3-1-2011	291-015-0125(T)	11-19-2010	Repeal	1-1-2011
257-010-0045	2-28-2011	Amend	3-1-2011	291-015-0130	11-19-2010	Repeal	1-1-2011
257-010-0045(T)	2-28-2011	Repeal	3-1-2011	291-015-0135	11-19-2010	Amend	1-1-2011
257-010-0050	2-28-2011	Amend	3-1-2011	291-015-0135(T)	11-19-2010	Repeal	1-1-2011
257-010-0050(T)	2-28-2011	Repeal	3-1-2011	291-015-0140	11-19-2010	Repeal	1-1-2011
257-010-0055	2-28-2011	Amend	3-1-2011	291-015-0145	11-19-2010	Repeal	1-1-2011

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291-019-0047	7-15-2011	Repeal	8-1-2011	291-048-0190	12-13-2010	Am. & Ren.(T)	1-1-2011
291-019-0110	7-15-2011	Amend	8-1-2011	291-048-0190	4-1-2011	Am. & Ren.	5-1-2011
291-019-0130	7-15-2011	Amend	8-1-2011	291-048-0190(T)	4-1-2011	Repeal	5-1-2011
291-019-0150	7-15-2011	Amend	8-1-2011	291-048-0230	12-13-2010	Adopt(T)	1-1-2011
291-024-0005	5-31-2011	Amend(T)	7-1-2011	291-048-0230	4-1-2011	Adopt	5-1-2011
291-024-0010	5-31-2011	Amend(T)	7-1-2011	291-048-0230(T)	4-1-2011	Repeal	5-1-2011
291-024-0015	5-31-2011	Amend(T)	7-1-2011	291-048-0240	12-13-2010	Adopt(T)	1-1-2011
291-024-0016	5-31-2011	Amend(T)	7-1-2011	291-048-0240	4-1-2011	Adopt	5-1-2011
291-024-0020	5-31-2011	Amend(T)	7-1-2011	291-048-0240(T)	4-1-2011	Repeal	5-1-2011
291-024-0025	5-31-2011	Amend(T)	7-1-2011	291-048-0270	12-13-2010	Adopt(T)	1-1-2011
291-024-0055	5-31-2011	Amend(T)	7-1-2011	291-048-0270	4-1-2011	Adopt	5-1-2011
291-024-0060	5-31-2011	Amend(T)	7-1-2011	291-048-0270(T)	4-1-2011	Repeal	5-1-2011
291-024-0066	5-31-2011	Amend(T)	7-1-2011	291-048-0280	12-13-2010	Adopt(T)	1-1-2011
291-024-0071	5-31-2011	Amend(T)	7-1-2011	291-048-0280	4-1-2011	Adopt	5-1-2011
291-024-0080	5-31-2011	Amend(T)	7-1-2011	291-048-0280(T)	4-1-2011	Repeal	5-1-2011
291-027-0020	5-2-2011	Amend	6-1-2011	291-048-0320	12-13-2010	Adopt(T)	1-1-2011
291-027-0030	5-2-2011	Amend	6-1-2011	291-048-0320	4-1-2011	Adopt	5-1-2011
291-027-0040	5-2-2011	Amend	6-1-2011	291-048-0320(T)	4-1-2011	Repeal	5-1-2011
291-027-0050	5-2-2011	Amend	6-1-2011	291-063-0010	12-1-2010	Amend(T)	1-1-2011
291-027-0055	5-2-2011	Adopt	6-1-2011	291-063-0010	6-2-2011	Amend	7-1-2011
291-027-0060	5-2-2011	Repeal	6-1-2011	291-063-0010(T)	6-2-2011	Repeal	7-1-2011
291-027-0065	5-2-2011	Adopt	6-1-2011	291-063-0016	12-1-2010	Amend(T)	1-1-2011
291-027-0070	5-2-2011	Amend	6-1-2011	291-063-0016	6-2-2011	Amend	7-1-2011
291-027-0080	5-2-2011	Amend	6-1-2011	291-063-0016(T)	6-2-2011	Repeal	7-1-2011
291-035-0005	7-15-2011	Amend	8-1-2011	291-063-0030	12-1-2010	Amend(T)	1-1-2011
291-035-0010	7-15-2011	Amend	8-1-2011	291-063-0030	6-2-2011	Amend	7-1-2011
291-035-0011	7-15-2011	Adopt	8-1-2011	291-063-0030(T)	6-2-2011	Repeal	7-1-2011
291-035-0015	7-15-2011	Amend	8-1-2011	291-097-0010	4-8-2011	Amend	5-1-2011
291-048-0100	12-13-2010	Am. & Ren.(T)	1-1-2011	291-097-0010(T)	4-8-2011	Repeal	5-1-2011
291-048-0100	4-1-2011	Am. & Ren.	5-1-2011	291-097-0020	4-8-2011	Amend	5-1-2011
291-048-0100(T)	4-1-2011	Repeal	5-1-2011	291-097-0020(T)	4-8-2011	Repeal	5-1-2011
291-048-0110	12-13-2010	Am. & Ren.(T)	1-1-2011	291-097-0025	4-8-2011	Amend	5-1-2011
291-048-0110	4-1-2011	Am. & Ren.	5-1-2011	291-097-0025(T)	4-8-2011	Repeal	5-1-2011
291-048-0110(T)	4-1-2011	Repeal	5-1-2011	291-097-0031	4-8-2011	Adopt	5-1-2011
291-048-0115	12-13-2010	Am. & Ren.(T)	1-1-2011	291-097-0040	4-8-2011	Amend	5-1-2011
291-048-0115	4-1-2011	Am. & Ren.	5-1-2011	291-097-0040(T)	4-8-2011	Repeal	5-1-2011
291-048-0115(T)	4-1-2011	Repeal	5-1-2011	291-097-0050	4-8-2011	Amend	5-1-2011
291-048-0120	12-13-2010	Suspend	1-1-2011	291-097-0050(T)	4-8-2011	Repeal	5-1-2011
291-048-0120	4-1-2011	Repeal	5-1-2011	291-105-0005	6-10-2011	Amend(T)	7-1-2011
291-048-0130	12-13-2010	Am. & Ren.(T)	1-1-2011	291-105-0100	6-10-2011	Amend(T)	7-1-2011
291-048-0130	4-1-2011	Am. & Ren.	5-1-2011	291-109-0100	3-1-2011	Amend	4-1-2011
291-048-0130(T)	4-1-2011	Repeal	5-1-2011	291-109-0110	3-1-2011	Amend	4-1-2011
291-048-0140	12-13-2010	Am. & Ren.(T)	1-1-2011	291-109-0120	3-1-2011	Amend	4-1-2011
291-048-0140	4-1-2011	Am. & Ren.	5-1-2011	291-109-0125	3-1-2011	Adopt	4-1-2011
291-048-0140(T)	4-1-2011	Repeal	5-1-2011	291-109-0140	3-1-2011	Amend	4-1-2011
291-048-0150	12-13-2010	Am. & Ren.(T)	1-1-2011	291-109-0150	3-1-2011	Amend	4-1-2011
291-048-0150	4-1-2011	Am. & Ren.	5-1-2011	291-109-0160	3-1-2011	Amend	4-1-2011
291-048-0150(T)	4-1-2011	Repeal	5-1-2011	291-109-0170	3-1-2011	Amend	4-1-2011
291-048-0160	12-13-2010	Am. & Ren.(T)	1-1-2011	291-109-0180	3-1-2011	Amend	4-1-2011
291-048-0160	4-1-2011	Am. & Ren.	5-1-2011	291-109-0190	3-1-2011	Amend	4-1-2011
291-048-0160(T)	4-1-2011	Repeal	5-1-2011	291-124-0005	11-19-2010	Amend	1-1-2011
291-048-0170	12-13-2010	Am. & Ren.(T)	1-1-2011	291-124-0010	11-19-2010	Amend	1-1-2011
291-048-0170	4-1-2011	Am. & Ren.	5-1-2011	291-124-0015	11-19-2010	Repeal	1-1-2011
291-048-0170(T)	4-1-2011	Repeal	5-1-2011	291-124-0016	11-19-2010	Adopt	1-1-2011
291-048-0180	12-13-2010	Suspend	1-1-2011	291-124-0017	11-19-2010	Adopt	1-1-2011

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291-124-0020	11-19-2010	Amend	1-1-2011	291-180-0435	3-4-2011	Suspend	4-1-2011
291-124-0025	11-19-2010	Repeal	1-1-2011	291-180-0445	3-4-2011	Suspend	4-1-2011
291-124-0030	11-19-2010	Amend	1-1-2011	291-180-0455	3-4-2011	Suspend	4-1-2011
291-124-0035	11-19-2010	Amend	1-1-2011	291-180-0465	3-4-2011	Suspend	4-1-2011
291-124-0041	11-19-2010	Amend	1-1-2011	291-180-0475	3-4-2011	Suspend	4-1-2011
291-124-0055	11-19-2010	Amend	1-1-2011	291-180-0485	3-4-2011	Suspend	4-1-2011
291-124-0060	11-19-2010	Amend	1-1-2011	291-180-0495	3-4-2011	Suspend	4-1-2011
291-124-0065	11-19-2010	Amend	1-1-2011	291-180-0505	3-4-2011	Suspend	4-1-2011
291-124-0070	11-19-2010	Amend	1-1-2011	291-180-0515	3-4-2011	Suspend	4-1-2011
291-124-0075	11-19-2010	Amend	1-1-2011	291-180-0525	3-4-2011	Suspend	4-1-2011
291-124-0080	11-19-2010	Amend	1-1-2011	291-180-0535	3-4-2011	Suspend	4-1-2011
291-124-0085	11-19-2010	Amend	1-1-2011	291-180-0545	3-4-2011	Suspend	4-1-2011
291-124-0090	11-19-2010	Adopt	1-1-2011	291-180-0555	3-4-2011	Suspend	4-1-2011
291-124-0095	11-19-2010	Repeal	1-1-2011	291-180-0565	3-4-2011	Suspend	4-1-2011
291-124-1000	6-16-2011	Adopt(T)	8-1-2011	291-180-0575	3-4-2011	Suspend	4-1-2011
291-124-1010	6-16-2011	Adopt(T)	8-1-2011	291-180-0585	3-4-2011	Suspend	4-1-2011
291-124-1020	6-16-2011	Adopt(T)	8-1-2011	291-180-0595	3-4-2011	Suspend	4-1-2011
291-124-1030	6-16-2011	Adopt(T)	8-1-2011	291-180-0605	3-4-2011	Suspend	4-1-2011
291-124-1040	6-16-2011	Adopt(T)	8-1-2011	291-180-0615	3-4-2011	Suspend	4-1-2011
291-124-1050	6-16-2011	Adopt(T)	8-1-2011	291-180-0625	3-4-2011	Suspend	4-1-2011
291-131-0020	4-1-2011	Amend(T)	4-1-2011	291-180-0635	3-4-2011	Suspend	4-1-2011
291-131-0025	4-1-2011	Amend(T)	4-1-2011	291-180-0645	3-4-2011	Suspend	4-1-2011
291-131-0035	4-1-2011	Amend(T)	4-1-2011	291-180-0655	3-4-2011	Suspend	4-1-2011
291-131-0037	4-1-2011	Amend(T)	4-1-2011	291-180-0665	3-4-2011	Suspend	4-1-2011
291-180-0115	3-4-2011	Suspend	4-1-2011	291-202-0020	1-28-2011	Amend	3-1-2011
291-180-0125	3-4-2011	Suspend	4-1-2011	291-202-0100	1-28-2011	Adopt	3-1-2011
291-180-0135	3-4-2011	Suspend	4-1-2011	291-202-0110	1-28-2011	Adopt	3-1-2011
291-180-0145	3-4-2011	Suspend	4-1-2011	291-202-0120	1-28-2011	Adopt	3-1-2011
291-180-0155	3-4-2011	Suspend	4-1-2011	291-202-0130	1-28-2011	Adopt	3-1-2011
291-180-0165	3-4-2011	Suspend	4-1-2011	309-034-0150	2-4-2011	Repeal	3-1-2011
291-180-0175	3-4-2011	Suspend	4-1-2011	309-034-0160	2-4-2011	Repeal	3-1-2011
291-180-0185	3-4-2011	Suspend	4-1-2011	309-034-0170	2-4-2011	Repeal	3-1-2011
291-180-0195	3-4-2011	Suspend	4-1-2011	309-034-0180	2-4-2011	Repeal	3-1-2011
291-180-0205	3-4-2011	Suspend	4-1-2011	309-034-0190	2-4-2011	Repeal	3-1-2011
291-180-0215	3-4-2011	Suspend	4-1-2011	309-034-0205	2-4-2011	Repeal	3-1-2011
291-180-0225	3-4-2011	Suspend	4-1-2011	309-034-0210	2-4-2011	Repeal	3-1-2011
291-180-0235	3-4-2011	Suspend	4-1-2011	309-034-0240	2-4-2011	Repeal	3-1-2011
291-180-0245	3-4-2011	Suspend	4-1-2011	309-034-0250	2-4-2011	Repeal	3-1-2011
291-180-0251	3-4-2011	Adopt(T)	4-1-2011	309-034-0260	2-4-2011	Repeal	3-1-2011
291-180-0255	3-4-2011	Suspend	4-1-2011	309-034-0270	2-4-2011	Repeal	3-1-2011
291-180-0261	3-4-2011	Adopt(T)	4-1-2011	309-034-0290	2-4-2011	Repeal	3-1-2011
291-180-0285	3-4-2011	Suspend	4-1-2011	309-034-0310	2-4-2011	Repeal	3-1-2011
291-180-0295	3-4-2011	Suspend	4-1-2011	309-034-0320	2-4-2011	Repeal	3-1-2011
291-180-0305	3-4-2011	Suspend	4-1-2011	309-034-0400	2-4-2011	Amend	3-1-2011
291-180-0315	3-4-2011	Suspend	4-1-2011	309-034-0410	2-4-2011	Amend	3-1-2011
291-180-0325	3-4-2011	Suspend	4-1-2011	309-034-0420	2-4-2011	Amend	3-1-2011
291-180-0335	3-4-2011	Suspend	4-1-2011	309-034-0430	2-4-2011	Amend	3-1-2011
291-180-0345	3-4-2011	Suspend	4-1-2011	309-034-0440	2-4-2011	Amend	3-1-2011
291-180-0355	3-4-2011	Suspend	4-1-2011	309-034-0450	2-4-2011	Amend	3-1-2011
291-180-0365	3-4-2011	Suspend	4-1-2011	309-034-0460	2-4-2011	Amend	3-1-2011
291-180-0375	3-4-2011	Suspend	4-1-2011	309-034-0470	2-4-2011	Amend	3-1-2011
291-180-0385	3-4-2011	Suspend	4-1-2011	309-034-0480	2-4-2011	Amend	3-1-2011
291-180-0395	3-4-2011	Suspend	4-1-2011	309-034-0490	2-4-2011	Amend	3-1-2011
291-180-0405	3-4-2011	Suspend	4-1-2011	309-034-0500	2-4-2011	Adopt	3-1-2011
291-180-0415	3-4-2011	Suspend	4-1-2011	309-041-0200	2-1-2011	Repeal	3-1-2011
291-180-0425	3-4-2011	Suspend	4-1-2011	309-041-0205	2-1-2011	Repeal	3-1-2011



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309-041-0215	2-1-2011	Repeal	3-1-2011	309-043-0195	2-1-2011	Repeal	3-1-2011
309-041-0220	2-1-2011	Repeal	3-1-2011	309-043-0200	2-1-2011	Repeal	3-1-2011
309-041-0225	2-1-2011	Repeal	3-1-2011	309-049-0000	2-1-2011	Renumber	3-1-2011
309-041-0230	2-1-2011	Repeal	3-1-2011	309-049-0005	2-1-2011	Renumber	3-1-2011
309-041-0235	2-1-2011	Repeal	3-1-2011	309-049-0010	2-1-2011	Renumber	3-1-2011
309-041-0240	2-1-2011	Repeal	3-1-2011	309-049-0015	2-1-2011	Renumber	3-1-2011
309-041-0245	2-1-2011	Repeal	3-1-2011	309-049-0020	2-1-2011	Renumber	3-1-2011
309-041-0250	2-1-2011	Repeal	3-1-2011	309-100-0100	1-7-2011	Adopt(T)	2-1-2011
309-041-0255	2-1-2011	Repeal	3-1-2011	309-100-0110	1-7-2011	Adopt(T)	2-1-2011
309-041-1300	2-1-2011	Renumber	3-1-2011	309-100-0120	1-7-2011	Adopt(T)	2-1-2011
309-041-1310	2-1-2011	Renumber	3-1-2011	309-100-0130	1-7-2011	Adopt(T)	2-1-2011
309-041-1320	2-1-2011	Renumber	3-1-2011	309-100-0140	1-7-2011	Adopt(T)	2-1-2011
309-041-1330	2-1-2011	Renumber	3-1-2011	309-100-0150	1-7-2011	Adopt(T)	2-1-2011
309-041-1340	2-1-2011	Renumber	3-1-2011	309-102-0000	1-7-2011	Suspend	2-1-2011
309-041-1350	2-1-2011	Renumber	3-1-2011	309-102-0005	1-7-2011	Suspend	2-1-2011
309-041-1360	2-1-2011	Renumber	3-1-2011	309-102-0010	1-7-2011	Suspend	2-1-2011
309-041-1370	2-1-2011	Renumber	3-1-2011	309-102-0015	1-7-2011	Suspend	2-1-2011
309-043-0000	2-1-2011	Repeal	3-1-2011	309-102-0020	1-7-2011	Suspend	2-1-2011
309-043-0005	2-1-2011	Repeal	3-1-2011	309-102-0025	1-7-2011	Suspend	2-1-2011
309-043-0010	2-1-2011	Repeal	3-1-2011	309-114-0005	11-19-2010	Amend(T)	1-1-2011
309-043-0015	2-1-2011	Repeal	3-1-2011	309-114-0005	5-19-2011	Amend	7-1-2011
309-043-0020	2-1-2011	Repeal	3-1-2011	309-114-0020	11-19-2010	Amend(T)	1-1-2011
309-043-0025	2-1-2011	Repeal	3-1-2011	309-114-0020	5-19-2011	Amend	7-1-2011
309-043-0030	2-1-2011	Repeal	3-1-2011	309-114-0030	11-19-2010	Amend(T)	1-1-2011
309-043-0035	2-1-2011	Repeal	3-1-2011	309-114-0040	11-19-2010	Adopt(T)	1-1-2011
309-043-0040	2-1-2011	Repeal	3-1-2011	309-114-0050	11-19-2010	Adopt(T)	1-1-2011
309-043-0045	2-1-2011	Repeal	3-1-2011	309-114-0060	11-19-2010	Adopt(T)	1-1-2011
309-043-0050	2-1-2011	Repeal	3-1-2011	309-114-0070	11-19-2010	Adopt(T)	1-1-2011
309-043-0055	2-1-2011	Repeal	3-1-2011	325-005-0015	7-1-2011	Amend	8-1-2011
309-043-0060	2-1-2011	Repeal	3-1-2011	330-070-0010	12-22-2010	Amend	2-1-2011
309-043-0065	2-1-2011	Repeal	3-1-2011	330-070-0010(T)	12-22-2010	Repeal	2-1-2011
309-043-0070	2-1-2011	Repeal	3-1-2011	330-070-0013	12-22-2010	Amend	2-1-2011
309-043-0075	2-1-2011	Repeal	3-1-2011	330-070-0013(T)	12-22-2010	Repeal	2-1-2011
309-043-0080	2-1-2011	Repeal	3-1-2011	330-070-0014	12-22-2010	Amend	2-1-2011
309-043-0085	2-1-2011	Repeal	3-1-2011	330-070-0019	12-22-2010	Adopt	2-1-2011
309-043-0090	2-1-2011	Repeal	3-1-2011	330-070-0019(T)	12-22-2010	Repeal	2-1-2011
309-043-0095	2-1-2011	Repeal	3-1-2011	330-070-0020	12-22-2010	Amend	2-1-2011
309-043-0100	2-1-2011	Repeal	3-1-2011	330-070-0021	12-22-2010	Amend	2-1-2011
309-043-0105	2-1-2011	Repeal	3-1-2011	330-070-0022	12-22-2010	Amend	2-1-2011
309-043-0110	2-1-2011	Repeal	3-1-2011	330-070-0022(T)	12-22-2010	Repeal	2-1-2011
309-043-0115	2-1-2011	Repeal	3-1-2011	330-070-0024	12-22-2010	Amend	2-1-2011
309-043-0120	2-1-2011	Repeal	3-1-2011	330-070-0025	12-22-2010	Amend	2-1-2011
309-043-0125	2-1-2011	Repeal	3-1-2011	330-070-0026	12-22-2010	Amend	2-1-2011
309-043-0130	2-1-2011	Repeal	3-1-2011	330-070-0027	12-22-2010	Amend	2-1-2011
309-043-0135	2-1-2011	Repeal	3-1-2011	330-070-0045	12-22-2010	Amend	2-1-2011
309-043-0140	2-1-2011	Repeal	3-1-2011	330-070-0055	12-22-2010	Amend	2-1-2011
309-043-0145	2-1-2011	Repeal	3-1-2011	330-070-0059	12-22-2010	Amend	2-1-2011
309-043-0150	2-1-2011	Repeal	3-1-2011	330-070-0060	12-22-2010	Amend	2-1-2011
309-043-0155	2-1-2011	Repeal	3-1-2011	330-070-0062	12-22-2010	Amend	2-1-2011
309-043-0160	2-1-2011	Repeal	3-1-2011	330-070-0063	12-22-2010	Amend	2-1-2011
309-043-0165	2-1-2011	Repeal	3-1-2011	330-070-0064	12-22-2010	Amend	2-1-2011
309-043-0170	2-1-2011	Repeal	3-1-2011	330-070-0070	12-22-2010	Amend	2-1-2011
309-043-0175	2-1-2011	Repeal	3-1-2011	330-070-0073	12-22-2010	Amend	2-1-2011
309-043-0180	2-1-2011	Repeal	3-1-2011	330-070-0089	12-22-2010	Amend	2-1-2011
309-043-0185	2-1-2011	Repeal	3-1-2011	330-070-0091	12-22-2010	Amend	2-1-2011

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330-09-0140	4-18-2011	Amend(T)	5-1-2011	330-130-0100	6-27-2011	Amend	8-1-2011
330-090-0105	11-23-2010	Amend	1-1-2011	330-160-0015	2-22-2011	Amend	4-1-2011
330-090-0105(T)	11-23-2010	Repeal	1-1-2011	330-160-0015	3-4-2011	Amend	4-1-2011
330-090-0110	11-23-2010	Amend	1-1-2011	330-160-0015(T)	2-22-2011	Repeal	4-1-2011
330-090-0110	4-18-2011	Amend(T)	5-1-2011	330-160-0020	3-4-2011	Amend	4-1-2011
330-090-0110(T)	11-23-2010	Repeal	1-1-2011	330-160-0025	3-4-2011	Amend	4-1-2011
330-090-0120	11-23-2010	Amend	1-1-2011	330-160-0030	3-4-2011	Amend	4-1-2011
330-090-0120(T)	11-23-2010	Repeal	1-1-2011	330-160-0040	2-22-2011	Adopt	4-1-2011
330-090-0130	11-23-2010	Amend	1-1-2011	330-160-0040(T)	2-22-2011	Repeal	4-1-2011
330-090-0130	4-18-2011	Amend(T)	5-1-2011	330-160-0050	3-4-2011	Adopt	4-1-2011
330-090-0130(T)	11-23-2010	Repeal	1-1-2011	331-010-0050	3-1-2011	Adopt(T)	4-1-2011
330-090-0133	11-23-2010	Amend	1-1-2011	331-010-0050	3-17-2011	Adopt(T)	5-1-2011
330-090-0133	4-18-2011	Amend(T)	5-1-2011	331-010-0050(T)	3-17-2011	Suspend	5-1-2011
330-090-0133(T)	11-23-2010	Repeal	1-1-2011	331-020-0040	3-1-2011	Amend(T)	4-1-2011
330-090-0140	11-23-2010	Amend	1-1-2011	331-020-0040	3-17-2011	Amend(T)	5-1-2011
330-090-0140(T)	11-23-2010	Repeal	1-1-2011	331-020-0040(T)	3-17-2011	Suspend	5-1-2011
330-090-0150	11-23-2010	Amend	1-1-2011	331-565-0090	4-1-2011	Amend(T)	5-1-2011
330-090-0150(T)	11-23-2010	Repeal	1-1-2011	331-705-0071	5-10-2011	Adopt(T)	6-1-2011
330-090-0350	11-23-2010	Adopt	1-1-2011	332-015-0000	1-1-2011	Amend	2-1-2011
330-090-0350(T)	11-23-2010	Repeal	1-1-2011	332-015-0010	1-1-2011	Repeal	2-1-2011
330-090-0450	11-23-2010	Adopt	1-1-2011	332-015-0030	1-1-2011	Amend	2-1-2011
330-090-0450(T)	11-23-2010	Repeal	1-1-2011	332-015-0040	1-1-2011	Amend	2-1-2011
330-105-0017	6-20-2011	Adopt(T)	8-1-2011	332-015-0050	1-1-2011	Amend	2-1-2011
330-112-0000	12-15-2010	Adopt	1-1-2011	332-015-0060	1-1-2011	Repeal	2-1-2011
330-112-0000(T)	12-15-2010	Repeal	1-1-2011	332-015-0065	1-1-2011	Repeal	2-1-2011
330-112-0010	12-15-2010	Adopt	1-1-2011	332-015-0070	1-1-2011	Amend	2-1-2011
330-112-0010(T)	12-15-2010	Repeal	1-1-2011	332-015-0070	4-4-2011	Amend(T)	5-1-2011
330-112-0020	12-15-2010	Adopt	1-1-2011	332-015-0080	1-1-2011	Adopt	2-1-2011
330-112-0020(T)	12-15-2010	Repeal	1-1-2011	332-020-0000	1-1-2011	Amend	2-1-2011
330-112-0030	12-15-2010	Adopt	1-1-2011	332-020-0010	1-1-2011	Amend	2-1-2011
330-112-0030(T)	12-15-2010	Repeal	1-1-2011	332-020-0015	1-1-2011	Amend	2-1-2011
330-112-0040	12-15-2010	Adopt	1-1-2011	332-020-0017	1-1-2011	Adopt	2-1-2011
330-112-0040(T)	12-15-2010	Repeal	1-1-2011	332-020-0020	1-1-2011	Amend	2-1-2011
330-112-0050	12-15-2010	Adopt	1-1-2011	332-020-0020(T)	1-1-2011	Repeal	2-1-2011
330-112-0050(T)	12-15-2010	Repeal	1-1-2011	332-025-0020	1-1-2011	Amend	2-1-2011
330-112-0060	12-15-2010	Adopt	1-1-2011	332-025-0020	4-4-2011	Amend(T)	5-1-2011
330-112-0060(T)	12-15-2010	Repeal	1-1-2011	332-025-0021	1-1-2011	Amend	2-1-2011
330-112-0070	12-15-2010	Adopt	1-1-2011	332-025-0021	4-4-2011	Amend(T)	5-1-2011
330-112-0070(T)	12-15-2010	Repeal	1-1-2011	332-025-0022	1-1-2011	Amend	2-1-2011
330-112-0080	12-15-2010	Adopt	1-1-2011	332-025-0022	4-4-2011	Amend(T)	5-1-2011
330-112-0080(T)	12-15-2010	Repeal	1-1-2011	332-025-0030	1-1-2011	Amend	2-1-2011
330-112-0090	12-15-2010	Adopt	1-1-2011	332-025-0040	1-1-2011	Amend	2-1-2011
330-112-0090(T)	12-15-2010	Repeal	1-1-2011	332-025-0040	4-4-2011	Amend(T)	5-1-2011
330-112-0100	12-15-2010	Adopt	1-1-2011	332-025-0050	1-1-2011	Amend	2-1-2011
330-112-0100(T)	12-15-2010	Repeal	1-1-2011	332-025-0060	1-1-2011	Amend	2-1-2011
330-130-0010	6-27-2011	Amend	8-1-2011	332-025-0070	1-1-2011	Adopt	2-1-2011
330-130-0020	6-27-2011	Amend	8-1-2011	332-025-0080	1-1-2011	Adopt	2-1-2011
330-130-0025	6-27-2011	Adopt	8-1-2011	332-025-0080	5-19-2011	Amend(T)	7-1-2011
330-130-0030	6-27-2011	Amend	8-1-2011	332-025-0100	1-1-2011	Adopt	2-1-2011
330-130-0040	6-27-2011	Amend	8-1-2011	332-030-0000	1-1-2011	Amend	2-1-2011
330-130-0050	6-27-2011	Amend	8-1-2011	333-002-0000	3-1-2011	Amend	4-1-2011
330-130-0055	6-27-2011	Amend	8-1-2011	333-002-0010	3-1-2011	Amend	4-1-2011
330-130-0060	6-27-2011	Amend	8-1-2011	333-002-0020	3-1-2011	Amend	4-1-2011
330-130-0070	6-27-2011	Amend	8-1-2011	333-002-0030	3-1-2011	Amend	4-1-2011
330-130-0080	6-27-2011	Amend	8-1-2011	333-002-0035	3-1-2011	Amend	4-1-2011

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333-002-0040	3-1-2011	Amend	4-1-2011	333-068-0020	6-16-2011	Amend	8-1-2011
333-002-0050	3-1-2011	Amend	4-1-2011	333-068-0025	6-16-2011	Amend	8-1-2011
333-002-0060	3-1-2011	Amend	4-1-2011	333-068-0030	6-16-2011	Amend	8-1-2011
333-002-0070	3-1-2011	Amend	4-1-2011	333-068-0035	6-16-2011	Amend	8-1-2011
333-002-0080	3-1-2011	Amend	4-1-2011	333-068-0040	6-16-2011	Amend	8-1-2011
333-002-0090	3-1-2011	Repeal	4-1-2011	333-068-0045	6-16-2011	Amend	8-1-2011
333-002-0100	3-1-2011	Amend	4-1-2011	333-068-0050	6-16-2011	Amend	8-1-2011
333-002-0110	3-1-2011	Repeal	4-1-2011	333-068-0055	6-16-2011	Amend	8-1-2011
333-002-0120	3-1-2011	Amend	4-1-2011	333-068-0060	6-16-2011	Amend	8-1-2011
333-002-0130	3-1-2011	Amend	4-1-2011	333-068-0065	6-16-2011	Amend	8-1-2011
333-002-0140	3-1-2011	Amend	4-1-2011	333-069-0005	6-16-2011	Amend	8-1-2011
333-002-0150	3-1-2011	Amend	4-1-2011	333-069-0015	6-16-2011	Amend	8-1-2011
333-002-0160	3-1-2011	Amend	4-1-2011	333-069-0020	6-16-2011	Amend	8-1-2011
333-002-0170	3-1-2011	Amend	4-1-2011	333-069-0030	6-16-2011	Amend	8-1-2011
333-002-0180	3-1-2011	Amend	4-1-2011	333-069-0040	6-16-2011	Amend	8-1-2011
333-002-0190	3-1-2011	Amend	4-1-2011	333-069-0050	6-16-2011	Amend	8-1-2011
333-002-0200	3-1-2011	Amend	4-1-2011	333-069-0060	6-16-2011	Amend	8-1-2011
333-002-0210	3-1-2011	Amend	4-1-2011	333-069-0070	6-16-2011	Amend	8-1-2011
333-002-0220	3-1-2011	Amend	4-1-2011	333-069-0075	6-16-2011	Repeal	8-1-2011
333-002-0230	3-1-2011	Amend	4-1-2011	333-069-0080	6-16-2011	Amend	8-1-2011
333-003-0010	7-1-2011	Amend(T)	8-1-2011	333-069-0085	6-16-2011	Amend	8-1-2011
333-003-0065	7-1-2011	Amend(T)	8-1-2011	333-069-0090	6-16-2011	Amend	8-1-2011
333-004-0010	7-1-2011	Amend(T)	8-1-2011	333-070-0075	6-16-2011	Amend	8-1-2011
333-005-0000	1-1-2011	Am. & Ren.	2-1-2011	333-070-0085	6-16-2011	Amend	8-1-2011
333-005-0010	1-1-2011	Am. & Ren.	2-1-2011	333-070-0090	6-16-2011	Amend	8-1-2011
333-005-0020	1-1-2011	Am. & Ren.	2-1-2011	333-070-0095	6-16-2011	Amend	8-1-2011
333-005-0030	1-1-2011	Am. & Ren.	2-1-2011	333-070-0100	6-16-2011	Amend	8-1-2011
333-005-0040	1-1-2011	Am. & Ren.	2-1-2011	333-070-0105	6-16-2011	Amend	8-1-2011
333-005-0050	1-1-2011	Am. & Ren.	2-1-2011	333-070-0110	6-16-2011	Amend	8-1-2011
333-005-0060	1-1-2011	Am. & Ren.	2-1-2011	333-070-0115	6-16-2011	Amend	8-1-2011
333-008-0010	7-1-2011	Amend(T)	8-1-2011	333-070-0120	6-16-2011	Amend	8-1-2011
333-008-0020	12-28-2010	Amend	2-1-2011	333-070-0125	6-16-2011	Amend	8-1-2011
333-008-0020(T)	12-28-2010	Repeal	2-1-2011	333-070-0130	6-16-2011	Amend	8-1-2011
333-008-0040	12-28-2010	Amend	2-1-2011	333-070-0135	6-16-2011	Amend	8-1-2011
333-008-0045	12-28-2010	Adopt	2-1-2011	333-070-0140	6-16-2011	Amend	8-1-2011
333-008-0070	7-1-2011	Amend(T)	8-1-2011	333-070-0145	6-16-2011	Amend	8-1-2011
333-009-0000	7-1-2011	Amend(T)	8-1-2011	333-070-0155	6-16-2011	Repeal	8-1-2011
333-010-0105	7-1-2011	Amend(T)	8-1-2011	333-070-0160	6-16-2011	Amend	8-1-2011
333-010-0205	7-1-2011	Amend(T)	8-1-2011	333-076-0101	12-15-2010	Amend	1-1-2011
333-012-0050	7-1-2011	Amend(T)	8-1-2011	333-076-0106	12-15-2010	Amend	1-1-2011
333-012-0250	3-29-2011	Am. & Ren.	5-1-2011	333-076-0108	12-15-2010	Amend	1-1-2011
333-015-0030	7-1-2011	Amend(T)	8-1-2011	333-076-0109	12-15-2010	Amend	1-1-2011
333-015-0100	7-1-2011	Amend(T)	8-1-2011	333-076-0111	12-15-2010	Amend	1-1-2011
333-020-0125	7-1-2011	Amend(T)	8-1-2011	333-076-0114	12-15-2010	Amend	1-1-2011
333-025-0100	7-1-2011	Amend(T)	8-1-2011	333-076-0115	12-15-2010	Amend	1-1-2011
333-027-0005	7-1-2011	Amend(T)	8-1-2011	333-076-0125	12-15-2010	Amend	1-1-2011
333-030-0015	7-1-2011	Amend(T)	8-1-2011	333-076-0130	12-15-2010	Amend	1-1-2011
333-048-0010	7-1-2011	Amend(T)	8-1-2011	333-076-0135	12-15-2010	Amend	1-1-2011
333-052-0040	7-1-2011	Amend(T)	8-1-2011	333-076-0140	12-15-2010	Amend	1-1-2011
333-053-0040	7-1-2011	Amend(T)	8-1-2011	333-076-0145	12-15-2010	Amend	1-1-2011
333-054-0010	7-1-2011	Amend(T)	8-1-2011	333-076-0155	12-15-2010	Amend	1-1-2011
333-061-0020	7-1-2011	Amend(T)	8-1-2011	333-076-0160	12-15-2010	Amend	1-1-2011
333-064-0040	4-21-2011	Amend	6-1-2011	333-076-0165	12-15-2010	Amend	1-1-2011
333-064-0070	4-21-2011	Repeal	6-1-2011	333-076-0170	12-15-2010	Amend	1-1-2011
333-068-0005	6-16-2011	Amend	8-1-2011	333-076-0175	12-15-2010	Amend	1-1-2011
333-068-0015	6-16-2011	Amend	8-1-2011	333-076-0180	12-15-2010	Amend	1-1-2011



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333-076-0250	12-15-2010	Adopt	1-1-2011	335-060-0030	2-1-2011	Amend	3-1-2011
333-076-0255	12-15-2010	Adopt	1-1-2011	335-070-0020	2-1-2011	Amend	3-1-2011
333-076-0260	12-15-2010	Adopt	1-1-2011	335-070-0055	2-1-2011	Amend	3-1-2011
333-076-0265	12-15-2010	Adopt	1-1-2011	335-070-0085	2-1-2011	Amend	3-1-2011
333-076-0270	12-15-2010	Adopt	1-1-2011	335-095-0030	2-1-2011	Amend	3-1-2011
333-100-0005	7-1-2011	Amend(T)	8-1-2011	335-095-0040	2-1-2011	Amend	3-1-2011
333-102-0203	7-1-2011	Amend(T)	8-1-2011	335-095-0055	2-1-2011	Repeal	3-1-2011
333-106-0005	7-1-2011	Amend(T)	8-1-2011	338-005-0030	3-1-2011	Amend(T)	4-1-2011
333-106-0101	7-1-2011	Amend(T)	8-1-2011	338-005-0030	3-4-2011	Amend(T)	4-1-2011
333-119-0010	7-1-2011	Amend(T)	8-1-2011	339-001-0005	7-1-2011	Amend	7-1-2011
333-175-0021	7-1-2011	Amend(T)	8-1-2011	339-001-0006	7-1-2011	Amend	7-1-2011
333-255-0070	1-6-2011	Amend	2-1-2011	339-005-0000	7-1-2011	Amend	7-1-2011
333-255-0070(T)	1-6-2011	Repeal	2-1-2011	339-010-0012	7-1-2011	Adopt	7-1-2011
333-255-0071	1-6-2011	Amend	2-1-2011	339-010-0018	7-1-2011	Adopt	7-1-2011
333-255-0072	1-6-2011	Amend	2-1-2011	339-010-0020	7-1-2011	Amend	7-1-2011
333-255-0073	1-6-2011	Amend	2-1-2011	339-010-0050	7-1-2011	Amend	7-1-2011
333-265-0050	1-6-2011	Amend	2-1-2011	340-012-0054	3-15-2011	Amend	4-1-2011
333-265-0090	1-6-2011	Amend	2-1-2011	340-012-0140	3-15-2011	Amend	4-1-2011
333-265-0090(T)	1-6-2011	Repeal	2-1-2011	340-016-0080	12-20-2010	Amend	2-1-2011
333-265-0105	1-6-2011	Amend	2-1-2011	340-016-0088	12-20-2010	Adopt	2-1-2011
333-265-0105(T)	1-6-2011	Repeal	2-1-2011	340-016-0100	12-20-2010	Repeal	2-1-2011
333-265-0110	1-6-2011	Amend	2-1-2011	340-016-0110	12-20-2010	Repeal	2-1-2011
333-500-0005	12-15-2010	Amend	1-1-2011	340-016-0120	12-20-2010	Repeal	2-1-2011
333-500-0010	12-15-2010	Amend	1-1-2011	340-016-0130	12-20-2010	Repeal	2-1-2011
333-500-0020	12-15-2010	Amend	1-1-2011	340-016-0140	12-20-2010	Repeal	2-1-2011
333-500-0025	12-15-2010	Amend	1-1-2011	340-016-0150	12-20-2010	Repeal	2-1-2011
333-500-0030	12-15-2010	Amend	1-1-2011	340-016-0210	12-20-2010	Amend	2-1-2011
333-500-0031	12-15-2010	Adopt	1-1-2011	340-041-0007	7-13-2011	Amend	8-1-2011
333-500-0034	12-15-2010	Amend	1-1-2011	340-041-0009	7-13-2011	Amend	8-1-2011
333-500-0040	12-15-2010	Amend	1-1-2011	340-041-0033	12-21-2010	Amend	2-1-2011
333-500-0065	12-15-2010	Amend	1-1-2011	340-041-0033	6-30-2011	Amend	8-1-2011
333-501-0010	12-15-2010	Amend	1-1-2011	340-041-0033	7-13-2011	Amend	8-1-2011
333-501-0015	12-15-2010	Amend	1-1-2011	340-041-0059	7-13-2011	Adopt	8-1-2011
333-501-0035	12-15-2010	Amend	1-1-2011	340-041-0061	7-13-2011	Amend	8-1-2011
333-501-0040	12-15-2010	Amend	1-1-2011	340-042-0040	7-13-2011	Amend	8-1-2011
333-501-0045	12-15-2010	Amend	1-1-2011	340-042-0080	7-13-2011	Amend	8-1-2011
333-501-0055	12-15-2010	Amend	1-1-2011	340-045-0075	7-1-2011	Amend	8-1-2011
333-501-0060	12-15-2010	Adopt	1-1-2011	340-045-0100	3-15-2011	Amend(T)	4-1-2011
333-505-0005	12-15-2010	Amend	1-1-2011	340-045-0105	7-13-2011	Adopt	8-1-2011
333-505-0020	12-15-2010	Amend	1-1-2011	340-071-0140	7-1-2011	Amend	8-1-2011
333-505-0030	12-15-2010	Amend	1-1-2011	340-141-0010	12-23-2010	Amend	2-1-2011
333-505-0033	12-15-2010	Amend	1-1-2011	340-143-0001	3-17-2011	Amend	5-1-2011
333-505-0050	12-15-2010	Amend	1-1-2011	340-143-0005	3-17-2011	Amend	5-1-2011
333-536-0005	7-1-2011	Amend(T)	8-1-2011	340-143-0010	3-17-2011	Amend	5-1-2011
333-700-0005	7-1-2011	Amend(T)	8-1-2011	340-143-0020	3-17-2011	Amend	5-1-2011
334-001-0012	1-1-2011	Amend	2-1-2011	340-143-0030	3-17-2011	Adopt	5-1-2011
334-001-0012	4-21-2011	Amend	6-1-2011	340-143-0040	3-17-2011	Adopt	5-1-2011
334-001-0012	7-1-2011	Amend	8-1-2011	340-143-0050	3-17-2011	Adopt	5-1-2011
334-001-0055	1-1-2011	Amend	2-1-2011	340-143-0060	3-17-2011	Adopt	5-1-2011
334-001-0055	4-21-2011	Amend	6-1-2011	340-200-0020	5-1-2011	Amend	6-1-2011
334-001-0060	7-1-2011	Amend	8-1-2011	340-200-0020	6-24-2011	Amend(T)	8-1-2011
334-010-0033	1-1-2011	Amend	2-1-2011	340-200-0025	5-1-2011	Amend	6-1-2011
334-010-0033	4-21-2011	Amend	6-1-2011	340-200-0040	12-10-2010	Amend	1-1-2011
335-001-0009	2-1-2011	Amend	3-1-2011	340-200-0040	2-24-2011	Amend	4-1-2011
335-060-0005	2-1-2011	Amend	3-1-2011	340-200-0040	3-15-2011	Amend	4-1-2011

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340-202-0010	5-1-2011	Amend	6-1-2011	340-244-0030	2-24-2011	Amend	4-1-2011
340-202-0060	5-1-2011	Amend	6-1-2011	340-244-0220	2-24-2011	Amend	4-1-2011
340-202-0210	5-1-2011	Amend	6-1-2011	340-244-0234	2-24-2011	Amend	4-1-2011
340-210-0100	6-24-2011	Amend(T)	8-1-2011	340-244-0236	2-24-2011	Amend	4-1-2011
340-210-0110	6-24-2011	Amend(T)	8-1-2011	340-244-0238	2-24-2011	Amend	4-1-2011
340-210-0120	6-24-2011	Amend(T)	8-1-2011	340-244-0242	2-24-2011	Amend	4-1-2011
340-212-0140	6-24-2011	Amend(T)	8-1-2011	340-244-0244	2-24-2011	Amend	4-1-2011
340-215-0060	5-1-2011	Amend	6-1-2011	340-244-0248	2-24-2011	Amend	4-1-2011
340-216-0020	2-24-2011	Amend	4-1-2011	340-246-0230	5-1-2011	Amend	6-1-2011
340-216-0020	5-1-2011	Amend	6-1-2011	340-257-0030	4-29-2011	Amend	6-1-2011
340-216-0025	5-1-2011	Amend	6-1-2011	340-257-0050	4-29-2011	Amend	6-1-2011
340-216-0040	5-1-2011	Amend	6-1-2011	340-257-0060	4-29-2011	Amend	6-1-2011
340-216-0052	5-1-2011	Amend	6-1-2011	340-257-0070	4-29-2011	Amend	6-1-2011
340-216-0054	5-1-2011	Amend	6-1-2011	340-257-0090	4-29-2011	Amend	6-1-2011
340-216-0056	5-1-2011	Amend	6-1-2011	340-257-0110	4-29-2011	Amend	6-1-2011
340-216-0060	2-24-2011	Amend	4-1-2011	340-257-0120	4-29-2011	Amend	6-1-2011
340-216-0060	5-1-2011	Amend	6-1-2011	340-257-0140	4-29-2011	Amend	6-1-2011
340-216-0064	2-24-2011	Amend	4-1-2011	340-262-0010	3-15-2011	Repeal	4-1-2011
340-216-0064	5-1-2011	Amend	6-1-2011	340-262-0020	3-15-2011	Repeal	4-1-2011
340-216-0066	5-1-2011	Amend	6-1-2011	340-262-0030	3-15-2011	Repeal	4-1-2011
340-216-0070	5-1-2011	Amend	6-1-2011	340-262-0040	3-15-2011	Repeal	4-1-2011
340-216-0090	5-1-2011	Amend	6-1-2011	340-262-0050	3-15-2011	Repeal	4-1-2011
340-220-0030	12-20-2010	Amend	2-1-2011	340-262-0100	3-15-2011	Repeal	4-1-2011
340-220-0040	12-20-2010	Amend	2-1-2011	340-262-0110	3-15-2011	Repeal	4-1-2011
340-220-0050	12-20-2010	Amend	2-1-2011	340-262-0120	3-15-2011	Repeal	4-1-2011
340-222-0042	5-1-2011	Amend	6-1-2011	340-262-0130	3-15-2011	Repeal	4-1-2011
340-222-0045	5-1-2011	Amend	6-1-2011	340-262-0200	3-15-2011	Repeal	4-1-2011
340-223-0010	12-10-2010	Amend	1-1-2011	340-262-0210	3-15-2011	Repeal	4-1-2011
340-223-0020	12-10-2010	Amend	1-1-2011	340-262-0220	3-15-2011	Repeal	4-1-2011
340-223-0030	12-10-2010	Amend	1-1-2011	340-262-0230	3-15-2011	Repeal	4-1-2011
340-223-0040	12-10-2010	Amend	1-1-2011	340-262-0240	3-15-2011	Repeal	4-1-2011
340-223-0050	12-10-2010	Amend	1-1-2011	340-262-0250	3-15-2011	Repeal	4-1-2011
340-223-0060	12-10-2010	Adopt	1-1-2011	340-262-0300	3-15-2011	Repeal	4-1-2011
340-223-0070	12-10-2010	Adopt	1-1-2011	340-262-0310	3-15-2011	Repeal	4-1-2011
340-223-0080	12-10-2010	Adopt	1-1-2011	340-262-0320	3-15-2011	Repeal	4-1-2011
340-224-0010	5-1-2011	Amend	6-1-2011	340-262-0330	3-15-2011	Repeal	4-1-2011
340-224-0050	5-1-2011	Amend	6-1-2011	340-262-0400	3-15-2011	Adopt	4-1-2011
340-224-0060	5-1-2011	Amend	6-1-2011	340-262-0450	3-15-2011	Adopt	4-1-2011
340-224-0070	5-1-2011	Amend	6-1-2011	340-262-0450	6-24-2011	Amend(T)	8-1-2011
340-225-0020	5-1-2011	Amend	6-1-2011	340-262-0500	3-15-2011	Adopt	4-1-2011
340-225-0030	5-1-2011	Amend	6-1-2011	340-262-0600	3-15-2011	Adopt	4-1-2011
340-225-0045	5-1-2011	Amend	6-1-2011	340-262-0600	6-24-2011	Amend(T)	8-1-2011
340-225-0050	5-1-2011	Amend	6-1-2011	340-262-0700	3-15-2011	Adopt	4-1-2011
340-225-0060	5-1-2011	Amend	6-1-2011	340-262-0800	3-15-2011	Adopt	4-1-2011
340-225-0090	5-1-2011	Amend	6-1-2011	340-262-0900	3-15-2011	Adopt	4-1-2011
340-228-0020	6-24-2011	Amend(T)	8-1-2011	350-030-0015	5-1-2011	Amend	5-1-2011
340-228-0200	6-24-2011	Amend(T)	8-1-2011	350-030-0020	5-1-2011	Amend	5-1-2011
340-228-0210	6-24-2011	Amend(T)	8-1-2011	350-030-0025	5-1-2011	Amend	5-1-2011
340-228-0300	5-1-2011	Amend	6-1-2011	350-030-0030	5-1-2011	Amend	5-1-2011
340-230-0030	2-24-2011	Amend	4-1-2011	350-030-0060	5-1-2011	Amend	5-1-2011
340-230-0300	2-24-2011	Amend	4-1-2011	350-030-0080	5-1-2011	Amend	5-1-2011
340-230-0400	2-24-2011	Repeal	4-1-2011	350-040-0010	5-1-2011	Amend	5-1-2011
340-230-0410	2-24-2011	Repeal	4-1-2011	350-040-0020	5-1-2011	Amend	5-1-2011
340-238-0040	2-24-2011	Amend	4-1-2011	350-040-0050	5-1-2011	Amend	5-1-2011
340-238-0060	2-24-2011	Amend	4-1-2011	350-040-0055	5-1-2011	Adopt	5-1-2011

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350-040-0065	5-1-2011	Amend	5-1-2011	350-081-0590	5-1-2011	Amend	5-1-2011
350-040-0070	5-1-2011	Amend	5-1-2011	350-120-0025	5-1-2011	Repeal	5-1-2011
350-040-0080	5-1-2011	Amend	5-1-2011	350-120-0030	5-1-2011	Repeal	5-1-2011
350-050-0020	5-1-2011	Amend	5-1-2011	350-120-0040	5-1-2011	Repeal	5-1-2011
350-050-0035	5-1-2011	Amend	5-1-2011	350-120-0050	5-1-2011	Amend	5-1-2011
350-050-0040	5-1-2011	Amend	5-1-2011	407-007-0200	4-15-2011	Amend(T)	5-1-2011
350-050-0045	5-1-2011	Amend	5-1-2011	407-007-0210	4-15-2011	Amend(T)	5-1-2011
350-050-0060	5-1-2011	Amend	5-1-2011	407-007-0220	4-15-2011	Amend(T)	5-1-2011
350-050-0070	5-1-2011	Amend	5-1-2011	407-007-0230	4-15-2011	Amend(T)	5-1-2011
350-050-0080	5-1-2011	Amend	5-1-2011	407-007-0240	4-15-2011	Amend(T)	5-1-2011
350-050-0085	5-1-2011	Amend	5-1-2011	407-007-0250	4-15-2011	Amend(T)	5-1-2011
350-050-0090	5-1-2011	Amend	5-1-2011	407-007-0290	4-15-2011	Amend(T)	5-1-2011
350-050-0100	5-1-2011	Amend	5-1-2011	407-007-0300	4-15-2011	Amend(T)	5-1-2011
350-060-0040	5-1-2011	Amend	5-1-2011	407-007-0315	4-15-2011	Amend(T)	5-1-2011
350-060-0042	5-1-2011	Amend	5-1-2011	407-007-0320	4-15-2011	Amend(T)	5-1-2011
350-060-0045	5-1-2011	Amend	5-1-2011	407-007-0325	4-15-2011	Amend(T)	5-1-2011
350-060-0047	5-1-2011	Adopt	5-1-2011	407-007-0330	4-15-2011	Amend(T)	5-1-2011
350-060-0050	5-1-2011	Amend	5-1-2011	407-007-0340	4-15-2011	Amend(T)	5-1-2011
350-060-0055	5-1-2011	Amend	5-1-2011	407-007-0350	4-15-2011	Amend(T)	5-1-2011
350-060-0060	5-1-2011	Amend	5-1-2011	407-014-0000	7-1-2011	Amend(T)	8-1-2011
350-060-0070	5-1-2011	Amend	5-1-2011	407-014-0015	7-1-2011	Adopt(T)	8-1-2011
350-060-0080	5-1-2011	Amend	5-1-2011	407-014-0020	7-1-2011	Amend(T)	8-1-2011
350-060-0100	5-1-2011	Amend	5-1-2011	407-014-0030	7-1-2011	Amend(T)	8-1-2011
350-060-0110	5-1-2011	Amend	5-1-2011	407-014-0040	7-1-2011	Amend(T)	8-1-2011
350-060-0120	5-1-2011	Amend	5-1-2011	407-014-0050	7-1-2011	Amend(T)	8-1-2011
350-060-0130	5-1-2011	Amend	5-1-2011	407-014-0060	7-1-2011	Amend(T)	8-1-2011
350-060-0160	5-1-2011	Amend	5-1-2011	407-014-0070	7-1-2011	Amend(T)	8-1-2011
350-060-0170	5-1-2011	Amend	5-1-2011	407-020-0000	2-1-2011	Am. & Ren.	3-1-2011
350-060-0190	5-1-2011	Amend	5-1-2011	407-020-0005	2-1-2011	Am. & Ren.	3-1-2011
350-060-0200	5-1-2011	Amend	5-1-2011	407-020-0010	2-1-2011	Am. & Ren.	3-1-2011
350-060-0205	5-1-2011	Amend	5-1-2011	407-020-0015	2-1-2011	Am. & Ren.	3-1-2011
350-060-0210	5-1-2011	Amend	5-1-2011	407-043-0020	7-1-2011	Adopt(T)	8-1-2011
350-070-0040	5-1-2011	Amend	5-1-2011	407-045-0260	1-1-2011	Amend	2-1-2011
350-070-0042	5-1-2011	Amend	5-1-2011	407-045-0260(T)	1-1-2011	Repeal	2-1-2011
350-070-0045	5-1-2011	Amend	5-1-2011	407-045-0400	7-1-2011	Amend(T)	8-1-2011
350-070-0046	5-1-2011	Adopt	5-1-2011	407-045-0410	7-1-2011	Suspend	8-1-2011
350-070-0050	5-1-2011	Amend	5-1-2011	407-045-0420	7-1-2011	Suspend	8-1-2011
350-070-0070	5-1-2011	Amend	5-1-2011	407-045-0430	7-1-2011	Suspend	8-1-2011
350-070-0080	5-1-2011	Amend	5-1-2011	407-045-0440	7-1-2011	Suspend	8-1-2011
350-070-0090	5-1-2011	Amend	5-1-2011	407-045-0450	7-1-2011	Suspend	8-1-2011
350-070-0120	5-1-2011	Amend	5-1-2011	407-045-0460	7-1-2011	Suspend	8-1-2011
350-070-0170	5-1-2011	Amend	5-1-2011	407-045-0470	7-1-2011	Suspend	8-1-2011
350-070-0200	5-1-2011	Amend	5-1-2011	407-045-0480	7-1-2011	Suspend	8-1-2011
350-070-0210	5-1-2011	Amend	5-1-2011	407-045-0490	7-1-2011	Suspend	8-1-2011
350-070-0220	5-1-2011	Amend	5-1-2011	407-045-0500	7-1-2011	Suspend	8-1-2011
350-070-0225	5-1-2011	Amend	5-1-2011	407-045-0510	7-1-2011	Suspend	8-1-2011
350-081-0017	5-1-2011	Adopt	5-1-2011	407-045-0520	7-1-2011	Suspend	8-1-2011
350-081-0020	5-1-2011	Amend	5-1-2011	407-045-0820	1-1-2011	Amend	2-1-2011
350-081-0036	6-16-2011	Amend(T)	8-1-2011	407-045-0820(T)	1-1-2011	Repeal	2-1-2011
350-081-0042	6-16-2011	Amend(T)	8-1-2011	407-120-0100	7-1-2011	Amend(T)	8-1-2011
350-081-0054	6-16-2011	Amend(T)	8-1-2011	407-120-0112	7-1-2011	Amend(T)	8-1-2011
350-081-0082	5-1-2011	Amend	5-1-2011	407-120-0114	7-1-2011	Amend(T)	8-1-2011
350-081-0540	5-1-2011	Amend	5-1-2011	407-120-0150	7-1-2011	Amend(T)	8-1-2011
350-081-0560	5-1-2011	Amend	5-1-2011	407-120-0200	7-1-2011	Amend(T)	8-1-2011
350-081-0570	5-1-2011	Amend	5-1-2011	409-015-0010	3-1-2011	Amend	3-1-2011



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409-030-0005	3-1-2011	Renumber	3-1-2011	410-121-0200	7-1-2011	Amend	8-1-2011
409-030-0010	3-1-2011	Renumber	3-1-2011	410-121-0320	1-1-2011	Repeal	2-1-2011
409-030-0020	3-1-2011	Renumber	3-1-2011	410-121-4000	5-5-2011	Adopt	6-1-2011
409-030-0030	3-1-2011	Renumber	3-1-2011	410-121-4005	5-5-2011	Adopt	6-1-2011
409-030-0050	3-1-2011	Renumber	3-1-2011	410-121-4010	5-5-2011	Adopt	6-1-2011
409-030-0065	3-1-2011	Renumber	3-1-2011	410-121-4015	5-5-2011	Adopt	6-1-2011
409-110-0000	2-1-2011	Amend	3-1-2011	410-121-4020	5-5-2011	Adopt	6-1-2011
409-110-0005	2-1-2011	Amend	3-1-2011	410-122-0080	3-25-2011	Amend	5-1-2011
409-110-0010	2-1-2011	Amend	3-1-2011	410-122-0080(T)	3-25-2011	Repeal	5-1-2011
409-110-0015	2-1-2011	Amend	3-1-2011	410-122-0180	3-25-2011	Amend	5-1-2011
409-110-0020	2-1-2011	Amend	3-1-2011	410-122-0180(T)	3-25-2011	Repeal	5-1-2011
410-050-0401	2-1-2011	Renumber	3-1-2011	410-122-0520	7-1-2011	Amend	8-1-2011
410-050-0411	2-1-2011	Renumber	3-1-2011	410-123-1000	1-1-2011	Amend	1-1-2011
410-050-0421	2-1-2011	Renumber	3-1-2011	410-123-1085	1-1-2011	Repeal	1-1-2011
410-050-0431	2-1-2011	Renumber	3-1-2011	410-123-1220	1-1-2011	Amend	1-1-2011
410-050-0451	2-1-2011	Renumber	3-1-2011	410-123-1220	7-12-2011	Amend	8-1-2011
410-050-0461	2-1-2011	Renumber	3-1-2011	410-123-1260	1-1-2011	Amend	1-1-2011
410-050-0471	2-1-2011	Renumber	3-1-2011	410-123-1260	7-12-2011	Amend	8-1-2011
410-050-0481	2-1-2011	Renumber	3-1-2011	410-123-1540	1-1-2011	Amend	1-1-2011
410-050-0491	2-1-2011	Renumber	3-1-2011	410-125-0047	1-1-2011	Amend	1-1-2011
410-050-0501	2-1-2011	Renumber	3-1-2011	410-125-0080	1-1-2011	Amend	1-1-2011
410-050-0511	2-1-2011	Renumber	3-1-2011	410-125-0085	1-1-2011	Amend	1-1-2011
410-050-0521	2-1-2011	Renumber	3-1-2011	410-125-0100	1-1-2011	Repeal	1-1-2011
410-050-0531	2-1-2011	Renumber	3-1-2011	410-125-0140	1-1-2011	Amend	1-1-2011
410-050-0541	2-1-2011	Renumber	3-1-2011	410-125-0360	1-1-2011	Amend	1-1-2011
410-050-0551	2-1-2011	Renumber	3-1-2011	410-125-0410	1-1-2011	Amend	1-1-2011
410-050-0561	2-1-2011	Renumber	3-1-2011	410-125-0450	1-1-2011	Adopt	1-1-2011
410-050-0591	2-1-2011	Renumber	3-1-2011	410-125-1020	1-1-2011	Amend	1-1-2011
410-050-0601	2-1-2011	Renumber	3-1-2011	410-125-2000	1-1-2011	Amend	1-1-2011
410-050-0861	7-1-2011	Amend(T)	8-1-2011	410-125-2020	1-1-2011	Amend	1-1-2011
410-120-0000	7-1-2011	Amend	8-1-2011	410-125-2030	1-1-2011	Amend	1-1-2011
410-120-0006	7-1-2011	Adopt	8-1-2011	410-127-0020	1-1-2011	Amend	1-1-2011
410-120-0006	7-15-2011	Amend(T)	8-1-2011	410-127-0060	1-1-2011	Amend	1-1-2011
410-120-0030	1-1-2011	Amend	2-1-2011	410-127-0065	1-1-2011	Amend	1-1-2011
410-120-0030	7-1-2011	Amend	8-1-2011	410-127-0080	1-1-2011	Amend	1-1-2011
410-120-1195	1-1-2011	Amend	2-1-2011	410-129-0220	3-25-2011	Amend	5-1-2011
410-120-1200	1-1-2011	Amend	2-1-2011	410-129-0220(T)	3-25-2011	Repeal	5-1-2011
410-120-1230	1-1-2011	Amend	2-1-2011	410-130-0200	1-1-2011	Amend	1-1-2011
410-120-1280	1-1-2011	Amend	2-1-2011	410-130-0255	1-1-2011	Amend	1-1-2011
410-120-1295	1-1-2011	Amend	2-1-2011	410-130-0580	1-1-2011	Amend	1-1-2011
410-120-1340	1-1-2011	Amend	2-1-2011	410-130-0585	1-1-2011	Amend	1-1-2011
410-120-1560	7-1-2011	Amend	8-1-2011	410-130-0587	1-1-2011	Amend	1-1-2011
410-121-0000	1-1-2011	Amend	2-1-2011	410-133-0040	7-1-2011	Amend	8-1-2011
410-121-0030	1-1-2011	Amend	2-1-2011	410-133-0080	7-1-2011	Amend	8-1-2011
410-121-0030	3-1-2011	Amend(T)	4-1-2011	410-133-0120	7-1-2011	Amend	8-1-2011
410-121-0030	7-17-2011	Amend	8-1-2011	410-136-0030	1-1-2011	Amend	1-1-2011
410-121-0030(T)	7-17-2011	Repeal	8-1-2011	410-136-0040	1-1-2011	Amend	1-1-2011
410-121-0040	1-1-2011	Amend	2-1-2011	410-136-0045	1-1-2011	Amend	1-1-2011
410-121-0147	7-1-2011	Amend	8-1-2011	410-136-0050	1-1-2011	Amend	1-1-2011
410-121-0149	1-1-2011	Amend	2-1-2011	410-136-0060	1-1-2011	Amend	1-1-2011
410-121-0155	1-1-2011	Amend	2-1-2011	410-136-0070	1-1-2011	Amend	1-1-2011
410-121-0155	7-1-2011	Amend	8-1-2011	410-136-0080	1-1-2011	Amend	1-1-2011
410-121-0157	7-1-2011	Amend	8-1-2011	410-136-0140	1-1-2011	Amend	1-1-2011
410-121-0160	1-1-2011	Amend	2-1-2011	410-136-0160	1-1-2011	Amend	1-1-2011
410-121-0160	7-1-2011	Amend	8-1-2011	410-136-0180	1-1-2011	Amend	1-1-2011

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410-136-0220	1-1-2011	Amend	1-1-2011	410-142-0225	1-1-2011	Amend	1-1-2011
410-136-0240	1-1-2011	Amend	1-1-2011	410-142-0240	1-1-2011	Amend	1-1-2011
410-136-0300	1-1-2011	Amend	1-1-2011	410-142-0280	1-1-2011	Amend	1-1-2011
410-136-0320	1-1-2011	Amend	1-1-2011	410-142-0300	1-1-2011	Amend	1-1-2011
410-136-0340	1-1-2011	Amend	1-1-2011	410-146-0021	1-1-2011	Amend	1-1-2011
410-136-0350	1-1-2011	Amend	1-1-2011	410-146-0085	1-1-2011	Amend	1-1-2011
410-136-0440	1-1-2011	Amend	1-1-2011	410-146-0086	1-1-2011	Amend	1-1-2011
410-136-0800	1-1-2011	Amend	1-1-2011	410-146-0120	1-1-2011	Amend	1-1-2011
410-136-0820	1-1-2011	Amend	1-1-2011	410-146-0140	1-1-2011	Repeal	1-1-2011
410-136-0840	1-1-2011	Amend	1-1-2011	410-146-0440	7-1-2011	Amend	7-1-2011
410-136-0860	1-1-2011	Amend	1-1-2011	410-146-0460	7-1-2011	Amend	7-1-2011
410-138-0000	1-1-2011	Amend	2-1-2011	410-147-0120	1-1-2011	Amend	1-1-2011
410-138-0005	1-1-2011	Amend	2-1-2011	410-147-0140	1-1-2011	Amend	1-1-2011
410-138-0007	1-1-2011	Amend	2-1-2011	410-147-0200	1-1-2011	Amend	1-1-2011
410-138-0009	1-1-2011	Amend	2-1-2011	410-147-0220	1-1-2011	Repeal	1-1-2011
410-138-0020	1-1-2011	Amend	2-1-2011	410-147-0320	1-1-2011	Amend	1-1-2011
410-138-0040	1-1-2011	Amend	2-1-2011	410-147-0340	7-1-2011	Amend	7-1-2011
410-138-0060	1-1-2011	Amend	2-1-2011	410-147-0400	7-1-2011	Amend	7-1-2011
410-138-0080	1-1-2011	Amend	2-1-2011	410-147-0480	1-1-2011	Amend	1-1-2011
410-138-0300	1-1-2011	Repeal	2-1-2011	410-147-0610	1-1-2011	Repeal	1-1-2011
410-138-0360	1-1-2011	Repeal	2-1-2011	410-165-0000	7-1-2011	Adopt	8-1-2011
410-138-0380	1-1-2011	Repeal	2-1-2011	410-165-0020	7-1-2011	Adopt	8-1-2011
410-138-0390	1-1-2011	Amend	2-1-2011	410-165-0040	7-1-2011	Adopt	8-1-2011
410-138-0400	1-1-2011	Repeal	2-1-2011	410-165-0080	7-1-2011	Adopt	8-1-2011
410-138-0420	1-1-2011	Amend	2-1-2011	410-165-0100	7-1-2011	Adopt	8-1-2011
410-138-0440	1-1-2011	Repeal	2-1-2011	410-165-0120	7-1-2011	Adopt	8-1-2011
410-138-0460	1-1-2011	Repeal	2-1-2011	410-165-0140	7-1-2011	Adopt	8-1-2011
410-138-0500	1-1-2011	Repeal	2-1-2011	411-031-0020	12-1-2010	Amend	1-1-2011
410-138-0540	1-1-2011	Repeal	2-1-2011	411-031-0020(T)	12-1-2010	Repeal	1-1-2011
410-138-0560	1-1-2011	Repeal	2-1-2011	411-031-0040	12-1-2010	Amend	1-1-2011
410-138-0600	1-1-2011	Repeal	2-1-2011	411-031-0040(T)	12-1-2010	Repeal	1-1-2011
410-138-0640	1-1-2011	Repeal	2-1-2011	411-034-0010	1-1-2011	Amend	2-1-2011
410-138-0660	1-1-2011	Repeal	2-1-2011	411-034-0020	1-1-2011	Amend	2-1-2011
410-138-0680	1-1-2011	Repeal	2-1-2011	411-050-0412	1-1-2011	Amend	2-1-2011
410-138-0700	1-1-2011	Repeal	2-1-2011	411-050-0499	1-1-2011	Repeal	2-1-2011
410-138-0710	1-1-2011	Repeal	2-1-2011	411-054-0005	4-1-2011	Amend	5-1-2011
410-138-0740	1-1-2011	Repeal	2-1-2011	411-054-0005(T)	4-1-2011	Repeal	5-1-2011
410-138-0760	1-1-2011	Repeal	2-1-2011	411-054-0012	4-1-2011	Amend	5-1-2011
410-138-0780	1-1-2011	Repeal	2-1-2011	411-054-0012(T)	4-1-2011	Repeal	5-1-2011
410-141-0000	1-1-2011	Amend	2-1-2011	411-067-0000	4-1-2011	Amend	5-1-2011
410-141-0070	1-1-2011	Amend	2-1-2011	411-067-0010	4-1-2011	Amend	5-1-2011
410-141-0080	1-1-2011	Amend	2-1-2011	411-067-0020	4-1-2011	Amend	5-1-2011
410-141-0120	1-1-2011	Amend	2-1-2011	411-067-0030	4-1-2011	Repeal	5-1-2011
410-141-0220	1-1-2011	Amend	2-1-2011	411-067-0050	4-1-2011	Amend	5-1-2011
410-141-0260	1-1-2011	Amend	2-1-2011	411-067-0055	4-1-2011	Amend	5-1-2011
410-141-0263	1-1-2011	Amend	2-1-2011	411-067-0060	4-1-2011	Amend	5-1-2011
410-141-0280	1-1-2011	Amend	2-1-2011	411-067-0065	4-1-2011	Adopt	5-1-2011
410-141-0300	1-1-2011	Amend	2-1-2011	411-067-0070	4-1-2011	Amend	5-1-2011
410-141-0420	1-1-2011	Amend	2-1-2011	411-067-0080	4-1-2011	Amend	5-1-2011
410-141-0520	1-1-2011	Amend	2-1-2011	411-067-0083	4-1-2011	Amend	5-1-2011
410-141-0520	4-1-2011	Amend	5-1-2011	411-067-0086	4-1-2011	Adopt	5-1-2011
410-141-0520(T)	1-1-2011	Repeal	2-1-2011	411-067-0087	4-1-2011	Repeal	5-1-2011
410-142-0020	1-1-2011	Amend	1-1-2011	411-067-0090	4-1-2011	Amend	5-1-2011
410-142-0100	1-1-2011	Amend	1-1-2011	411-067-0100	4-1-2011	Amend	5-1-2011
410-142-0110	1-1-2011	Adopt	1-1-2011	411-070-0442	7-1-2011	Amend(T)	8-1-2011

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411-200-0010	5-1-2011	Amend	6-1-2011	411-328-0570	7-1-2011	Amend	8-1-2011
411-200-0020	5-1-2011	Amend	6-1-2011	411-328-0570	7-1-2011	Amend(T)	8-1-2011
411-200-0030	5-1-2011	Amend	6-1-2011	411-328-0570(T)	7-1-2011	Repeal	8-1-2011
411-200-0035	5-1-2011	Adopt	6-1-2011	411-328-0580	7-1-2011	Suspend	8-1-2011
411-200-0040	5-1-2011	Amend	6-1-2011	411-328-0590	7-1-2011	Suspend	8-1-2011
411-304-0035	1-1-2011	Amend	2-1-2011	411-328-0600	7-1-2011	Suspend	8-1-2011
411-308-0020	2-1-2011	Amend(T)	3-1-2011	411-328-0610	7-1-2011	Suspend	8-1-2011
411-308-0050	2-1-2011	Amend(T)	3-1-2011	411-328-0630	7-1-2011	Amend(T)	8-1-2011
411-308-0060	2-1-2011	Amend(T)	3-1-2011	411-328-0670	7-1-2011	Suspend	8-1-2011
411-308-0070	2-1-2011	Amend(T)	3-1-2011	411-328-0730	7-1-2011	Suspend	8-1-2011
411-308-0080	2-1-2011	Amend(T)	3-1-2011	411-328-0740	7-1-2011	Amend(T)	8-1-2011
411-308-0090	2-1-2011	Amend(T)	3-1-2011	411-328-0805	7-1-2011	Suspend	8-1-2011
411-308-0120	2-1-2011	Amend(T)	3-1-2011	411-328-0810	2-7-2011	Amend(T)	3-1-2011
411-320-0020	1-1-2011	Amend	2-1-2011	411-328-0810	7-1-2011	Amend	8-1-2011
411-320-0020(T)	1-1-2011	Repeal	2-1-2011	411-328-0810	7-1-2011	Suspend	8-1-2011
411-320-0030	12-1-2010	Amend(T)	1-1-2011	411-328-0810(T)	7-1-2011	Repeal	8-1-2011
411-320-0030	6-2-2011	Amend	7-1-2011	411-328-0820	7-1-2011	Suspend	8-1-2011
411-320-0045	12-1-2010	Amend(T)	1-1-2011	411-328-0830	7-1-2011	Suspend	8-1-2011
411-320-0045	6-2-2011	Amend	7-1-2011	411-335-0010	7-1-2011	Amend(T)	8-1-2011
411-320-0080	1-1-2011	Amend	2-1-2011	411-335-0020	7-1-2011	Amend(T)	8-1-2011
411-320-0080(T)	1-1-2011	Repeal	2-1-2011	411-335-0030	2-7-2011	Amend(T)	3-1-2011
411-320-0090	7-1-2011	Amend(T)	8-1-2011	411-335-0030	7-1-2011	Amend	8-1-2011
411-320-0110	7-1-2011	Amend(T)	8-1-2011	411-335-0030	7-1-2011	Amend(T)	8-1-2011
411-320-0130	12-1-2010	Amend(T)	1-1-2011	411-335-0030(T)	7-1-2011	Repeal	8-1-2011
411-320-0130	6-2-2011	Amend	7-1-2011	411-335-0050	2-7-2011	Amend(T)	3-1-2011
411-320-0170	12-1-2010	Amend(T)	1-1-2011	411-335-0050	7-1-2011	Amend	8-1-2011
411-320-0175	1-1-2011	Amend	2-1-2011	411-335-0050	7-1-2011	Suspend	8-1-2011
411-320-0175(T)	1-1-2011	Repeal	2-1-2011	411-335-0050(T)	7-1-2011	Repeal	8-1-2011
411-323-0010	7-1-2011	Adopt	8-1-2011	411-335-0060	7-1-2011	Amend(T)	8-1-2011
411-323-0010	7-1-2011	Amend(T)	8-1-2011	411-335-0070	7-1-2011	Suspend	8-1-2011
411-323-0020	7-1-2011	Adopt	8-1-2011	411-335-0080	7-1-2011	Suspend	8-1-2011
411-323-0020	7-1-2011	Amend(T)	8-1-2011	411-335-0090	7-1-2011	Suspend	8-1-2011
411-323-0030	7-1-2011	Adopt	8-1-2011	411-335-0100	7-1-2011	Suspend	8-1-2011
411-323-0030	7-1-2011	Amend(T)	8-1-2011	411-335-0110	7-1-2011	Suspend	8-1-2011
411-323-0035	7-1-2011	Adopt(T)	8-1-2011	411-335-0140	7-1-2011	Suspend	8-1-2011
411-323-0040	7-1-2011	Adopt	8-1-2011	411-335-0300	7-1-2011	Suspend	8-1-2011
411-323-0040	7-1-2011	Amend(T)	8-1-2011	411-335-0310	7-1-2011	Amend(T)	8-1-2011
411-323-0050	7-1-2011	Adopt	8-1-2011	411-335-0370	7-1-2011	Suspend	8-1-2011
411-323-0050	7-1-2011	Amend(T)	8-1-2011	411-335-0380	2-7-2011	Amend(T)	3-1-2011
411-323-0060	7-1-2011	Adopt	8-1-2011	411-335-0380	7-1-2011	Amend	8-1-2011
411-323-0060	7-1-2011	Amend(T)	8-1-2011	411-335-0380	7-1-2011	Suspend	8-1-2011
411-323-0070	7-1-2011	Adopt	8-1-2011	411-335-0380(T)	7-1-2011	Repeal	8-1-2011
411-323-0070	7-1-2011	Amend(T)	8-1-2011	411-335-0390	7-1-2011	Suspend	8-1-2011
411-325-0020	7-1-2011	Amend(T)	8-1-2011	411-340-0030	11-17-2010	Amend(T)	1-1-2011
411-325-0025	7-1-2011	Adopt(T)	8-1-2011	411-340-0030	5-5-2011	Amend	6-1-2011
411-325-0060	7-1-2011	Amend(T)	8-1-2011	411-340-0030(T)	5-5-2011	Repeal	6-1-2011
411-325-0080	7-1-2011	Suspend	8-1-2011	411-340-0040	11-17-2010	Amend(T)	1-1-2011
411-325-0100	7-1-2011	Suspend	8-1-2011	411-340-0040	5-5-2011	Amend	6-1-2011
411-325-0160	7-1-2011	Suspend	8-1-2011	411-340-0040(T)	5-5-2011	Repeal	6-1-2011
411-325-0210	7-1-2011	Suspend	8-1-2011	411-340-0060	11-17-2010	Amend(T)	1-1-2011
411-325-0310	7-1-2011	Suspend	8-1-2011	411-340-0060(T)	5-5-2011	Repeal	6-1-2011
411-325-0320	7-1-2011	Amend(T)	8-1-2011	411-340-0100	7-1-2011	Amend(T)	8-1-2011
411-325-0450	7-1-2011	Suspend	8-1-2011	411-340-0120	11-17-2010	Amend(T)	1-1-2011
411-325-0460	7-1-2011	Amend(T)	8-1-2011	411-340-0120	5-5-2011	Amend	6-1-2011
411-328-0560	7-1-2011	Amend(T)	8-1-2011	411-340-0120(T)	5-5-2011	Repeal	6-1-2011



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411-345-0010	7-1-2011	Amend(T)	8-1-2011	411-346-0165	7-1-2011	Adopt	8-1-2011
411-345-0020	7-1-2011	Amend	8-1-2011	411-346-0165(T)	7-1-2011	Repeal	8-1-2011
411-345-0020	7-1-2011	Amend(T)	8-1-2011	411-346-0190	2-10-2011	Amend(T)	3-1-2011
411-345-0025	7-1-2011	Adopt	8-1-2011	411-346-0190	7-1-2011	Adopt	8-1-2011
411-345-0030	2-7-2011	Amend(T)	3-1-2011	411-346-0190(T)	7-1-2011	Repeal	8-1-2011
411-345-0030	7-1-2011	Amend	8-1-2011	411-346-0200	2-10-2011	Amend(T)	3-1-2011
411-345-0030	7-1-2011	Amend(T)	8-1-2011	411-346-0200	7-1-2011	Adopt	8-1-2011
411-345-0030(T)	7-1-2011	Repeal	8-1-2011	411-346-0200(T)	7-1-2011	Repeal	8-1-2011
411-345-0040	7-1-2011	Repeal	8-1-2011	411-346-0220	2-10-2011	Amend(T)	3-1-2011
411-345-0050	7-1-2011	Amend	8-1-2011	411-346-0220	7-1-2011	Adopt	8-1-2011
411-345-0050	7-1-2011	Amend(T)	8-1-2011	411-346-0220(T)	7-1-2011	Repeal	8-1-2011
411-345-0060	7-1-2011	Repeal	8-1-2011	411-360-0070	1-1-2011	Amend	2-1-2011
411-345-0070	7-1-2011	Repeal	8-1-2011	411-360-0070(T)	1-1-2011	Repeal	2-1-2011
411-345-0080	7-1-2011	Amend	8-1-2011	411-370-0010	7-1-2011	Adopt	8-1-2011
411-345-0080	7-1-2011	Suspend	8-1-2011	411-370-0020	7-1-2011	Adopt	8-1-2011
411-345-0090	7-1-2011	Amend	8-1-2011	411-370-0030	7-1-2011	Adopt	8-1-2011
411-345-0095	7-1-2011	Adopt	8-1-2011	411-370-0040	7-1-2011	Adopt	8-1-2011
411-345-0100	2-7-2011	Amend(T)	3-1-2011	413-010-0055	12-29-2010	Amend	2-1-2011
411-345-0100	7-1-2011	Amend	8-1-2011	413-010-0055(T)	12-29-2010	Repeal	2-1-2011
411-345-0100	7-1-2011	Amend(T)	8-1-2011	413-010-0081	12-29-2010	Amend	2-1-2011
411-345-0100(T)	7-1-2011	Repeal	8-1-2011	413-010-0082	12-29-2010	Amend	2-1-2011
411-345-0110	7-1-2011	Amend	8-1-2011	413-010-0083	12-29-2010	Amend	2-1-2011
411-345-0110	7-1-2011	Amend(T)	8-1-2011	413-010-0084	12-29-2010	Repeal	2-1-2011
411-345-0120	7-1-2011	Repeal	8-1-2011	413-010-0085	12-29-2010	Amend	2-1-2011
411-345-0130	7-1-2011	Amend	8-1-2011	413-010-0086	12-29-2010	Repeal	2-1-2011
411-345-0130	7-1-2011	Amend(T)	8-1-2011	413-010-0360	12-29-2010	Repeal	2-1-2011
411-345-0140	7-1-2011	Amend	8-1-2011	413-010-0370	12-29-2010	Repeal	2-1-2011
411-345-0150	7-1-2011	Repeal	8-1-2011	413-010-0380	12-29-2010	Repeal	2-1-2011
411-345-0160	7-1-2011	Amend	8-1-2011	413-010-0500	6-30-2011	Amend(T)	8-1-2011
411-345-0170	7-1-2011	Amend	8-1-2011	413-010-0501	6-30-2011	Adopt(T)	8-1-2011
411-345-0180	7-1-2011	Amend	8-1-2011	413-010-0502	6-30-2011	Adopt(T)	8-1-2011
411-345-0190	7-1-2011	Amend	8-1-2011	413-010-0505	6-30-2011	Amend(T)	8-1-2011
411-345-0190	7-1-2011	Amend(T)	8-1-2011	413-010-0510	6-30-2011	Amend(T)	8-1-2011
411-345-0200	7-1-2011	Amend	8-1-2011	413-010-0515	6-30-2011	Amend(T)	8-1-2011
411-345-0210	7-1-2011	Repeal	8-1-2011	413-010-0520	6-30-2011	Amend(T)	8-1-2011
411-345-0220	7-1-2011	Repeal	8-1-2011	413-010-0525	6-30-2011	Amend(T)	8-1-2011
411-345-0230	7-1-2011	Amend	8-1-2011	413-010-0530	6-30-2011	Amend(T)	8-1-2011
411-345-0240	7-1-2011	Amend	8-1-2011	413-010-0535	6-30-2011	Amend(T)	8-1-2011
411-345-0250	7-1-2011	Amend	8-1-2011	413-020-0200	6-30-2011	Amend(T)	8-1-2011
411-345-0260	2-7-2011	Amend(T)	3-1-2011	413-020-0210	6-30-2011	Amend(T)	8-1-2011
411-345-0260	7-1-2011	Amend	8-1-2011	413-020-0230	6-30-2011	Amend(T)	8-1-2011
411-345-0260(T)	7-1-2011	Repeal	8-1-2011	413-020-0233	6-30-2011	Amend(T)	8-1-2011
411-345-0270	7-1-2011	Amend	8-1-2011	413-020-0236	6-30-2011	Amend(T)	8-1-2011
411-345-0280	7-1-2011	Repeal	8-1-2011	413-020-0240	6-30-2011	Amend(T)	8-1-2011
411-345-0290	7-1-2011	Repeal	8-1-2011	413-020-0245	6-30-2011	Amend(T)	8-1-2011
411-345-0300	7-1-2011	Repeal	8-1-2011	413-020-0255	6-30-2011	Amend(T)	8-1-2011
411-346-0110	2-10-2011	Amend(T)	3-1-2011	413-040-0240	1-4-2011	Amend	2-1-2011
411-346-0110	7-1-2011	Adopt	8-1-2011	413-040-0240(T)	1-4-2011	Repeal	2-1-2011
411-346-0110(T)	7-1-2011	Repeal	8-1-2011	413-070-0063	6-30-2011	Amend(T)	8-1-2011
411-346-0150	2-10-2011	Amend(T)	3-1-2011	413-070-0500	12-29-2010	Amend	2-1-2011
411-346-0150	7-1-2011	Adopt	8-1-2011	413-070-0505	12-29-2010	Amend	2-1-2011
411-346-0150(T)	7-1-2011	Repeal	8-1-2011	413-070-0510	12-29-2010	Amend	2-1-2011
411-346-0160	2-10-2011	Amend(T)	3-1-2011	413-070-0514	12-29-2010	Adopt	2-1-2011
411-346-0160	7-1-2011	Adopt	8-1-2011	413-070-0514	3-22-2011	Amend(T)	5-1-2011
411-346-0160(T)	7-1-2011	Repeal	8-1-2011	413-070-0515	12-29-2010	Am. & Ren.	2-1-2011

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413-070-0516	12-29-2010	Adopt	2-1-2011	413-090-0010	6-30-2011	Amend(T)	8-1-2011
413-070-0516	3-22-2011	Amend(T)	5-1-2011	413-090-0021	6-30-2011	Amend(T)	8-1-2011
413-070-0517	12-29-2010	Repeal	2-1-2011	413-090-0030	6-30-2011	Amend(T)	8-1-2011
413-070-0518	12-29-2010	Adopt	2-1-2011	413-090-0040	6-30-2011	Amend(T)	8-1-2011
413-070-0518	3-22-2011	Amend(T)	5-1-2011	413-090-0050	6-30-2011	Amend(T)	8-1-2011
413-070-0519	12-29-2010	Adopt	2-1-2011	413-100-0000	6-30-2011	Amend	8-1-2011
413-070-0519	3-22-2011	Amend(T)	5-1-2011	413-100-0010	6-30-2011	Amend	8-1-2011
413-070-0520	12-29-2010	Amend	2-1-2011	413-100-0020	6-30-2011	Amend	8-1-2011
413-070-0524	12-29-2010	Amend	2-1-2011	413-100-0030	6-30-2011	Amend	8-1-2011
413-070-0532	12-29-2010	Amend	2-1-2011	413-100-0060	6-30-2011	Amend	8-1-2011
413-070-0536	12-29-2010	Amend	2-1-2011	413-100-0070	6-30-2011	Amend	8-1-2011
413-070-0540	12-29-2010	Amend	2-1-2011	413-100-0080	6-30-2011	Amend	8-1-2011
413-070-0548	12-29-2010	Am. & Ren.	2-1-2011	413-100-0110	6-30-2011	Amend	8-1-2011
413-070-0550	12-29-2010	Amend	2-1-2011	413-100-0120	6-30-2011	Amend	8-1-2011
413-070-0550	3-22-2011	Amend(T)	5-1-2011	413-100-0130	6-30-2011	Amend	8-1-2011
413-070-0552	12-29-2010	Amend	2-1-2011	413-100-0135	6-30-2011	Amend(T)	8-1-2011
413-070-0556	12-29-2010	Amend	2-1-2011	413-100-0150	6-30-2011	Amend(T)	8-1-2011
413-070-0565	12-29-2010	Amend	2-1-2011	413-100-0160	6-30-2011	Amend	8-1-2011
413-070-0570	12-28-2010	Adopt	2-1-2011	413-100-0180	6-30-2011	Amend	8-1-2011
413-070-0572	12-28-2010	Adopt	2-1-2011	413-100-0190	6-30-2011	Amend	8-1-2011
413-070-0574	12-28-2010	Adopt	2-1-2011	413-100-0200	6-30-2011	Amend	8-1-2011
413-070-0600	12-29-2010	Amend	2-1-2011	413-100-0210	6-30-2011	Amend	8-1-2011
413-070-0620	12-29-2010	Amend	2-1-2011	413-100-0220	6-30-2011	Amend	8-1-2011
413-070-0625	12-29-2010	Amend	2-1-2011	413-100-0230	6-30-2011	Amend	8-1-2011
413-070-0630	12-29-2010	Amend	2-1-2011	413-100-0240	6-30-2011	Amend	8-1-2011
413-070-0640	12-29-2010	Amend	2-1-2011	413-100-0250	6-30-2011	Amend	8-1-2011
413-070-0645	12-29-2010	Amend	2-1-2011	413-100-0260	6-30-2011	Amend	8-1-2011
413-070-0651	12-29-2010	Adopt(T)	2-1-2011	413-100-0270	6-30-2011	Amend	8-1-2011
413-070-0651	6-28-2011	Amend	8-1-2011	413-100-0280	6-30-2011	Amend	8-1-2011
413-070-0655	12-29-2010	Adopt(T)	2-1-2011	413-100-0300	6-30-2011	Amend	8-1-2011
413-070-0655	6-28-2011	Amend	8-1-2011	413-100-0310	6-30-2011	Amend	8-1-2011
413-070-0660	12-29-2010	Adopt(T)	2-1-2011	413-100-0320	6-30-2011	Amend	8-1-2011
413-070-0660	6-28-2011	Amend	8-1-2011	413-100-0335	6-30-2011	Amend	8-1-2011
413-070-0665	12-29-2010	Adopt(T)	2-1-2011	413-100-0345	6-30-2011	Amend	8-1-2011
413-070-0665	6-28-2011	Amend	8-1-2011	413-100-0905	6-30-2011	Amend(T)	8-1-2011
413-070-0670	12-29-2010	Adopt(T)	2-1-2011	413-100-0915	6-30-2011	Amend(T)	8-1-2011
413-070-0670	6-28-2011	Amend	8-1-2011	413-100-0925	6-30-2011	Amend(T)	8-1-2011
413-070-0900	6-30-2011	Amend(T)	8-1-2011	413-100-0930	6-30-2011	Amend(T)	8-1-2011
413-070-0905	6-30-2011	Amend(T)	8-1-2011	413-110-0100	12-29-2010	Amend	2-1-2011
413-070-0909	6-30-2011	Amend(T)	8-1-2011	413-110-0110	12-29-2010	Amend	2-1-2011
413-070-0917	6-30-2011	Amend(T)	8-1-2011	413-110-0120	12-29-2010	Repeal	2-1-2011
413-070-0919	6-30-2011	Amend(T)	8-1-2011	413-110-0130	12-29-2010	Amend	2-1-2011
413-070-0925	6-30-2011	Amend(T)	8-1-2011	413-110-0132	12-29-2010	Adopt	2-1-2011
413-070-0929	6-30-2011	Suspend	8-1-2011	413-110-0132	4-4-2011	Amend(T)	5-1-2011
413-070-0934	6-30-2011	Amend(T)	8-1-2011	413-110-0140	12-29-2010	Repeal	2-1-2011
413-070-0939	6-30-2011	Amend(T)	8-1-2011	413-110-0150	12-29-2010	Adopt	2-1-2011
413-070-0944	6-30-2011	Amend(T)	8-1-2011	413-120-0000	12-29-2010	Amend	2-1-2011
413-070-0949	6-30-2011	Amend(T)	8-1-2011	413-120-0010	12-29-2010	Amend	2-1-2011
413-070-0959	6-30-2011	Amend(T)	8-1-2011	413-120-0015	12-29-2010	Repeal	2-1-2011
413-070-0964	6-30-2011	Amend(T)	8-1-2011	413-120-0020	12-29-2010	Amend	2-1-2011
413-070-0969	6-30-2011	Amend(T)	8-1-2011	413-120-0020	3-22-2011	Amend(T)	5-1-2011
413-070-0970	6-30-2011	Amend(T)	8-1-2011	413-120-0021	12-29-2010	Adopt	2-1-2011
413-070-0974	6-30-2011	Amend(T)	8-1-2011	413-120-0021	3-22-2011	Amend(T)	5-1-2011
413-070-0979	6-30-2011	Suspend	8-1-2011	413-120-0025	12-29-2010	Adopt	2-1-2011
413-090-0000	6-30-2011	Amend(T)	8-1-2011	413-120-0030	12-29-2010	Repeal	2-1-2011
413-090-0005	6-30-2011	Amend(T)	8-1-2011	413-120-0033	12-29-2010	Am. & Ren.	2-1-2011

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413-120-0035	3-22-2011	Amend(T)	5-1-2011	413-120-0850	12-29-2010	Adopt	2-1-2011
413-120-0040	12-29-2010	Repeal	2-1-2011	413-120-0860	12-29-2010	Adopt	2-1-2011
413-120-0045	12-29-2010	Am. & Ren.	2-1-2011	413-120-0870	12-29-2010	Adopt	2-1-2011
413-120-0053	12-29-2010	Adopt	2-1-2011	413-120-0900	12-28-2010	Adopt	2-1-2011
413-120-0057	12-29-2010	Adopt	2-1-2011	413-120-0905	12-28-2010	Adopt	2-1-2011
413-120-0060	12-29-2010	Amend	2-1-2011	413-120-0910	12-28-2010	Adopt	2-1-2011
413-120-0060	3-22-2011	Amend(T)	5-1-2011	413-120-0920	12-28-2010	Adopt	2-1-2011
413-120-0075	12-29-2010	Am. & Ren.	2-1-2011	413-120-0925	12-28-2010	Adopt	2-1-2011
413-120-0080	12-29-2010	Repeal	2-1-2011	413-120-0930	12-28-2010	Adopt	2-1-2011
413-120-0190	12-29-2010	Amend	2-1-2011	413-120-0940	12-28-2010	Adopt	2-1-2011
413-120-0195	12-29-2010	Amend	2-1-2011	413-120-0945	12-28-2010	Adopt	2-1-2011
413-120-0200	12-29-2010	Repeal	2-1-2011	413-120-0950	12-28-2010	Adopt	2-1-2011
413-120-0210	12-29-2010	Repeal	2-1-2011	413-120-0960	12-28-2010	Adopt	2-1-2011
413-120-0220	12-29-2010	Amend	2-1-2011	413-120-0970	12-28-2010	Adopt	2-1-2011
413-120-0222	12-29-2010	Adopt	2-1-2011	413-130-0000	6-30-2011	Amend(T)	8-1-2011
413-120-0225	12-29-2010	Adopt	2-1-2011	413-130-0010	6-30-2011	Amend(T)	8-1-2011
413-120-0230	12-29-2010	Repeal	2-1-2011	413-130-0015	6-30-2011	Adopt(T)	8-1-2011
413-120-0240	12-29-2010	Amend	2-1-2011	413-130-0020	6-30-2011	Amend(T)	8-1-2011
413-120-0243	12-29-2010	Adopt	2-1-2011	413-130-0030	6-30-2011	Am. & Ren.(T)	8-1-2011
413-120-0246	12-29-2010	Adopt	2-1-2011	413-130-0040	6-30-2011	Amend(T)	8-1-2011
413-120-0250	12-29-2010	Repeal	2-1-2011	413-130-0045	6-30-2011	Suspend	8-1-2011
413-120-0255	12-29-2010	Repeal	2-1-2011	413-130-0050	6-30-2011	Amend(T)	8-1-2011
413-120-0260	12-29-2010	Repeal	2-1-2011	413-130-0055	6-30-2011	Adopt(T)	8-1-2011
413-120-0265	12-29-2010	Repeal	2-1-2011	413-130-0060	6-30-2011	Suspend	8-1-2011
413-120-0270	12-29-2010	Repeal	2-1-2011	413-130-0070	6-30-2011	Amend(T)	8-1-2011
413-120-0275	12-29-2010	Repeal	2-1-2011	413-130-0075	6-30-2011	Amend(T)	8-1-2011
413-120-0280	12-29-2010	Repeal	2-1-2011	413-130-0080	6-30-2011	Amend(T)	8-1-2011
413-120-0285	12-29-2010	Repeal	2-1-2011	413-130-0090	6-30-2011	Amend(T)	8-1-2011
413-120-0290	12-29-2010	Repeal	2-1-2011	413-130-0100	6-30-2011	Amend(T)	8-1-2011
413-120-0300	12-29-2010	Repeal	2-1-2011	413-130-0110	6-30-2011	Amend(T)	8-1-2011
413-120-0310	12-29-2010	Repeal	2-1-2011	413-130-0115	6-30-2011	Suspend	8-1-2011
413-120-0500	12-29-2010	Amend	2-1-2011	413-130-0125	6-30-2011	Amend(T)	8-1-2011
413-120-0510	12-29-2010	Amend	2-1-2011	413-130-0130	6-30-2011	Amend(T)	8-1-2011
413-120-0520	12-29-2010	Repeal	2-1-2011	413-130-0150	12-29-2010	Repeal	2-1-2011
413-120-0521	12-29-2010	Adopt	2-1-2011	413-130-0160	12-29-2010	Repeal	2-1-2011
413-120-0530	12-29-2010	Repeal	2-1-2011	413-130-0170	12-29-2010	Repeal	2-1-2011
413-120-0540	12-29-2010	Repeal	2-1-2011	413-130-0180	12-29-2010	Repeal	2-1-2011
413-120-0541	12-29-2010	Adopt	2-1-2011	414-205-0055	1-1-2011	Amend	2-1-2011
413-120-0550	12-29-2010	Am. & Ren.	2-1-2011	414-205-0100	1-1-2011	Amend	2-1-2011
413-120-0570	12-29-2010	Adopt	2-1-2011	414-205-0110	1-1-2011	Amend	2-1-2011
413-120-0590	12-29-2010	Adopt	2-1-2011	414-205-0170	1-1-2011	Amend	2-1-2011
413-120-0595	12-29-2010	Adopt	2-1-2011	414-300-0005	1-1-2011	Amend	2-1-2011
413-120-0700	12-29-2010	Adopt	2-1-2011	414-300-0010	1-1-2011	Amend	2-1-2011
413-120-0710	12-29-2010	Adopt	2-1-2011	414-300-0015	1-1-2011	Amend	2-1-2011
413-120-0720	12-29-2010	Adopt	2-1-2011	414-300-0030	1-1-2011	Amend	2-1-2011
413-120-0730	12-29-2010	Adopt	2-1-2011	414-300-0040	1-1-2011	Amend	2-1-2011
413-120-0730	3-22-2011	Amend(T)	5-1-2011	414-300-0110	1-1-2011	Amend(T)	2-1-2011
413-120-0750	12-29-2010	Adopt	2-1-2011	414-300-0110	6-1-2011	Amend	7-1-2011
413-120-0750	3-22-2011	Amend(T)	5-1-2011	414-300-0110(T)	6-1-2011	Repeal	7-1-2011
413-120-0760	12-29-2010	Adopt	2-1-2011	414-300-0120	1-1-2011	Amend	2-1-2011
413-120-0760	3-22-2011	Amend(T)	5-1-2011	414-300-0250	1-1-2011	Amend	2-1-2011
413-120-0800	12-29-2010	Amend	2-1-2011	414-300-0415	1-1-2011	Amend	2-1-2011
413-120-0810	12-29-2010	Amend	2-1-2011	414-350-0010	1-1-2011	Amend	2-1-2011
413-120-0820	12-29-2010	Repeal	2-1-2011	414-350-0020	1-1-2011	Amend	2-1-2011
413-120-0830	12-29-2010	Amend	2-1-2011	414-350-0030	1-1-2011	Amend	2-1-2011



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414-350-0060	1-1-2011	Amend	2-1-2011	415-054-0420(T)	3-9-2011	Repeal	4-1-2011
414-350-0090	1-1-2011	Amend	2-1-2011	415-054-0430	3-9-2011	Adopt	4-1-2011
414-350-0100	1-1-2011	Amend	2-1-2011	415-054-0430(T)	3-9-2011	Repeal	4-1-2011
414-350-0110	1-1-2011	Amend(T)	2-1-2011	415-054-0440	3-9-2011	Adopt	4-1-2011
414-350-0110	6-1-2011	Amend	7-1-2011	415-054-0440(T)	3-9-2011	Repeal	4-1-2011
414-350-0110(T)	6-1-2011	Repeal	7-1-2011	415-054-0450	3-9-2011	Adopt	4-1-2011
414-350-0115	1-1-2011	Amend	2-1-2011	415-054-0450(T)	3-9-2011	Repeal	4-1-2011
414-350-0200	1-1-2011	Amend	2-1-2011	415-054-0460	3-9-2011	Adopt	4-1-2011
414-350-0210	1-1-2011	Amend	2-1-2011	415-054-0460(T)	3-9-2011	Repeal	4-1-2011
414-350-0375	1-1-2011	Amend	2-1-2011	415-054-0470	3-9-2011	Adopt	4-1-2011
414-350-0380	1-1-2011	Amend	2-1-2011	415-054-0470(T)	3-9-2011	Repeal	4-1-2011
414-425-0010	5-1-2011	Amend(T)	6-1-2011	415-054-0480	3-9-2011	Adopt	4-1-2011
414-425-0010	6-30-2011	Amend(T)	8-1-2011	415-054-0480(T)	3-9-2011	Repeal	4-1-2011
414-425-0010(T)	6-30-2011	Suspend	8-1-2011	415-054-0490	3-9-2011	Adopt	4-1-2011
414-425-0030	5-1-2011	Amend(T)	6-1-2011	415-054-0490(T)	3-9-2011	Repeal	4-1-2011
414-425-0030	6-30-2011	Amend(T)	8-1-2011	415-054-0500	3-9-2011	Adopt	4-1-2011
414-425-0030(T)	6-30-2011	Suspend	8-1-2011	415-054-0500(T)	3-9-2011	Repeal	4-1-2011
414-450-0010	5-1-2011	Amend(T)	6-1-2011	415-054-0510	3-9-2011	Adopt	4-1-2011
414-450-0010	6-30-2011	Amend(T)	8-1-2011	415-054-0510(T)	3-9-2011	Repeal	4-1-2011
414-450-0010(T)	6-30-2011	Suspend	8-1-2011	415-054-0520	3-9-2011	Adopt	4-1-2011
414-450-0030	5-1-2011	Amend(T)	6-1-2011	415-054-0520(T)	3-9-2011	Repeal	4-1-2011
414-450-0030	6-30-2011	Amend(T)	8-1-2011	415-054-0530	3-9-2011	Adopt	4-1-2011
414-450-0030(T)	6-30-2011	Suspend	8-1-2011	415-054-0540	3-9-2011	Adopt	4-1-2011
415-054-0005	3-9-2011	Repeal	4-1-2011	415-054-0550	3-9-2011	Adopt	4-1-2011
415-054-0010	3-9-2011	Repeal	4-1-2011	415-054-0560	3-9-2011	Adopt	4-1-2011
415-054-0015	3-9-2011	Repeal	4-1-2011	415-054-0570	3-9-2011	Adopt	4-1-2011
415-054-0017	3-9-2011	Repeal	4-1-2011	415-054-0580	3-9-2011	Adopt	4-1-2011
415-054-0018	3-9-2011	Repeal	4-1-2011	415-065-0055	2-11-2011	Amend(T)	3-1-2011
415-054-0045	3-9-2011	Repeal	4-1-2011	416-070-0010	6-14-2011	Adopt(T)	7-1-2011
415-054-0050	3-9-2011	Repeal	4-1-2011	416-070-0020	6-14-2011	Adopt(T)	7-1-2011
415-054-0055	3-9-2011	Repeal	4-1-2011	416-070-0030	6-14-2011	Adopt(T)	7-1-2011
415-054-0060	3-9-2011	Repeal	4-1-2011	416-070-0040	6-14-2011	Adopt(T)	7-1-2011
415-054-0070	3-9-2011	Repeal	4-1-2011	416-070-0050	6-14-2011	Adopt(T)	7-1-2011
415-054-0075	3-9-2011	Repeal	4-1-2011	416-070-0060	6-14-2011	Adopt(T)	7-1-2011
415-054-0076	3-9-2011	Repeal	4-1-2011	436-009-0003	4-1-2011	Amend	4-1-2011
415-054-0080	3-9-2011	Repeal	4-1-2011	436-009-0004	4-1-2011	Amend	4-1-2011
415-054-0090	3-9-2011	Repeal	4-1-2011	436-009-0005	4-1-2011	Amend	4-1-2011
415-054-0100	3-9-2011	Repeal	4-1-2011	436-009-0010	4-1-2011	Amend	4-1-2011
415-054-0200	3-9-2011	Repeal	4-1-2011	436-009-0020	4-1-2011	Amend	4-1-2011
415-054-0210	3-9-2011	Repeal	4-1-2011	436-009-0030	4-1-2011	Amend	4-1-2011
415-054-0220	3-9-2011	Repeal	4-1-2011	436-009-0040	4-1-2011	Amend	4-1-2011
415-054-0230	3-9-2011	Repeal	4-1-2011	436-009-0050	4-1-2011	Amend	4-1-2011
415-054-0240	3-9-2011	Repeal	4-1-2011	436-009-0070	4-1-2011	Amend	4-1-2011
415-054-0300	3-9-2011	Repeal	4-1-2011	436-009-0080	4-1-2011	Amend	4-1-2011
415-054-0310	3-9-2011	Repeal	4-1-2011	436-009-0080	7-5-2011	Amend(T)	8-1-2011
415-054-0320	3-9-2011	Repeal	4-1-2011	436-009-0090	4-1-2011	Amend	4-1-2011
415-054-0330	3-9-2011	Repeal	4-1-2011	436-009-0114	4-1-2011	Adopt	4-1-2011
415-054-0340	3-9-2011	Repeal	4-1-2011	436-009-0120	4-1-2011	Amend	4-1-2011
415-054-0350	3-9-2011	Repeal	4-1-2011	436-009-0125	4-1-2011	Amend	4-1-2011
415-054-0360	3-9-2011	Repeal	4-1-2011	436-009-0155	4-1-2011	Amend	4-1-2011
415-054-0370	3-9-2011	Repeal	4-1-2011	436-009-0160	4-1-2011	Amend	4-1-2011
415-054-0400	3-9-2011	Adopt	4-1-2011	436-009-0180	4-1-2011	Amend	4-1-2011
415-054-0400(T)	3-9-2011	Repeal	4-1-2011	436-009-0199	4-1-2011	Am. & Ren.	4-1-2011
415-054-0410	3-9-2011	Adopt	4-1-2011	436-009-0200	4-1-2012	Adopt	4-1-2011
415-054-0410(T)	3-9-2011	Repeal	4-1-2011	436-009-0205	4-1-2012	Adopt	4-1-2011

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436-009-0207	4-1-2012	Adopt	4-1-2011	441-674-0520	1-20-2011	Adopt	3-1-2011
436-009-0210	4-1-2012	Adopt	4-1-2011	441-674-0910	1-1-2011	Adopt	2-1-2011
436-009-0215	4-1-2012	Adopt	4-1-2011	441-674-0910(T)	1-1-2011	Repeal	2-1-2011
436-009-0220	4-1-2012	Adopt	4-1-2011	441-674-0915	1-1-2011	Adopt	2-1-2011
436-009-0225	4-1-2012	Adopt	4-1-2011	441-674-0915(T)	1-1-2011	Repeal	2-1-2011
436-009-0230	4-1-2012	Adopt	4-1-2011	441-674-0920	1-1-2011	Adopt	2-1-2011
436-009-0235	4-1-2012	Adopt	4-1-2011	441-674-0920(T)	1-1-2011	Repeal	2-1-2011
436-009-0240	4-1-2012	Adopt	4-1-2011	441-710-0035	12-1-2010	Amend	1-1-2011
436-009-0245	4-1-2012	Adopt	4-1-2011	441-710-0071	12-1-2010	Adopt	1-1-2011
436-009-0250	4-1-2012	Adopt	4-1-2011	441-710-0500	3-8-2011	Amend	4-1-2011
436-009-0255	4-1-2012	Adopt	4-1-2011	441-860-0101	7-1-2011	Amend(T)	8-1-2011
436-009-0260	4-1-2012	Adopt	4-1-2011	441-880-0400	7-1-2011	Amend(T)	8-1-2011
436-009-0265	4-1-2012	Adopt	4-1-2011	441-930-0010	1-1-2011	Amend	2-1-2011
436-009-0270	4-1-2012	Adopt	4-1-2011	441-930-0030	1-1-2011	Amend	2-1-2011
436-009-0275	4-1-2012	Adopt	4-1-2011	441-930-0035	1-1-2011	Adopt	2-1-2011
436-009-0280	4-1-2012	Adopt	4-1-2011	441-930-0045	1-1-2011	Adopt	2-1-2011
436-009-0285	4-1-2012	Adopt	4-1-2011	441-930-0065	1-1-2011	Adopt	2-1-2011
436-009-0290	4-1-2012	Adopt	4-1-2011	441-930-0068	1-1-2011	Adopt	2-1-2011
436-010-0230	4-1-2011	Amend	4-1-2011	441-930-0070	1-1-2011	Amend	2-1-2011
436-010-0265	4-1-2011	Amend	4-1-2011	441-930-0080	1-1-2011	Amend	2-1-2011
436-010-0290	4-1-2011	Amend	4-1-2011	441-930-0210	1-1-2011	Amend	2-1-2011
436-060-0095	4-1-2011	Amend	4-1-2011	441-930-0220	1-1-2011	Amend	2-1-2011
436-085-0003	7-1-2011	Amend	7-1-2011	441-930-0230	1-1-2011	Amend	2-1-2011
436-085-0005	7-1-2011	Amend	7-1-2011	441-930-0240	1-1-2011	Amend	2-1-2011
436-085-0025	7-1-2011	Amend	7-1-2011	441-930-0250	1-1-2011	Amend	2-1-2011
436-085-0030	7-1-2011	Amend	7-1-2011	441-930-0255	1-1-2011	Adopt	2-1-2011
437-003-0001	2-9-2011	Amend	3-1-2011	441-930-0260	1-1-2011	Amend	2-1-2011
437-003-1423	2-9-2011	Adopt	3-1-2011	441-930-0267	1-1-2011	Adopt	2-1-2011
437-003-3600	2-9-2011	Adopt	3-1-2011	441-930-0270	1-1-2011	Amend	2-1-2011
441-035-0010	2-15-2011	Amend	3-1-2011	441-930-0270	7-1-2011	Amend(T)	8-1-2011
441-505-1135	12-1-2010	Adopt	1-1-2011	441-930-0280	1-1-2011	Repeal	2-1-2011
441-505-1135	7-1-2011	Suspend	8-1-2011	441-930-0290	1-1-2011	Amend	2-1-2011
441-674-0005	1-1-2011	Adopt	2-1-2011	441-930-0300	1-1-2011	Amend	2-1-2011
441-674-0005	1-20-2011	Amend	3-1-2011	441-930-0310	1-1-2011	Amend	2-1-2011
441-674-0005(T)	1-1-2011	Repeal	2-1-2011	441-930-0320	1-1-2011	Amend	2-1-2011
441-674-0100	1-1-2011	Adopt	2-1-2011	441-930-0330	1-1-2011	Amend	2-1-2011
441-674-0100(T)	1-1-2011	Repeal	2-1-2011	441-930-0340	1-1-2011	Repeal	2-1-2011
441-674-0120	1-1-2011	Adopt	2-1-2011	441-930-0350	1-1-2011	Amend	2-1-2011
441-674-0120(T)	1-1-2011	Repeal	2-1-2011	441-930-0360	1-1-2011	Amend	2-1-2011
441-674-0130	1-1-2011	Adopt	2-1-2011	442-005-0000	5-19-2011	Amend	7-1-2011
441-674-0130(T)	1-1-2011	Repeal	2-1-2011	442-005-0010	2-25-2011	Amend	4-1-2011
441-674-0140	1-1-2011	Adopt	2-1-2011	442-005-0020	7-15-2011	Amend(T)	8-1-2011
441-674-0140(T)	1-1-2011	Repeal	2-1-2011	442-005-0030	1-5-2011	Amend(T)	2-1-2011
441-674-0210	1-1-2011	Adopt	2-1-2011	442-005-0030	4-22-2011	Amend	6-1-2011
441-674-0210(T)	1-1-2011	Repeal	2-1-2011	442-005-0030	7-15-2011	Amend(T)	8-1-2011
441-674-0220	1-1-2011	Adopt	2-1-2011	442-005-0030(T)	1-5-2011	Suspend	2-1-2011
441-674-0220(T)	1-1-2011	Repeal	2-1-2011	442-005-0050	2-25-2011	Amend	4-1-2011
441-674-0230	1-1-2011	Adopt	2-1-2011	442-005-0050	7-15-2011	Amend(T)	8-1-2011
441-674-0230(T)	1-1-2011	Repeal	2-1-2011	442-005-0060	2-25-2011	Amend	4-1-2011
441-674-0240	1-1-2011	Adopt	2-1-2011	442-005-0070	4-22-2011	Amend	6-1-2011
441-674-0240(T)	1-1-2011	Repeal	2-1-2011	442-005-0070	7-15-2011	Amend(T)	8-1-2011
441-674-0250	1-1-2011	Adopt	2-1-2011	442-005-0100	2-25-2011	Amend	4-1-2011
441-674-0250(T)	1-1-2011	Repeal	2-1-2011	442-005-0240	4-22-2011	Amend	6-1-2011
441-674-0310	1-1-2011	Adopt	2-1-2011	442-010-0010	1-18-2011	Amend	3-1-2011
441-674-0310(T)	1-1-2011	Repeal	2-1-2011	442-010-0010	3-8-2011	Amend	4-1-2011

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442-010-0020	3-8-2011	Amend	4-1-2011	443-002-0070	1-26-2011	Amend	3-1-2011
442-010-0030	1-18-2011	Amend	3-1-2011	443-002-0190	1-26-2011	Amend	3-1-2011
442-010-0030	3-8-2011	Amend	4-1-2011	459-005-0040	11-24-2010	Adopt	1-1-2011
442-010-0040	1-18-2011	Amend	3-1-2011	459-005-0250	6-1-2011	Amend	7-1-2011
442-010-0040	3-8-2011	Amend	4-1-2011	459-005-0580	6-1-2011	Adopt	7-1-2011
442-010-0050	3-8-2011	Amend	4-1-2011	459-011-0150	6-1-2011	Adopt	7-1-2011
442-010-0055	1-18-2011	Amend	3-1-2011	459-015-0055	6-1-2011	Amend	7-1-2011
442-010-0055	3-8-2011	Amend	4-1-2011	459-050-0075	6-1-2011	Amend	7-1-2011
442-010-0060	1-18-2011	Amend	3-1-2011	459-050-0090	6-1-2011	Amend	7-1-2011
442-010-0060	3-8-2011	Amend	4-1-2011	459-060-0020	11-24-2010	Amend	1-1-2011
442-010-0065	3-8-2011	Adopt	4-1-2011	459-070-0100	2-2-2011	Amend	3-1-2011
442-010-0070	1-18-2011	Amend	3-1-2011	459-070-0110	2-2-2011	Amend	3-1-2011
442-010-0070	3-8-2011	Amend	4-1-2011	461-001-0000	1-1-2011	Amend	2-1-2011
442-010-0075	3-8-2011	Adopt	4-1-2011	461-001-0025	7-1-2011	Amend(T)	8-1-2011
442-010-0080	1-18-2011	Amend	3-1-2011	461-012-0100	7-1-2011	Am. & Ren.	7-1-2011
442-010-0080	3-8-2011	Amend	4-1-2011	461-012-0150	7-1-2011	Am. & Ren.	7-1-2011
442-010-0085	3-8-2011	Adopt	4-1-2011	461-025-0311	1-1-2011	Amend	2-1-2011
442-010-0090	3-8-2011	Amend	4-1-2011	461-025-0311(T)	1-1-2011	Repeal	2-1-2011
442-010-0100	1-18-2011	Amend	3-1-2011	461-101-0010	1-1-2011	Amend	2-1-2011
442-010-0100	3-8-2011	Amend	4-1-2011	461-101-0010(T)	1-1-2011	Repeal	2-1-2011
442-010-0110	1-18-2011	Amend	3-1-2011	461-110-0210	4-1-2011	Amend	5-1-2011
442-010-0110	3-8-2011	Amend	4-1-2011	461-110-0310	4-1-2011	Amend	5-1-2011
442-010-0120	1-18-2011	Amend	3-1-2011	461-110-0330	4-1-2011	Amend	5-1-2011
442-010-0120	3-8-2011	Amend	4-1-2011	461-110-0340	4-1-2011	Amend	5-1-2011
442-010-0130	1-18-2011	Amend	3-1-2011	461-110-0350	4-1-2011	Amend	5-1-2011
442-010-0130	3-8-2011	Amend	4-1-2011	461-110-0370	4-1-2011	Amend	5-1-2011
442-010-0140	1-18-2011	Amend	3-1-2011	461-110-0390	4-1-2011	Amend	5-1-2011
442-010-0140	3-8-2011	Amend	4-1-2011	461-110-0400	4-1-2011	Amend	5-1-2011
442-010-0150	1-18-2011	Amend	3-1-2011	461-110-0410	4-1-2011	Amend	5-1-2011
442-010-0150	3-8-2011	Amend	4-1-2011	461-110-0430	4-1-2011	Amend	5-1-2011
442-010-0160	1-18-2011	Amend	3-1-2011	461-110-0530	4-1-2011	Amend	5-1-2011
442-010-0160	3-8-2011	Amend	4-1-2011	461-110-0630	1-1-2011	Amend	2-1-2011
442-010-0170	1-18-2011	Amend	3-1-2011	461-110-0630	4-1-2011	Amend	5-1-2011
442-010-0170	3-8-2011	Amend	4-1-2011	461-110-0630(T)	1-1-2011	Repeal	2-1-2011
442-010-0180	1-18-2011	Amend	3-1-2011	461-110-0750	4-1-2011	Amend	5-1-2011
442-010-0180	3-8-2011	Amend	4-1-2011	461-115-0071	1-1-2011	Amend	2-1-2011
442-010-0190	1-18-2011	Amend	3-1-2011	461-115-0071(T)	1-1-2011	Repeal	2-1-2011
442-010-0190	3-8-2011	Amend	4-1-2011	461-115-0530	3-1-2011	Amend(T)	4-1-2011
442-010-0200	1-18-2011	Adopt	3-1-2011	461-115-0530	7-1-2011	Amend	8-1-2011
442-010-0200	3-8-2011	Amend	4-1-2011	461-115-0530(T)	7-1-2011	Repeal	8-1-2011
442-010-0210	1-18-2011	Adopt	3-1-2011	461-115-0705	4-1-2011	Amend	5-1-2011
442-010-0210	3-8-2011	Amend	4-1-2011	461-115-0705(T)	4-1-2011	Repeal	5-1-2011
442-010-0220	1-18-2011	Adopt	3-1-2011	461-120-0210	1-1-2011	Amend	2-1-2011
442-010-0220	3-8-2011	Amend	4-1-2011	461-120-0210	4-1-2011	Amend	5-1-2011
442-010-0230	1-18-2011	Adopt	3-1-2011	461-120-0315	7-1-2011	Amend	8-1-2011
442-010-0230	3-8-2011	Amend	4-1-2011	461-125-0170	7-1-2011	Amend(T)	8-1-2011
442-010-0240	1-18-2011	Adopt	3-1-2011	461-130-0305	1-1-2011	Amend	2-1-2011
442-010-0240	3-8-2011	Amend	4-1-2011	461-130-0310	1-1-2011	Amend	2-1-2011
442-010-0250	1-18-2011	Adopt	3-1-2011	461-130-0310	7-1-2011	Amend(T)	8-1-2011
442-010-0250	3-8-2011	Amend	4-1-2011	461-130-0315	1-1-2011	Amend	2-1-2011
442-010-0260	1-18-2011	Adopt	3-1-2011	461-130-0320	1-1-2011	Repeal	2-1-2011
442-010-0260	3-8-2011	Amend	4-1-2011	461-130-0323	1-1-2011	Repeal	2-1-2011
442-010-0270	1-18-2011	Adopt	3-1-2011	461-130-0325	1-1-2011	Repeal	2-1-2011
442-010-0270	3-8-2011	Amend	4-1-2011	461-130-0327	1-1-2011	Amend	2-1-2011
442-010-0280	1-18-2011	Adopt	3-1-2011	461-130-0327	7-1-2011	Amend(T)	8-1-2011



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461-130-0330	1-1-2011	Amend	2-1-2011	461-155-0150	7-1-2011	Amend	8-1-2011
461-130-0335	1-1-2011	Amend	2-1-2011	461-155-0180	1-1-2011	Amend	2-1-2011
461-135-0010	1-1-2011	Amend	2-1-2011	461-155-0180	1-20-2011	Amend(T)	3-1-2011
461-135-0070	7-1-2011	Amend(T)	8-1-2011	461-155-0180	7-1-2011	Amend	8-1-2011
461-135-0095	4-1-2011	Amend	5-1-2011	461-155-0180(T)	1-1-2011	Repeal	2-1-2011
461-135-0095(T)	4-1-2011	Repeal	5-1-2011	461-155-0180(T)	7-1-2011	Repeal	8-1-2011
461-135-0210	1-1-2011	Amend	2-1-2011	461-155-0225	1-1-2011	Amend	2-1-2011
461-135-0210(T)	1-1-2011	Repeal	2-1-2011	461-155-0225(T)	1-1-2011	Repeal	2-1-2011
461-135-0400	1-1-2011	Amend	2-1-2011	461-155-0235	1-20-2011	Amend	3-1-2011
461-135-0400	2-16-2011	Amend(T)	4-1-2011	461-155-0290	3-1-2011	Amend(T)	4-1-2011
461-135-0400	3-22-2011	Amend(T)	5-1-2011	461-155-0290	7-1-2011	Amend	8-1-2011
461-135-0400	7-1-2011	Amend	8-1-2011	461-155-0290(T)	7-1-2011	Repeal	8-1-2011
461-135-0400(T)	1-1-2011	Repeal	2-1-2011	461-155-0291	3-1-2011	Amend(T)	4-1-2011
461-135-0400(T)	3-22-2011	Suspend	5-1-2011	461-155-0291	7-1-2011	Amend	8-1-2011
461-135-0400(T)	7-1-2011	Repeal	8-1-2011	461-155-0291(T)	7-1-2011	Repeal	8-1-2011
461-135-0475	7-1-2011	Amend(T)	8-1-2011	461-155-0295	3-1-2011	Amend(T)	4-1-2011
461-135-0780	1-1-2011	Amend	2-1-2011	461-155-0295	7-1-2011	Amend	8-1-2011
461-135-0950	4-1-2011	Amend	5-1-2011	461-155-0295(T)	7-1-2011	Repeal	8-1-2011
461-135-1100	1-1-2011	Amend	2-1-2011	461-155-0320	1-1-2011	Amend	2-1-2011
461-135-1100(T)	1-1-2011	Repeal	2-1-2011	461-155-0320(T)	1-1-2011	Repeal	2-1-2011
461-135-1110	7-1-2011	Amend(T)	8-1-2011	461-155-0528	1-1-2011	Adopt	2-1-2011
461-135-1120	3-1-2011	Amend(T)	4-1-2011	461-155-0528	2-1-2011	Amend(T)	3-1-2011
461-135-1120	7-1-2011	Amend	8-1-2011	461-155-0528	7-1-2011	Amend	8-1-2011
461-135-1120(T)	7-1-2011	Repeal	8-1-2011	461-155-0528(T)	1-1-2011	Repeal	2-1-2011
461-135-1125	1-1-2011	Amend	2-1-2011	461-155-0528(T)	7-1-2011	Repeal	8-1-2011
461-135-1125(T)	1-1-2011	Repeal	2-1-2011	461-155-0575	4-1-2011	Adopt(T)	5-1-2011
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461-135-1197	1-1-2011	Adopt	2-1-2011	461-155-0575	7-15-2011	Amend(T)	8-1-2011
461-135-1250	1-1-2011	Amend	2-1-2011	461-155-0688	1-1-2011	Amend	2-1-2011
461-135-1250	6-15-2011	Amend(T)	7-1-2011	461-155-0688(T)	1-1-2011	Repeal	2-1-2011
461-135-1250(T)	1-1-2011	Repeal	2-1-2011	461-155-0693	1-1-2011	Amend	2-1-2011
461-135-1250(T)	6-29-2011	Suspend	8-1-2011	461-155-0693	2-1-2011	Amend(T)	3-1-2011
461-140-0110	4-1-2011	Amend	5-1-2011	461-155-0693	7-1-2011	Amend	8-1-2011
461-145-0140	1-1-2011	Amend(T)	2-1-2011	461-155-0693	7-15-2011	Amend(T)	8-1-2011
461-145-0140	7-1-2011	Amend	8-1-2011	461-155-0693(T)	1-1-2011	Repeal	2-1-2011
461-145-0143	1-1-2011	Suspend	2-1-2011	461-160-0015	1-1-2011	Amend(T)	2-1-2011
461-145-0143(T)	7-1-2011	Repeal	8-1-2011	461-160-0015	4-1-2011	Amend	5-1-2011
461-145-0220	1-1-2011	Amend(T)	2-1-2011	461-160-0015(T)	4-1-2011	Repeal	5-1-2011
461-145-0220	7-1-2011	Amend	8-1-2011	461-160-0400	4-1-2011	Amend	5-1-2011
461-145-0530	2-4-2011	Amend(T)	3-1-2011	461-160-0400(T)	4-1-2011	Repeal	5-1-2011
461-145-0530	7-1-2011	Amend	8-1-2011	461-160-0410	1-1-2011	Amend	2-1-2011
461-145-0530(T)	7-1-2011	Repeal	8-1-2011	461-160-0430	1-1-2011	Amend	2-1-2011
461-150-0055	1-1-2011	Amend	2-1-2011	461-160-0430	1-1-2011	Amend(T)	2-1-2011
461-150-0055	1-1-2011	Amend(T)	2-1-2011	461-160-0430	4-1-2011	Amend	5-1-2011
461-150-0055	2-4-2011	Amend(T)	3-1-2011	461-160-0430(T)	1-1-2011	Repeal	2-1-2011
461-150-0055	4-1-2011	Amend	5-1-2011	461-160-0430(T)	4-1-2011	Repeal	5-1-2011
461-150-0055(T)	1-1-2011	Repeal	2-1-2011	461-160-0530	1-1-2011	Repeal	2-1-2011
461-150-0055(T)	2-4-2011	Suspend	3-1-2011	461-160-0620	7-1-2011	Amend(T)	8-1-2011
461-150-0055(T)	4-1-2011	Repeal	5-1-2011	461-160-0700	1-1-2011	Amend	2-1-2011
461-155-0030	1-1-2011	Amend	2-1-2011	461-160-0700	1-1-2011	Amend(T)	2-1-2011
461-155-0030	1-1-2011	Amend(T)	2-1-2011	461-160-0700	4-1-2011	Amend	5-1-2011
461-155-0030	4-1-2011	Amend	5-1-2011	461-160-0700(T)	1-1-2011	Repeal	2-1-2011
461-155-0030(T)	1-1-2011	Repeal	2-1-2011	461-160-0700(T)	4-1-2011	Repeal	5-1-2011
461-155-0030(T)	4-1-2011	Repeal	5-1-2011	461-160-0800	7-1-2011	Amend	8-1-2011
461-155-0035	1-1-2011	Amend	2-1-2011	461-165-0160	7-1-2011	Amend	8-1-2011

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461-170-0010	4-1-2011	Amend	5-1-2011	573-050-0020	6-13-2011	Amend	7-1-2011
461-170-0010(T)	4-1-2011	Repeal	5-1-2011	573-050-0025	6-13-2011	Amend	7-1-2011
461-170-0011	1-1-2011	Amend	2-1-2011	573-050-0040	6-13-2011	Amend	7-1-2011
461-175-0010	1-1-2011	Amend	2-1-2011	573-076-0000	6-13-2011	Amend	7-1-2011
461-175-0010(T)	1-1-2011	Repeal	2-1-2011	573-076-0020	6-13-2011	Amend	7-1-2011
461-175-0200	1-1-2011	Amend	2-1-2011	573-076-0050	6-13-2011	Amend	7-1-2011
461-175-0200	7-1-2011	Amend	8-1-2011	573-076-0060	6-13-2011	Amend	7-1-2011
461-175-0200(T)	1-1-2011	Repeal	2-1-2011	573-076-0070	6-13-2011	Amend	7-1-2011
461-175-0250	1-1-2011	Amend	2-1-2011	573-076-0080	6-13-2011	Amend	7-1-2011
461-175-0250(T)	1-1-2011	Repeal	2-1-2011	573-076-0130	6-13-2011	Amend	7-1-2011
461-180-0130	6-29-2011	Amend(T)	8-1-2011	574-050-0005	2-2-2011	Amend	3-1-2011
461-190-0199	7-1-2011	Amend(T)	8-1-2011	574-050-0005	5-2-2011	Amend	6-1-2011
461-190-0211	1-1-2011	Amend(T)	2-1-2011	575-080-0100	11-16-2010	Adopt	1-1-2011
461-190-0211	4-1-2011	Amend	5-1-2011	575-080-0110	11-16-2010	Adopt	1-1-2011
461-190-0211	7-1-2011	Amend(T)	8-1-2011	575-080-0120	11-16-2010	Adopt	1-1-2011
461-190-0211(T)	4-1-2011	Repeal	5-1-2011	575-080-0130	11-16-2010	Adopt	1-1-2011
461-190-0212	6-2-2011	Adopt(T)	7-1-2011	575-080-0135	11-16-2010	Adopt	1-1-2011
461-190-0212	6-29-2011	Adopt(T)	8-1-2011	575-080-0140	11-16-2010	Adopt	1-1-2011
461-190-0212(T)	6-29-2011	Suspend	8-1-2011	575-080-0145	11-16-2010	Adopt	1-1-2011
461-190-0416	2-14-2011	Amend(T)	3-1-2011	576-010-0000	7-1-2011	Amend	7-1-2011
461-190-0416	7-1-2011	Amend	8-1-2011	576-010-0006	6-13-2011	Adopt	7-1-2011
461-190-0416(T)	7-1-2011	Repeal	8-1-2011	576-010-0031	6-13-2011	Amend	7-1-2011
461-193-0560	1-1-2011	Amend	2-1-2011	576-010-0036	6-13-2011	Amend	7-1-2011
461-193-0560(T)	1-1-2011	Repeal	2-1-2011	576-010-0041	6-13-2011	Amend	7-1-2011
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462-210-0030	6-9-2011	Amend	7-1-2011	576-015-0050	6-13-2011	Amend	7-1-2011
462-210-0040	6-9-2011	Amend	7-1-2011	576-017-0005	6-13-2011	Amend	7-1-2011
462-220-0030	6-9-2011	Amend	7-1-2011	576-017-0010	6-13-2011	Repeal	7-1-2011
471-010-0111	12-13-2010	Adopt	1-1-2011	576-017-0015	6-13-2011	Repeal	7-1-2011
471-030-0037	3-1-2011	Amend(T)	4-1-2011	576-017-0020	6-13-2011	Repeal	7-1-2011
471-030-0038	3-1-2011	Amend(T)	4-1-2011	576-060-0010	6-13-2011	Amend	7-1-2011
471-030-0048	7-1-2011	Amend(T)	6-1-2011	576-060-0015	6-13-2011	Amend	7-1-2011
471-030-0053	6-29-2011	Amend(T)	8-1-2011	576-060-0020	6-13-2011	Amend	7-1-2011
471-031-0140	12-13-2010	Amend	1-1-2011	576-060-0025	6-13-2011	Amend	7-1-2011
471-031-0141	12-13-2010	Amend	1-1-2011	576-060-0031	6-13-2011	Amend	7-1-2011
471-031-0200	12-13-2010	Amend	1-1-2011	576-060-0038	6-13-2011	Amend	7-1-2011
471-031-0225	12-13-2010	Repeal	1-1-2011	577-060-0020	7-1-2011	Amend(T)	7-1-2011
471-031-0230	12-13-2010	Repeal	1-1-2011	578-041-0030	6-20-2011	Amend	8-1-2011
471-031-0235	12-13-2010	Adopt	1-1-2011	579-020-0006	6-6-2011	Amend	7-1-2011
471-040-0005	2-9-2011	Amend(T)	3-1-2011	579-050-0005	6-6-2011	Repeal	7-1-2011
471-040-0005	7-14-2011	Amend	8-1-2011	580-040-0035	1-20-2011	Amend	3-1-2011
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571-004-0020	2-7-2011	Amend	3-1-2011	581-001-0005	4-22-2011	Amend	6-1-2011
571-004-0025	2-7-2011	Amend	3-1-2011	581-015-2030	4-22-2011	Amend	6-1-2011
571-004-0030	2-7-2011	Amend	3-1-2011	581-020-0345	2-1-2011	Amend	3-1-2011
571-004-0035	2-7-2011	Repeal	3-1-2011	581-020-0350	12-17-2010	Repeal	2-1-2011
571-004-0040	2-7-2011	Repeal	3-1-2011	581-022-0421	2-1-2011	Amend	3-1-2011
571-004-0045	2-7-2011	Amend	3-1-2011	581-022-0610	7-1-2011	Amend	8-1-2011
571-004-0050	2-7-2011	Amend	3-1-2011	581-022-0615	7-1-2011	Amend	8-1-2011
571-004-0055	2-7-2011	Amend	3-1-2011	581-022-0617	12-17-2010	Adopt	2-1-2011
571-060-0005	7-1-2011	Amend	8-1-2011	581-045-0009	1-1-2011	Amend	2-1-2011
573-001-0075	12-8-2010	Amend	1-1-2011	581-051-0305	2-1-2011	Amend	3-1-2011
573-040-0005	6-13-2011	Amend	7-1-2011	581-051-0306	2-1-2011	Amend	3-1-2011
573-050-0005	6-13-2011	Amend	7-1-2011	581-053-0002	3-17-2011	Amend	5-1-2011
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581-053-0516	7-1-2011	Adopt	8-1-2011	584-060-0181	3-15-2011	Amend	4-1-2011
581-056-0517	7-1-2011	Repeal	8-1-2011	584-060-0182	1-1-2011	Amend	1-1-2011
582-001-0010	3-1-2011	Amend(T)	3-1-2011	584-060-0190	1-1-2011	Amend	1-1-2011
582-030-0040	3-1-2011	Amend(T)	3-1-2011	584-060-0200	1-1-2011	Amend	1-1-2011
582-050-0000	3-1-2011	Amend(T)	3-1-2011	584-060-0210	1-1-2011	Amend	2-1-2011
582-050-0005	3-1-2011	Amend(T)	3-1-2011	584-060-0220	1-1-2011	Amend	2-1-2011
582-050-0010	3-1-2011	Amend(T)	3-1-2011	584-060-0220	3-15-2011	Amend	4-1-2011
582-050-0020	3-1-2011	Amend(T)	3-1-2011	584-065-0125	3-15-2011	Adopt	4-1-2011
582-050-0060	3-1-2011	Amend(T)	3-1-2011	584-070-0001	1-1-2011	Amend	1-1-2011
582-060-0010	3-1-2011	Amend(T)	3-1-2011	584-070-0111	1-1-2011	Amend	1-1-2011
582-060-0020	3-1-2011	Amend(T)	3-1-2011	584-070-0111	3-15-2011	Amend	4-1-2011
582-070-0010	3-1-2011	Amend(T)	3-1-2011	584-070-0112	1-1-2011	Amend	1-1-2011
582-070-0020	3-1-2011	Amend(T)	3-1-2011	584-070-0132	1-1-2011	Amend	1-1-2011
582-070-0025	3-1-2011	Amend(T)	3-1-2011	584-070-0205	1-1-2011	Adopt	2-1-2011
582-070-0030	3-1-2011	Amend(T)	3-1-2011	584-070-0211	1-1-2011	Amend	2-1-2011
582-070-0040	3-1-2011	Amend(T)	3-1-2011	584-070-0221	1-1-2011	Amend	2-1-2011
582-070-0042	3-1-2011	Amend(T)	3-1-2011	584-070-0271	1-1-2011	Amend	2-1-2011
582-070-0043	3-1-2011	Amend(T)	3-1-2011	584-070-0310	1-1-2011	Amend	1-1-2011
582-070-0044	3-1-2011	Amend(T)	3-1-2011	584-070-0401	1-1-2011	Adopt	2-1-2011
583-030-0010	11-16-2010	Amend	1-1-2011	584-070-0411	1-1-2011	Adopt	2-1-2011
583-030-0035	11-16-2010	Amend	1-1-2011	584-070-0411	4-14-2011	Amend	5-1-2011
583-050-0011	11-16-2010	Amend	1-1-2011	584-070-0421	1-1-2011	Adopt	2-1-2011
583-050-0016	11-16-2010	Amend	1-1-2011	584-070-0421	4-14-2011	Amend	5-1-2011
584-010-0090	1-1-2011	Amend	2-1-2011	584-070-0431	1-1-2011	Adopt	2-1-2011
584-017-0200	1-1-2011	Amend	2-1-2011	584-070-0431	4-14-2011	Amend	5-1-2011
584-017-0201	1-1-2011	Amend	2-1-2011	584-070-0431	6-15-2011	Amend	7-1-2011
584-017-0300	1-1-2011	Amend	2-1-2011	584-080-0031	1-1-2011	Amend	1-1-2011
584-017-0390	1-1-2011	Amend	2-1-2011	584-080-0151	3-15-2011	Amend	4-1-2011
584-017-0480	1-1-2011	Amend	2-1-2011	584-080-0152	3-15-2011	Amend	4-1-2011
584-017-0500	1-26-2011	Adopt	3-1-2011	584-080-0153	1-1-2011	Amend	1-1-2011
584-017-0510	1-26-2011	Adopt	3-1-2011	584-080-0161	1-1-2011	Amend	1-1-2011
584-017-0520	1-26-2011	Adopt	3-1-2011	584-080-0171	1-1-2011	Amend	1-1-2011
584-017-0530	1-26-2011	Adopt	3-1-2011	589-002-0100	4-20-2011	Amend	6-1-2011
584-017-0541	1-26-2011	Adopt	3-1-2011	603-011-0250	1-7-2011	Amend	2-1-2011
584-017-0551	1-26-2011	Adopt	3-1-2011	603-011-0255	1-6-2011	Amend	2-1-2011
584-017-0555	1-26-2011	Adopt	3-1-2011	603-011-0256	1-7-2011	Amend	2-1-2011
584-017-0560	1-26-2011	Adopt	3-1-2011	603-011-0263	1-6-2011	Amend	2-1-2011
584-017-0570	1-26-2011	Adopt	3-1-2011	603-011-0264	1-6-2011	Amend	2-1-2011
584-017-0580	1-26-2011	Adopt	3-1-2011	603-011-0281	1-7-2011	Amend	2-1-2011
584-020-0040	6-15-2011	Amend	7-1-2011	603-011-0340	1-6-2011	Amend	2-1-2011
584-021-0120	3-15-2011	Amend	4-1-2011	603-011-0365	1-6-2011	Repeal	2-1-2011
584-021-0165	1-1-2011	Amend	1-1-2011	603-027-0420	1-26-2011	Amend	3-1-2011
584-023-0005	1-1-2011	Amend	1-1-2011	603-042-0020	5-10-2011	Amend	6-1-2011
584-036-0055	1-1-2011	Amend	1-1-2011	603-052-0347	11-23-2010	Amend	1-1-2011
584-036-0055	6-15-2011	Amend	7-1-2011	603-052-1207	3-17-2011	Adopt(T)	5-1-2011
584-036-0105	3-15-2011	Amend	4-1-2011	603-052-1212	3-17-2011	Adopt(T)	5-1-2011
584-042-0002	1-1-2011	Repeal	2-1-2011	603-052-1215	3-17-2011	Adopt(T)	5-1-2011
584-042-0006	1-1-2011	Repeal	2-1-2011	603-052-1230	12-17-2010	Amend	2-1-2011
584-042-0009	1-1-2011	Repeal	2-1-2011	603-052-1250	12-17-2010	Amend	2-1-2011
584-042-0044	1-1-2011	Amend	1-1-2011	603-056-0145	7-1-2011	Amend(T)	8-1-2011
584-048-0065	1-1-2011	Am. & Ren.	2-1-2011	604-010-0005	6-30-2011	Amend(T)	8-1-2011
584-060-0014	3-15-2011	Amend	4-1-2011	604-010-0011	6-30-2011	Amend(T)	8-1-2011
584-060-0062	1-28-2011	Amend	3-1-2011	604-010-0015	6-30-2011	Amend(T)	8-1-2011
584-060-0162	1-1-2011	Amend	1-1-2011	604-030-0010	6-30-2011	Amend(T)	8-1-2011
584-060-0171	1-1-2011	Amend	1-1-2011	604-030-0020	6-30-2011	Amend(T)	8-1-2011



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629-001-0015	1-7-2011	Amend(T)	2-1-2011	635-010-0157	1-1-2011	Amend	2-1-2011
629-001-0015	3-15-2011	Amend	4-1-2011	635-011-0100	1-1-2011	Amend	2-1-2011
629-001-0015(T)	3-15-2011	Repeal	4-1-2011	635-012-0020	6-29-2011	Amend(T)	8-1-2011
629-001-0020	1-7-2011	Amend(T)	2-1-2011	635-012-0030	6-29-2011	Suspend	8-1-2011
629-001-0020	3-15-2011	Amend	4-1-2011	635-012-0040	6-29-2011	Suspend	8-1-2011
629-001-0020(T)	3-15-2011	Repeal	4-1-2011	635-012-0050	6-29-2011	Suspend	8-1-2011
629-041-0035	1-7-2011	Amend(T)	2-1-2011	635-012-0060	6-29-2011	Suspend	8-1-2011
629-041-0035	3-15-2011	Amend	4-1-2011	635-013-0003	1-1-2011	Amend	2-1-2011
629-041-0035(T)	3-15-2011	Repeal	4-1-2011	635-013-0003	5-1-2011	Amend	6-1-2011
635-003-0003	5-1-2011	Amend	6-1-2011	635-013-0004	1-1-2011	Amend	2-1-2011
635-003-0085	7-1-2011	Amend	8-1-2011	635-013-0007	7-1-2011	Amend	8-1-2011
635-004-0005	3-22-2011	Amend	5-1-2011	635-013-0009	7-1-2011	Amend	8-1-2011
635-004-0009	3-22-2011	Amend	5-1-2011	635-014-0080	1-1-2011	Amend	2-1-2011
635-004-0016	5-26-2011	Amend	7-1-2011	635-014-0090	1-1-2011	Amend	2-1-2011
635-004-0017	3-4-2011	Amend(T)	4-1-2011	635-014-0090	6-1-2011	Amend(T)	7-1-2011
635-004-0017	5-26-2011	Amend	7-1-2011	635-014-0090	7-1-2011	Amend	8-1-2011
635-004-0017	7-12-2011	Amend(T)	8-1-2011	635-016-0080	1-1-2011	Amend	2-1-2011
635-004-0018	1-1-2011	Amend	1-1-2011	635-016-0090	1-1-2011	Amend	2-1-2011
635-004-0019	12-7-2010	Amend(T)	1-1-2011	635-016-0090	5-1-2011	Amend(T)	6-1-2011
635-004-0019	1-1-2011	Amend	1-1-2011	635-016-0090	7-1-2011	Amend	8-1-2011
635-004-0019	1-1-2011	Amend(T)	2-1-2011	635-017-0080	1-1-2011	Amend	2-1-2011
635-004-0019	1-11-2011	Amend(T)	2-1-2011	635-017-0090	1-1-2011	Amend	2-1-2011
635-004-0019	3-3-2011	Amend(T)	4-1-2011	635-017-0095	1-1-2011	Amend	2-1-2011
635-004-0019	5-13-2011	Amend(T)	6-1-2011	635-017-0095	1-1-2011	Amend(T)	2-1-2011
635-004-0019	6-20-2011	Amend(T)	8-1-2011	635-017-0095	2-17-2011	Amend(T)	3-1-2011
635-004-0019	7-7-2011	Amend(T)	8-1-2011	635-017-0095	3-17-2011	Amend(T)	5-1-2011
635-004-0019(T)	12-7-2010	Suspend	1-1-2011	635-017-0095	3-21-2011	Amend	5-1-2011
635-004-0019(T)	1-1-2011	Suspend	2-1-2011	635-017-0095(T)	2-17-2011	Suspend	3-1-2011
635-004-0019(T)	1-11-2011	Suspend	2-1-2011	635-017-0095(T)	3-17-2011	Suspend	5-1-2011
635-004-0019(T)	3-3-2011	Suspend	4-1-2011	635-018-0080	1-1-2011	Amend	2-1-2011
635-004-0019(T)	5-13-2011	Suspend	6-1-2011	635-018-0090	1-1-2011	Amend	2-1-2011
635-004-0019(T)	6-20-2011	Suspend	8-1-2011	635-018-0090	1-1-2011	Amend(T)	2-1-2011
635-004-0019(T)	7-7-2011	Suspend	8-1-2011	635-018-0090	4-15-2011	Amend(T)	4-1-2011
635-004-0025	1-1-2011	Amend	1-1-2011	635-018-0090	4-15-2011	Amend(T)	4-1-2011
635-004-0033	7-5-2011	Amend(T)	8-1-2011	635-018-0090	5-10-2011	Amend(T)	6-1-2011
635-004-0035	1-1-2011	Amend	1-1-2011	635-018-0090	8-1-2011	Amend(T)	8-1-2011
635-004-0070	1-1-2011	Amend	1-1-2011	635-018-0090(T)	4-15-2011	Suspend	4-1-2011
635-004-0075	1-1-2011	Amend	1-1-2011	635-018-0090(T)	4-15-2011	Suspend	4-1-2011
635-005-0020	7-3-2011	Amend(T)	8-1-2011	635-018-0090(T)	5-10-2011	Suspend	6-1-2011
635-005-0045	12-10-2010	Amend(T)	1-1-2011	635-018-0090(T)	8-1-2011	Suspend	8-1-2011
635-005-0055	3-15-2011	Amend(T)	4-1-2011	635-019-0080	1-1-2011	Amend	2-1-2011
635-005-0190	1-1-2011	Amend	1-1-2011	635-019-0090	1-1-2011	Amend	2-1-2011
635-006-0215	1-1-2011	Amend	1-1-2011	635-019-0090	5-28-2011	Amend(T)	7-1-2011
635-006-0232	1-10-2011	Amend	2-1-2011	635-019-0090	6-13-2011	Amend(T)	7-1-2011
635-006-1075	11-23-2010	Amend(T)	1-1-2011	635-019-0090	7-11-2011	Amend(T)	8-1-2011
635-006-1095	12-15-2010	Amend(T)	1-1-2011	635-019-0090	7-16-2011	Amend(T)	8-1-2011
635-007-0545	12-6-2010	Amend	1-1-2011	635-019-0090(T)	6-13-2011	Suspend	7-1-2011
635-007-0825	12-6-2010	Repeal	1-1-2011	635-019-0090(T)	7-11-2011	Suspend	8-1-2011
635-007-0830	12-6-2010	Repeal	1-1-2011	635-019-0090(T)	7-16-2011	Suspend	8-1-2011
635-008-0055	1-1-2011	Amend	2-1-2011	635-021-0080	1-1-2011	Amend	2-1-2011
635-008-0148	1-14-2011	Amend	2-1-2011	635-021-0090	1-1-2011	Amend	2-1-2011
635-008-0149	1-14-2011	Amend	2-1-2011	635-021-0090	5-28-2011	Amend(T)	7-1-2011
635-008-0151	1-14-2011	Amend	2-1-2011	635-023-0080	1-1-2011	Amend	2-1-2011
635-008-0151	5-24-2011	Amend	7-1-2011	635-023-0090	1-1-2011	Amend	2-1-2011
635-008-0153	1-1-2011	Amend	2-1-2011	635-023-0095	1-1-2011	Amend	2-1-2011

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635-023-0095	2-11-2011	Amend(T)	3-1-2011	635-041-0045(T)	6-16-2011	Suspend	7-1-2011
635-023-0095	3-21-2011	Amend	5-1-2011	635-041-0045(T)	7-10-2011	Suspend	8-1-2011
635-023-0095	4-10-2011	Amend(T)	5-1-2011	635-041-0065	2-1-2011	Amend(T)	3-1-2011
635-023-0095	6-27-2011	Amend(T)	8-1-2011	635-041-0065	2-10-2011	Amend(T)	3-1-2011
635-023-0095	7-9-2011	Amend(T)	8-1-2011	635-041-0065	3-21-2011	Amend	5-1-2011
635-023-0095(T)	2-11-2011	Suspend	3-1-2011	635-041-0065(T)	2-10-2011	Suspend	3-1-2011
635-023-0095(T)	4-10-2011	Suspend	5-1-2011	635-041-0076	5-10-2011	Amend(T)	6-1-2011
635-023-0095(T)	6-27-2011	Suspend	8-1-2011	635-041-0076	6-16-2011	Amend(T)	7-1-2011
635-023-0095(T)	7-9-2011	Suspend	8-1-2011	635-041-0076	6-27-2011	Amend(T)	8-1-2011
635-023-0125	1-1-2011	Amend	2-1-2011	635-041-0076	7-5-2011	Amend(T)	8-1-2011
635-023-0125	2-14-2011	Amend(T)	3-1-2011	635-041-0076	7-10-2011	Amend(T)	8-1-2011
635-023-0125	4-8-2011	Amend(T)	5-1-2011	635-041-0076	7-18-2011	Amend(T)	8-1-2011
635-023-0125	4-16-2011	Amend(T)	5-1-2011	635-041-0076(T)	6-16-2011	Suspend	7-1-2011
635-023-0125	4-21-2011	Amend(T)	6-1-2011	635-041-0076(T)	6-27-2011	Suspend	8-1-2011
635-023-0125	5-7-2011	Amend(T)	6-1-2011	635-041-0076(T)	7-5-2011	Suspend	8-1-2011
635-023-0125	5-15-2011	Amend(T)	6-1-2011	635-041-0076(T)	7-10-2011	Suspend	8-1-2011
635-023-0125	5-27-2011	Amend(T)	7-1-2011	635-041-0076(T)	7-18-2011	Suspend	8-1-2011
635-023-0125	6-2-2011	Amend(T)	7-1-2011	635-042-0010	3-21-2011	Amend	5-1-2011
635-023-0125(T)	4-8-2011	Suspend	5-1-2011	635-042-0022	3-29-2011	Amend(T)	5-1-2011
635-023-0125(T)	4-16-2011	Suspend	5-1-2011	635-042-0022	4-6-2011	Amend(T)	5-1-2011
635-023-0125(T)	4-21-2011	Suspend	6-1-2011	635-042-0022	5-12-2011	Amend(T)	6-1-2011
635-023-0125(T)	5-7-2011	Suspend	6-1-2011	635-042-0022	5-18-2011	Amend(T)	7-1-2011
635-023-0125(T)	5-15-2011	Suspend	6-1-2011	635-042-0022(T)	5-18-2011	Suspend	7-1-2011
635-023-0125(T)	5-27-2011	Suspend	7-1-2011	635-042-0027	6-16-2011	Amend(T)	7-1-2011
635-023-0125(T)	6-2-2011	Suspend	7-1-2011	635-042-0027(T)	6-16-2011	Suspend	7-1-2011
635-023-0128	1-1-2011	Amend	2-1-2011	635-042-0032	3-21-2011	Amend	5-1-2011
635-023-0128	6-16-2011	Amend(T)	7-1-2011	635-042-0060	3-21-2011	Amend	5-1-2011
635-023-0128	7-18-2011	Amend(T)	8-1-2011	635-042-0110	5-10-2011	Amend(T)	6-1-2011
635-023-0128(T)	7-18-2011	Suspend	8-1-2011	635-042-0110	6-21-2011	Amend(T)	8-1-2011
635-023-0130	1-1-2011	Amend	2-1-2011	635-042-0110(T)	6-21-2011	Suspend	8-1-2011
635-023-0134	1-1-2011	Amend	2-1-2011	635-042-0115	5-10-2011	Amend(T)	6-1-2011
635-023-0134	4-23-2011	Amend(T)	5-1-2011	635-042-0115	6-21-2011	Amend(T)	8-1-2011
635-039-0080	1-1-2011	Amend	1-1-2011	635-042-0115(T)	6-21-2011	Suspend	8-1-2011
635-039-0080	3-22-2011	Amend	5-1-2011	635-042-0130	12-1-2010	Amend(T)	1-1-2011
635-039-0085	3-22-2011	Amend	5-1-2011	635-042-0130	3-21-2011	Amend	5-1-2011
635-039-0085	6-4-2011	Amend(T)	7-1-2011	635-042-0135	1-15-2011	Amend(T)	2-1-2011
635-039-0085	7-1-2011	Amend(T)	8-1-2011	635-042-0145	2-13-2011	Amend(T)	3-1-2011
635-039-0085	7-6-2011	Amend(T)	8-1-2011	635-042-0145	3-21-2011	Amend	5-1-2011
635-039-0085(T)	7-1-2011	Suspend	8-1-2011	635-042-0145	4-21-2011	Amend(T)	6-1-2011
635-039-0085(T)	7-6-2011	Suspend	8-1-2011	635-042-0145	4-28-2011	Amend(T)	6-1-2011
635-039-0090	1-1-2011	Amend	1-1-2011	635-042-0145	5-12-2011	Amend(T)	6-1-2011
635-039-0090	3-22-2011	Amend	5-1-2011	635-042-0145	5-18-2011	Amend(T)	7-1-2011
635-041-0005	5-5-2011	Amend(T)	6-1-2011	635-042-0145	6-27-2011	Amend(T)	8-1-2011
635-041-0015	5-5-2011	Amend(T)	6-1-2011	635-042-0145(T)	4-21-2011	Suspend	6-1-2011
635-041-0020	5-5-2011	Amend(T)	6-1-2011	635-042-0145(T)	4-28-2011	Suspend	6-1-2011
635-041-0025	5-5-2011	Amend(T)	6-1-2011	635-042-0145(T)	5-12-2011	Suspend	6-1-2011
635-041-0045	3-21-2011	Amend	5-1-2011	635-042-0145(T)	5-18-2011	Suspend	7-1-2011
635-041-0045	5-5-2011	Amend(T)	6-1-2011	635-042-0145(T)	6-27-2011	Suspend	8-1-2011
635-041-0045	5-10-2011	Amend(T)	6-1-2011	635-042-0160	2-13-2011	Amend(T)	3-1-2011
635-041-0045	6-6-2011	Amend(T)	7-1-2011	635-042-0160	3-21-2011	Amend	5-1-2011
635-041-0045	6-9-2011	Amend(T)	7-1-2011	635-042-0160	4-21-2011	Amend(T)	6-1-2011
635-041-0045	6-16-2011	Amend(T)	7-1-2011	635-042-0160	5-11-2011	Amend(T)	6-1-2011
635-041-0045	7-10-2011	Amend(T)	8-1-2011	635-042-0160(T)	4-21-2011	Suspend	6-1-2011
635-041-0045(T)	5-10-2011	Suspend	6-1-2011	635-042-0160(T)	5-11-2011	Suspend	6-1-2011
635-041-0045(T)	6-6-2011	Suspend	7-1-2011	635-042-0170	2-13-2011	Amend(T)	3-1-2011

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635-042-0170	4-21-2011	Amend(T)	6-1-2011	635-051-0078	7-1-2011	Suspend	7-1-2011
635-042-0170	5-11-2011	Amend(T)	6-1-2011	635-055-0000	1-14-2011	Amend	2-1-2011
635-042-0170(T)	4-21-2011	Suspend	6-1-2011	635-055-0030	1-14-2011	Amend	2-1-2011
635-042-0170(T)	5-11-2011	Suspend	6-1-2011	635-055-0035	1-14-2011	Amend	2-1-2011
635-042-0180	2-13-2011	Amend(T)	3-1-2011	635-055-0037	1-14-2011	Amend	2-1-2011
635-042-0180	3-21-2011	Amend	5-1-2011	635-056-0000	2-15-2011	Amend	3-1-2011
635-042-0180	4-21-2011	Amend(T)	6-1-2011	635-056-0010	2-15-2011	Amend	3-1-2011
635-042-0180	5-18-2011	Amend(T)	7-1-2011	635-056-0020	2-15-2011	Amend	3-1-2011
635-042-0180(T)	4-21-2011	Suspend	6-1-2011	635-056-0050	2-15-2011	Amend	3-1-2011
635-042-0180(T)	5-18-2011	Suspend	7-1-2011	635-056-0050	7-1-2011	Amend	7-1-2011
635-043-0051	5-4-2011	Amend	6-1-2011	635-056-0060	2-15-2011	Amend	3-1-2011
635-043-0051	6-3-2011	Amend	7-1-2011	635-056-0060	7-1-2011	Amend	7-1-2011
635-043-0100	1-28-2011	Amend(T)	3-1-2011	635-056-0070	2-15-2011	Amend	3-1-2011
635-043-0100	7-1-2011	Repeal	7-1-2011	635-056-0070	7-1-2011	Amend	7-1-2011
635-044-0000	2-15-2011	Amend	3-1-2011	635-056-0075	2-15-2011	Amend	3-1-2011
635-044-0060	2-15-2011	Amend	3-1-2011	635-056-0080	2-15-2011	Amend	3-1-2011
635-044-0200	7-1-2011	Amend	7-1-2011	635-056-0130	2-15-2011	Amend	3-1-2011
635-044-0205	7-1-2011	Amend	7-1-2011	635-057-0000	2-15-2011	Amend	3-1-2011
635-044-0210	7-1-2011	Amend	7-1-2011	635-060-0023	1-1-2011	Amend	2-1-2011
635-044-0215	7-1-2011	Amend	7-1-2011	635-060-0030	1-1-2011	Amend	2-1-2011
635-044-0220	7-1-2011	Repeal	7-1-2011	635-060-0055	1-1-2011	Amend	2-1-2011
635-044-0225	7-1-2011	Repeal	7-1-2011	635-065-0001	1-1-2011	Amend	2-1-2011
635-044-0230	7-1-2011	Repeal	7-1-2011	635-065-0012	8-1-2011	Adopt	8-1-2011
635-044-0235	7-1-2011	Repeal	7-1-2011	635-065-0015	1-1-2011	Amend	2-1-2011
635-044-0240	7-1-2011	Adopt	7-1-2011	635-065-0090	1-1-2011	Amend	2-1-2011
635-044-0245	7-1-2011	Adopt	7-1-2011	635-065-0401	1-1-2011	Amend	2-1-2011
635-044-0250	7-1-2011	Adopt	7-1-2011	635-065-0625	1-1-2011	Amend	2-1-2011
635-044-0255	7-1-2011	Adopt	7-1-2011	635-065-0700	1-1-2011	Amend	2-1-2011
635-044-0280	7-1-2011	Adopt	7-1-2011	635-065-0705	1-1-2011	Amend	2-1-2011
635-044-0300	7-1-2011	Adopt	7-1-2011	635-065-0740	1-1-2011	Amend	2-1-2011
635-044-0305	7-1-2011	Adopt	7-1-2011	635-065-0760	1-1-2011	Amend	2-1-2011
635-044-0310	7-1-2011	Adopt	7-1-2011	635-065-0765	6-3-2011	Amend	7-1-2011
635-045-0002	1-1-2011	Amend	2-1-2011	635-066-0000	1-1-2011	Amend	2-1-2011
635-046-0000	7-1-2011	Adopt	7-1-2011	635-067-0000	1-1-2011	Amend	2-1-2011
635-046-0005	7-1-2011	Repeal	7-1-2011	635-067-0000	6-3-2011	Amend	7-1-2011
635-046-0010	7-1-2011	Repeal	7-1-2011	635-067-0030	8-20-2011	Amend	8-1-2011
635-046-0015	7-1-2011	Repeal	7-1-2011	635-067-0040	8-20-2011	Amend	8-1-2011
635-046-0020	7-1-2011	Repeal	7-1-2011	635-068-0000	3-1-2011	Amend	3-1-2011
635-046-0025	7-1-2011	Repeal	7-1-2011	635-068-0000	6-3-2011	Amend	7-1-2011
635-046-0030	7-1-2011	Repeal	7-1-2011	635-069-0000	2-1-2011	Amend	3-1-2011
635-046-0035	7-1-2011	Repeal	7-1-2011	635-069-0000	6-3-2011	Amend	7-1-2011
635-046-0040	7-1-2011	Adopt	7-1-2011	635-070-0000	6-3-2011	Amend	7-1-2011
635-046-0045	7-1-2011	Adopt	7-1-2011	635-071-0000	6-3-2011	Amend	7-1-2011
635-046-0050	7-1-2011	Adopt	7-1-2011	635-072-0000	1-1-2011	Amend	2-1-2011
635-046-0055	7-1-2011	Adopt	7-1-2011	635-073-0000	2-1-2011	Amend	3-1-2011
635-049-0025	1-1-2011	Amend(T)	2-1-2011	635-073-0000	6-3-2011	Amend	7-1-2011
635-049-0025	6-3-2011	Amend	7-1-2011	635-073-0065	2-1-2011	Amend	3-1-2011
635-049-0025(T)	6-3-2011	Repeal	7-1-2011	635-073-0070	2-1-2011	Amend	3-1-2011
635-049-0265	1-1-2011	Amend(T)	2-1-2011	635-073-0076	1-1-2011	Amend	2-1-2011
635-049-0265	6-3-2011	Amend	7-1-2011	635-075-0001	1-1-2011	Amend	2-1-2011
635-049-0265(T)	6-3-2011	Repeal	7-1-2011	635-075-0003	6-3-2011	Amend	7-1-2011
635-050-0045	7-1-2011	Amend	7-1-2011	635-075-0010	1-1-2011	Amend	2-1-2011
635-051-0048	1-19-2011	Amend(T)	3-1-2011	635-080-0016	1-1-2011	Amend	2-1-2011
635-051-0076	1-28-2011	Adopt(T)	3-1-2011	635-080-0021	1-1-2011	Amend	2-1-2011
635-051-0076	7-1-2011	Suspend	7-1-2011	635-080-0023	1-1-2011	Amend	2-1-2011



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635-120-0020	5-4-2011	Repeal	6-1-2011	660-004-0035	2-2-2011	Amend	3-1-2011
635-135-0020	5-4-2011	Repeal	6-1-2011	660-004-0035	3-16-2011	Amend	5-1-2011
635-140-0000	5-4-2011	Amend	6-1-2011	660-004-0040	2-2-2011	Amend	3-1-2011
635-140-0005	5-4-2011	Amend	6-1-2011	660-004-0040	3-16-2011	Amend	5-1-2011
635-140-0010	5-4-2011	Amend	6-1-2011	660-006-0000	2-2-2011	Amend	3-1-2011
635-140-0015	5-4-2011	Adopt	6-1-2011	660-006-0003	2-2-2011	Amend	3-1-2011
635-140-0025	5-4-2011	Repeal	6-1-2011	660-006-0004	2-2-2011	Amend	3-1-2011
635-160-0000	5-4-2011	Amend	6-1-2011	660-006-0005	2-2-2011	Amend	3-1-2011
635-160-0030	5-4-2011	Repeal	6-1-2011	660-006-0010	2-2-2011	Amend	3-1-2011
635-170-0015	12-29-2010	Amend(T)	2-1-2011	660-006-0015	2-2-2011	Amend	3-1-2011
635-170-0015	5-4-2011	Repeal	6-1-2011	660-006-0020	2-2-2011	Amend	3-1-2011
635-180-0015	5-4-2011	Repeal	6-1-2011	660-006-0025	2-2-2011	Amend	3-1-2011
635-190-0030	5-4-2011	Repeal	6-1-2011	660-006-0026	2-2-2011	Amend	3-1-2011
635-195-0010	5-4-2011	Repeal	6-1-2011	660-006-0027	2-2-2011	Amend	3-1-2011
635-200-0030	3-2-2011	Repeal	4-1-2011	660-006-0029	2-2-2011	Amend	3-1-2011
635-435-0035	7-1-2011	Amend(T)	8-1-2011	660-006-0031	2-2-2011	Amend	3-1-2011
644-010-0010	1-1-2011	Amend(T)	1-1-2011	660-006-0035	2-2-2011	Amend	3-1-2011
644-010-0010	2-14-2011	Amend	3-1-2011	660-006-0040	2-2-2011	Amend	3-1-2011
644-010-0010(T)	2-14-2011	Repeal	3-1-2011	660-006-0050	2-2-2011	Amend	3-1-2011
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647-010-0010	7-1-2011	Amend	6-1-2011	660-006-0057	2-2-2011	Amend	3-1-2011
660-001-0000	12-8-2010	Amend	1-1-2011	660-006-0060	2-2-2011	Amend	3-1-2011
660-001-0005	12-8-2010	Amend	1-1-2011	660-033-0010	3-16-2011	Amend	5-1-2011
660-001-0007	12-8-2010	Amend	1-1-2011	660-033-0020	3-16-2011	Amend	5-1-2011
660-001-0201	12-8-2010	Amend	1-1-2011	660-033-0030	3-16-2011	Amend	5-1-2011
660-001-0210	12-8-2010	Amend	1-1-2011	660-033-0120	3-16-2011	Amend	5-1-2011
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660-003-0010	12-8-2010	Amend	1-1-2011	660-033-0135	3-16-2011	Amend	5-1-2011
660-003-0015	12-8-2010	Amend	1-1-2011	660-033-0140	3-16-2011	Amend	5-1-2011
660-003-0020	12-8-2010	Amend	1-1-2011	660-033-0145	3-16-2011	Amend	5-1-2011
660-003-0025	12-8-2010	Amend	1-1-2011	660-044-0000	6-1-2011	Adopt	7-1-2011
660-003-0032	12-8-2010	Amend	1-1-2011	660-044-0005	6-1-2011	Adopt	7-1-2011
660-003-0033	12-8-2010	Amend	1-1-2011	660-044-0010	6-1-2011	Adopt	7-1-2011
660-003-0050	12-8-2010	Amend	1-1-2011	660-044-0020	6-1-2011	Adopt	7-1-2011
660-004-0000	2-2-2011	Amend	3-1-2011	660-044-0025	6-1-2011	Adopt	7-1-2011
660-004-0000	3-16-2011	Amend	5-1-2011	660-044-0030	6-1-2011	Adopt	7-1-2011
660-004-0005	2-2-2011	Amend	3-1-2011	660-044-0035	6-1-2011	Adopt	7-1-2011
660-004-0005	3-16-2011	Amend	5-1-2011	678-010-0010	7-1-2011	Amend(T)	8-1-2011
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660-004-0010	3-16-2011	Amend	5-1-2011	678-010-0030	7-1-2011	Amend(T)	8-1-2011
660-004-0015	2-2-2011	Amend	3-1-2011	678-010-0040	7-1-2011	Amend(T)	8-1-2011
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660-004-0018	2-2-2011	Amend	3-1-2011	690-095-0005	12-14-2010	Adopt	1-1-2011
660-004-0018	3-16-2011	Amend	5-1-2011	690-095-0010	12-14-2010	Adopt	1-1-2011
660-004-0020	2-2-2011	Amend	3-1-2011	690-095-0015	12-14-2010	Adopt	1-1-2011
660-004-0020	3-16-2011	Amend	5-1-2011	690-095-0020	12-14-2010	Adopt	1-1-2011
660-004-0022	2-2-2011	Amend	3-1-2011	690-095-0025	12-14-2010	Adopt	1-1-2011
660-004-0022	3-16-2011	Amend	5-1-2011	690-095-0030	12-14-2010	Adopt	1-1-2011
660-004-0025	2-2-2011	Amend	3-1-2011	690-095-0035	12-14-2010	Adopt	1-1-2011
660-004-0025	3-16-2011	Amend	5-1-2011	690-095-0040	12-14-2010	Adopt	1-1-2011
660-004-0028	2-2-2011	Amend	3-1-2011	690-095-0045	12-14-2010	Adopt	1-1-2011
660-004-0028	3-16-2011	Amend	5-1-2011	690-095-0050	12-14-2010	Adopt	1-1-2011
660-004-0030	2-2-2011	Amend	3-1-2011	690-095-0055	12-14-2010	Adopt	1-1-2011

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690-095-0065	12-14-2010	Adopt	1-1-2011	734-051-0530(T)	1-19-2011	Repeal	3-1-2011
690-095-0070	12-14-2010	Adopt	1-1-2011	734-070-0005	5-27-2011	Amend	7-1-2011
690-095-0075	12-14-2010	Adopt	1-1-2011	734-070-0010	5-27-2011	Amend	7-1-2011
690-095-0080	12-14-2010	Adopt	1-1-2011	734-070-0017	1-28-2011	Adopt	3-1-2011
690-095-0085	12-14-2010	Adopt	1-1-2011	734-070-0025	5-27-2011	Amend	7-1-2011
690-095-0090	12-14-2010	Adopt	1-1-2011	734-071-0010	5-27-2011	Amend	7-1-2011
690-095-0095	12-14-2010	Adopt	1-1-2011	734-072-0010	5-27-2011	Amend	7-1-2011
690-095-0100	12-14-2010	Adopt	1-1-2011	734-072-0015	5-27-2011	Amend	7-1-2011
731-001-0005	5-27-2011	Amend	7-1-2011	734-072-0020	5-27-2011	Amend	7-1-2011
731-017-0005	12-22-2010	Adopt	2-1-2011	734-072-0022	5-27-2011	Amend	7-1-2011
731-017-0010	12-22-2010	Adopt	2-1-2011	734-072-0023	5-27-2011	Amend	7-1-2011
731-017-0015	12-22-2010	Adopt	2-1-2011	734-072-0030	5-27-2011	Amend	7-1-2011
731-017-0020	12-22-2010	Adopt	2-1-2011	734-073-0050	5-27-2011	Amend	7-1-2011
731-017-0025	12-22-2010	Adopt	2-1-2011	734-073-0056	5-27-2011	Amend	7-1-2011
731-017-0030	12-22-2010	Adopt	2-1-2011	734-073-0065	5-27-2011	Amend	7-1-2011
731-017-0035	12-22-2010	Adopt	2-1-2011	734-074-0020	5-27-2011	Amend	7-1-2011
731-017-0040	12-22-2010	Adopt	2-1-2011	734-074-0023	5-27-2011	Amend	7-1-2011
731-017-0045	12-22-2010	Adopt	2-1-2011	734-074-0051	5-27-2011	Amend	7-1-2011
731-017-0050	12-22-2010	Adopt	2-1-2011	734-075-0010	6-21-2011	Amend	8-1-2011
731-017-0055	12-22-2010	Adopt	2-1-2011	734-075-0025	6-21-2011	Amend	8-1-2011
731-035-0070	12-22-2010	Amend	2-1-2011	734-075-0035	5-27-2011	Amend	7-1-2011
734-020-0010	5-27-2011	Amend	7-1-2011	734-075-0065	5-27-2011	Repeal	7-1-2011
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734-020-0015	5-27-2011	Amend	7-1-2011	734-075-0080	5-27-2011	Repeal	7-1-2011
734-020-0016	5-27-2011	Amend	7-1-2011	734-075-0085	5-27-2011	Adopt	7-1-2011
734-020-0017	5-27-2011	Amend	7-1-2011	734-076-0005	5-27-2011	Amend	7-1-2011
734-024-0005	5-27-2011	Adopt	7-1-2011	734-076-0015	5-27-2011	Amend	7-1-2011
734-024-0015	5-27-2011	Adopt	7-1-2011	734-076-0075	5-27-2011	Amend	7-1-2011
734-024-0020	5-27-2011	Adopt	7-1-2011	734-076-0115	5-27-2011	Amend	7-1-2011
734-024-0030	5-27-2011	Adopt	7-1-2011	734-076-0165	5-27-2011	Amend	7-1-2011
734-024-0040	5-27-2011	Adopt	7-1-2011	734-076-0175	5-27-2011	Amend	7-1-2011
734-051-0020	1-19-2011	Amend	3-1-2011	734-077-0010	5-27-2011	Amend	7-1-2011
734-051-0020(T)	1-19-2011	Repeal	3-1-2011	734-078-0020	5-27-2011	Amend	7-1-2011
734-051-0040	1-19-2011	Amend	3-1-2011	734-079-0005	5-27-2011	Amend	7-1-2011
734-051-0040(T)	1-19-2011	Repeal	3-1-2011	734-079-0015	5-27-2011	Amend	7-1-2011
734-051-0045	1-19-2011	Amend	3-1-2011	734-082-0025	6-21-2011	Amend	8-1-2011
734-051-0045(T)	1-19-2011	Repeal	3-1-2011	734-082-0035	5-27-2011	Amend	7-1-2011
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734-051-0070(T)	1-19-2011	Repeal	3-1-2011	734-082-0070	5-27-2011	Amend	7-1-2011
734-051-0080	1-19-2011	Amend	3-1-2011	734-082-0080	5-27-2011	Amend	7-1-2011
734-051-0080(T)	1-19-2011	Repeal	3-1-2011	735-032-0065	12-22-2010	Adopt	2-1-2011
734-051-0135	1-19-2011	Amend	3-1-2011	735-034-0000	3-16-2011	Amend	5-1-2011
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734-051-0245	1-19-2011	Amend	3-1-2011	735-034-0010	3-16-2011	Amend	5-1-2011
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734-051-0255	1-19-2011	Amend	3-1-2011	735-040-0098(T)	1-28-2011	Repeal	3-1-2011
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734-051-0295	1-19-2011	Amend	3-1-2011	735-060-0000	1-1-2011	Amend	1-1-2011
734-051-0295(T)	1-19-2011	Repeal	3-1-2011	735-060-0120	1-1-2011	Amend	1-1-2011
734-051-0315	1-19-2011	Amend	3-1-2011	735-062-0002	1-1-2011	Amend	1-1-2011
734-051-0315(T)	1-19-2011	Repeal	3-1-2011	735-062-0016	6-21-2011	Amend	8-1-2011
734-051-0345	1-19-2011	Amend	3-1-2011	735-062-0070	1-1-2011	Amend	1-1-2011
734-051-0345(T)	1-19-2011	Repeal	3-1-2011	735-062-0200	1-1-2011	Amend	1-1-2011
734-051-0500	1-19-2011	Amend	3-1-2011	735-063-0000	6-21-2011	Amend	8-1-2011
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735-063-0070	6-21-2011	Amend	8-1-2011	740-200-0040	2-18-2011	Amend	4-1-2011
735-072-0020	3-2-2011	Amend	4-1-2011	741-125-0010	12-22-2010	Repeal	2-1-2011
735-072-0050	3-2-2011	Amend	4-1-2011	800-010-0015	2-1-2011	Amend	3-1-2011
735-074-0210	6-21-2011	Amend	8-1-2011	800-010-0030	2-1-2011	Amend	3-1-2011
735-074-0212	6-21-2011	Amend	8-1-2011	800-010-0040	2-1-2011	Amend	3-1-2011
735-076-0050	6-21-2011	Amend	8-1-2011	800-010-0041	2-1-2011	Amend	3-1-2011
735-076-0052	6-21-2011	Amend	8-1-2011	800-010-0050	2-1-2011	Amend	3-1-2011
735-080-0020	3-16-2011	Amend	5-1-2011	800-010-0050	7-1-2012	Amend	7-1-2011
735-080-0040	3-16-2011	Amend	5-1-2011	800-015-0010	2-1-2011	Amend	3-1-2011
735-080-0046	3-16-2011	Adopt	5-1-2011	800-015-0015	2-1-2011	Amend	3-1-2011
735-090-0000	1-1-2011	Amend	2-1-2011	800-015-0030	2-1-2011	Amend	3-1-2011
735-090-0020	1-1-2011	Amend	2-1-2011	800-020-0015	2-1-2011	Amend	3-1-2011
735-090-0042	1-1-2011	Adopt	2-1-2011	800-020-0015	7-1-2012	Amend	7-1-2011
735-090-0101	1-1-2011	Amend	2-1-2011	800-020-0020	7-1-2011	Amend	3-1-2011
735-100-0030	2-18-2011	Am. & Ren.	4-1-2011	800-020-0025	2-1-2011	Amend	3-1-2011
735-150-0015	4-22-2011	Amend	6-1-2011	800-020-0025	7-1-2011	Amend	3-1-2011
735-150-0055	1-1-2011	Amend	2-1-2011	800-020-0026	2-1-2011	Amend	3-1-2011
735-154-0005	3-16-2011	Amend	5-1-2011	800-025-0020	2-1-2011	Amend	3-1-2011
735-176-0000	1-1-2011	Amend	1-1-2011	800-025-0023	2-1-2011	Amend	3-1-2011
735-176-0010	1-1-2011	Amend	1-1-2011	800-025-0025	2-1-2011	Amend	3-1-2011
735-176-0017	1-1-2011	Amend	1-1-2011	800-025-0027	2-1-2011	Amend	3-1-2011
735-176-0019	1-1-2011	Amend	1-1-2011	800-025-0030	2-1-2011	Amend	3-1-2011
735-176-0020	1-1-2011	Amend	1-1-2011	800-025-0050	2-1-2011	Amend	3-1-2011
735-176-0021	1-1-2011	Amend	1-1-2011	800-025-0060	2-1-2011	Amend	3-1-2011
735-176-0022	1-1-2011	Amend	1-1-2011	800-030-0025	2-1-2011	Amend	3-1-2011
735-176-0023	1-1-2011	Adopt	1-1-2011	800-030-0030	2-1-2011	Adopt	3-1-2011
735-176-0030	1-1-2011	Amend	1-1-2011	800-030-0050	2-1-2011	Amend	3-1-2011
735-176-0040	1-1-2011	Amend	1-1-2011	801-001-0035	1-1-2011	Amend	1-1-2011
735-176-0045	1-1-2011	Amend	1-1-2011	801-005-0010	1-1-2011	Amend	1-1-2011
736-010-0015	3-24-2011	Amend(T)	5-1-2011	801-010-0010	1-1-2011	Amend	1-1-2011
736-010-0025	3-24-2011	Amend(T)	5-1-2011	801-010-0050	1-1-2011	Amend	1-1-2011
736-010-0026	3-24-2011	Amend(T)	5-1-2011	801-010-0060	1-1-2011	Amend	1-1-2011
736-010-0030	3-24-2011	Amend(T)	5-1-2011	801-010-0065	1-1-2011	Amend	1-1-2011
736-010-0066	2-15-2011	Adopt	3-1-2011	801-010-0073	1-1-2011	Amend	1-1-2011
736-019-0000	3-30-2011	Amend	5-1-2011	801-010-0075	1-1-2011	Amend	1-1-2011
736-019-0020	3-30-2011	Amend	5-1-2011	801-010-0078	1-1-2011	Amend	1-1-2011
736-019-0040	3-30-2011	Amend	5-1-2011	801-010-0079	1-1-2011	Amend	1-1-2011
736-019-0060	3-30-2011	Amend	5-1-2011	801-010-0080	1-1-2011	Amend	1-1-2011
736-019-0070	3-30-2011	Adopt	5-1-2011	801-010-0100	1-1-2011	Amend	1-1-2011
736-019-0080	3-30-2011	Amend	5-1-2011	801-010-0110	1-1-2011	Amend	1-1-2011
736-019-0100	3-30-2011	Amend	5-1-2011	801-010-0115	1-1-2011	Amend	1-1-2011
736-019-0120	3-30-2011	Amend	5-1-2011	801-010-0120	1-1-2011	Amend	1-1-2011
737-010-0020	1-28-2011	Amend	3-1-2011	801-010-0125	1-1-2011	Amend	1-1-2011
737-100-0010	2-18-2011	Adopt	4-1-2011	801-010-0130	1-1-2011	Amend	1-1-2011
737-100-0040	2-18-2011	Adopt	4-1-2011	801-010-0170	1-1-2011	Amend	1-1-2011
740-100-0010	5-27-2011	Amend	7-1-2011	801-010-0190	1-1-2011	Amend	1-1-2011
740-100-0020	5-27-2011	Amend	7-1-2011	801-010-0340	1-1-2011	Amend	1-1-2011
740-100-0065	5-27-2011	Amend	7-1-2011	801-010-0345	1-1-2011	Amend	1-1-2011
740-100-0070	5-27-2011	Amend	7-1-2011	801-040-0010	1-1-2011	Amend	1-1-2011
740-100-0080	5-27-2011	Amend	7-1-2011	801-040-0050	1-1-2011	Amend	1-1-2011
740-100-0085	5-27-2011	Amend	7-1-2011	804-001-0002	7-1-2011	Amend	7-1-2011
740-100-0090	5-27-2011	Amend	7-1-2011	806-001-0003	7-1-2011	Amend	7-1-2011
740-100-0100	5-27-2011	Amend	7-1-2011	806-010-0105	12-14-2010	Amend	1-1-2011
740-110-0010	5-27-2011	Amend	7-1-2011	808-001-0008	6-17-2011	Amend	8-1-2011



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808-002-0020	1-28-2011	Amend(T)	3-1-2011	812-005-0800	7-1-2011	Amend	8-1-2011
808-002-0020	6-17-2011	Amend	8-1-2011	812-006-0150	3-1-2011	Amend	4-1-2011
808-002-0020(T)	6-17-2011	Repeal	8-1-2011	812-006-0250	3-1-2011	Amend	4-1-2011
808-003-0018	5-25-2011	Amend	7-1-2011	812-007-0031	5-1-2011	Adopt	6-1-2011
808-003-0130	1-27-2011	Amend	3-1-2011	812-007-0032	5-1-2011	Adopt	6-1-2011
808-040-0025	6-17-2011	Amend	8-1-2011	812-007-0323	12-22-2010	Adopt(T)	2-1-2011
808-040-0040	6-17-2011	Amend	8-1-2011	812-007-0323	3-1-2011	Adopt	4-1-2011
809-010-0001	7-1-2011	Amend	8-1-2011	812-007-0323(T)	3-1-2011	Repeal	4-1-2011
809-010-0025	7-1-2011	Amend	8-1-2011	812-008-0065	5-1-2011	Adopt	6-1-2011
809-030-0025	7-1-2011	Amend	8-1-2011	812-008-0070	3-1-2011	Amend	4-1-2011
809-050-0005	7-1-2011	Adopt	8-1-2011	812-008-0072	3-1-2011	Amend	4-1-2011
811-015-0036	6-13-2011	Adopt	7-1-2011	812-008-0074	1-1-2011	Amend	2-1-2011
812-001-0200	12-1-2010	Amend(T)	1-1-2011	812-008-0074	3-1-2011	Amend	4-1-2011
812-001-0200	3-1-2011	Amend	4-1-2011	812-008-0077	5-1-2011	Adopt	6-1-2011
812-001-0200	5-1-2011	Amend	6-1-2011	812-008-0209	5-1-2011	Amend	6-1-2011
812-001-0200(T)	3-1-2011	Repeal	4-1-2011	812-009-0010	7-8-2011	Amend(T)	8-1-2011
812-001-0290	3-1-2011	Amend	4-1-2011	812-010-0020	7-8-2011	Amend(T)	8-1-2011
812-002-0320	1-1-2011	Amend	2-1-2011	812-020-0090	1-1-2011	Amend	2-1-2011
812-002-0640	5-1-2011	Amend	6-1-2011	812-021-0015	7-1-2011	Amend(T)	8-1-2011
812-002-0677	1-1-2011	Adopt	2-1-2011	812-021-0016	4-28-2011	Amend(T)	6-1-2011
812-002-0700	5-1-2011	Amend	6-1-2011	812-021-0016	7-1-2011	Amend	8-1-2011
812-003-0310	5-1-2011	Amend	6-1-2011	812-021-0016(T)	7-1-2011	Repeal	8-1-2011
812-003-0320	5-1-2011	Amend	6-1-2011	812-021-0019	7-1-2011	Amend	8-1-2011
812-003-0321	5-1-2011	Adopt	6-1-2011	812-021-0021	7-1-2011	Adopt(T)	8-1-2011
812-004-0001	7-8-2011	Amend(T)	8-1-2011	812-021-0028	7-1-2011	Amend(T)	8-1-2011
812-004-1001	7-8-2011	Adopt(T)	8-1-2011	812-025-0000	1-1-2011	Adopt	2-1-2011
812-004-1110	7-8-2011	Adopt(T)	8-1-2011	812-025-0005	1-1-2011	Adopt	2-1-2011
812-004-1120	7-8-2011	Adopt(T)	8-1-2011	812-025-0010	1-1-2011	Adopt	2-1-2011
812-004-1140	7-8-2011	Adopt(T)	8-1-2011	812-025-0015	1-1-2011	Adopt	2-1-2011
812-004-1160	7-8-2011	Adopt(T)	8-1-2011	812-025-0020	1-1-2011	Adopt	2-1-2011
812-004-1180	7-8-2011	Adopt(T)	8-1-2011	812-025-0025	1-1-2011	Adopt	2-1-2011
812-004-1195	7-8-2011	Adopt(T)	8-1-2011	812-025-0030	1-1-2011	Adopt	2-1-2011
812-004-1210	7-8-2011	Adopt(T)	8-1-2011	812-025-0032	5-1-2011	Adopt	6-1-2011
812-004-1240	7-8-2011	Adopt(T)	8-1-2011	812-025-0035	1-1-2011	Adopt	2-1-2011
812-004-1250	7-8-2011	Adopt(T)	8-1-2011	812-025-0040	1-1-2011	Adopt	2-1-2011
812-004-1260	7-8-2011	Adopt(T)	8-1-2011	812-025-0045	1-1-2011	Adopt	2-1-2011
812-004-1300	7-8-2011	Adopt(T)	8-1-2011	812-030-0223	5-1-2011	Adopt	6-1-2011
812-004-1320	7-8-2011	Adopt(T)	8-1-2011	812-030-0235	5-1-2011	Adopt	6-1-2011
812-004-1340	7-8-2011	Adopt(T)	8-1-2011	813-001-0060	12-1-2010	Adopt(T)	1-1-2011
812-004-1350	7-8-2011	Adopt(T)	8-1-2011	813-001-0060	8-25-2011	Adopt	7-1-2011
812-004-1360	7-8-2011	Adopt(T)	8-1-2011	813-001-0060(T)	8-25-2011	Repeal	7-1-2011
812-004-1400	7-8-2011	Adopt(T)	8-1-2011	813-007-0055	3-21-2011	Repeal	5-1-2011
812-004-1420	7-8-2011	Adopt(T)	8-1-2011	813-007-0057	3-21-2011	Adopt	5-1-2011
812-004-1440	7-8-2011	Adopt(T)	8-1-2011	813-007-0060	3-21-2011	Repeal	5-1-2011
812-004-1450	7-8-2011	Adopt(T)	8-1-2011	813-008-0005	3-1-2011	Am. & Ren.(T)	4-1-2011
812-004-1460	7-8-2011	Adopt(T)	8-1-2011	813-008-0010	3-1-2011	Suspend	4-1-2011
812-004-1480	7-8-2011	Adopt(T)	8-1-2011	813-008-0015	3-1-2011	Am. & Ren.(T)	4-1-2011
812-004-1490	7-8-2011	Adopt(T)	8-1-2011	813-008-0020	3-1-2011	Suspend	4-1-2011
812-004-1500	7-8-2011	Adopt(T)	8-1-2011	813-008-0025	3-1-2011	Suspend	4-1-2011
812-004-1505	7-8-2011	Adopt(T)	8-1-2011	813-008-0030	3-1-2011	Suspend	4-1-2011
812-004-1510	7-8-2011	Adopt(T)	8-1-2011	813-008-0040	3-1-2011	Suspend	4-1-2011
812-004-1520	7-8-2011	Adopt(T)	8-1-2011	813-041-0020	12-15-2010	Amend	1-1-2011
812-004-1530	7-8-2011	Adopt(T)	8-1-2011	813-042-0030	2-17-2011	Amend	4-1-2011
812-004-1537	7-8-2011	Adopt(T)	8-1-2011	813-043-0030	2-17-2011	Amend	4-1-2011
812-004-1600	7-8-2011	Adopt(T)	8-1-2011	813-065-0120	3-1-2011	Adopt(T)	4-1-2011

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813-065-0140	3-1-2011	Adopt(T)	4-1-2011	817-090-0090	5-5-2011	Amend	6-1-2011
813-065-0150	3-1-2011	Adopt(T)	4-1-2011	817-090-0095	5-5-2011	Amend	6-1-2011
813-065-0200	3-1-2011	Adopt(T)	4-1-2011	817-090-0100	5-5-2011	Amend	6-1-2011
813-065-0210	3-1-2011	Adopt(T)	4-1-2011	817-090-0105	5-5-2011	Amend	6-1-2011
813-065-0220	3-1-2011	Adopt(T)	4-1-2011	817-090-0110	5-5-2011	Amend	6-1-2011
813-065-0230	3-1-2011	Adopt(T)	4-1-2011	817-090-0115	5-5-2011	Amend	6-1-2011
813-065-0240	3-1-2011	Adopt(T)	4-1-2011	818-001-0087	7-1-2011	Amend(T)	8-1-2011
813-230-0000	2-7-2011	Amend	3-1-2011	818-013-0001	2-1-2011	Amend	2-1-2011
813-230-0000(T)	2-7-2011	Repeal	3-1-2011	818-013-0001(T)	2-1-2011	Repeal	2-1-2011
813-230-0005	2-7-2011	Amend	3-1-2011	818-013-0005	2-1-2011	Amend	2-1-2011
813-230-0005(T)	2-7-2011	Repeal	3-1-2011	818-013-0005(T)	2-1-2011	Repeal	2-1-2011
813-230-0007	2-7-2011	Adopt	3-1-2011	818-013-0010	2-1-2011	Amend	2-1-2011
813-230-0007(T)	2-7-2011	Repeal	3-1-2011	818-013-0010(T)	2-1-2011	Repeal	2-1-2011
813-230-0015	2-7-2011	Amend	3-1-2011	818-013-0015	2-1-2011	Amend	2-1-2011
813-230-0015(T)	2-7-2011	Repeal	3-1-2011	818-013-0015(T)	2-1-2011	Repeal	2-1-2011
817-005-0005	5-5-2011	Amend	6-1-2011	818-013-0020	2-1-2011	Amend	2-1-2011
817-010-0065	5-5-2011	Amend	6-1-2011	818-013-0020(T)	2-1-2011	Repeal	2-1-2011
817-010-0090	5-5-2011	Repeal	6-1-2011	818-013-0025	2-1-2011	Amend	2-1-2011
817-020-0006	5-5-2011	Amend	6-1-2011	818-013-0025(T)	2-1-2011	Repeal	2-1-2011
817-030-0005	3-1-2011	Amend(T)	4-1-2011	818-013-0030	2-1-2011	Amend	2-1-2011
817-030-0005	5-5-2011	Amend	6-1-2011	818-013-0030(T)	2-1-2011	Repeal	2-1-2011
817-030-0005(T)	5-5-2011	Repeal	6-1-2011	818-013-0035	2-1-2011	Amend	2-1-2011
817-030-0015	3-1-2011	Amend(T)	4-1-2011	818-013-0035(T)	2-1-2011	Repeal	2-1-2011
817-030-0015	5-5-2011	Repeal	6-1-2011	818-021-0017	6-1-2011	Amend(T)	6-1-2011
817-030-0018	3-1-2011	Amend(T)	4-1-2011	818-021-0060	7-1-2011	Amend(T)	8-1-2011
817-030-0018	5-5-2011	Repeal	6-1-2011	818-021-0070	7-1-2011	Amend(T)	8-1-2011
817-030-0020	5-5-2011	Repeal	6-1-2011	818-026-0060	6-1-2011	Amend(T)	6-1-2011
817-030-0030	5-5-2011	Amend	6-1-2011	818-026-0065	6-1-2011	Amend(T)	6-1-2011
817-030-0040	5-5-2011	Repeal	6-1-2011	818-026-0070	6-1-2011	Amend(T)	6-1-2011
817-030-0045	5-5-2011	Repeal	6-1-2011	820-010-0209	1-14-2011	Amend	2-1-2011
817-030-0055	5-5-2011	Repeal	6-1-2011	820-010-0210	1-14-2011	Amend	2-1-2011
817-030-0065	5-5-2011	Amend	6-1-2011	820-010-0212	1-14-2011	Amend	2-1-2011
817-030-0071	5-5-2011	Adopt	6-1-2011	820-010-0213	1-14-2011	Amend	2-1-2011
817-035-0010	5-5-2011	Amend	6-1-2011	820-010-0214	1-14-2011	Amend	2-1-2011
817-035-0030	5-5-2011	Repeal	6-1-2011	820-010-0215	12-28-2010	Amend(T)	2-1-2011
817-035-0050	3-1-2011	Amend(T)	4-1-2011	820-010-0215	1-14-2011	Amend	2-1-2011
817-035-0050	5-5-2011	Amend	6-1-2011	820-010-0215(T)	1-14-2011	Repeal	2-1-2011
817-035-0050(T)	5-5-2011	Repeal	6-1-2011	820-010-0305	1-14-2011	Amend	2-1-2011
817-035-0070	5-5-2011	Amend	6-1-2011	820-010-0325	5-12-2011	Amend	6-1-2011
817-035-0110	5-5-2011	Amend	6-1-2011	820-010-0400	1-14-2011	Amend	2-1-2011
817-040-0003	3-1-2011	Amend(T)	4-1-2011	820-010-0417	1-14-2011	Amend	2-1-2011
817-040-0003	5-5-2011	Amend	6-1-2011	820-010-0427	1-14-2011	Amend	2-1-2011
817-040-0003	6-1-2011	Amend	7-1-2011	820-010-0435	1-14-2011	Repeal	2-1-2011
817-040-0003(T)	5-5-2011	Repeal	6-1-2011	820-010-0463	1-14-2011	Amend	2-1-2011
817-060-0050	5-5-2011	Adopt	6-1-2011	820-010-0505	1-14-2011	Amend	2-1-2011
817-060-0050(T)	5-5-2011	Repeal	6-1-2011	820-010-0520	1-14-2011	Amend	2-1-2011
817-090-0025	5-5-2011	Amend	6-1-2011	820-010-0635	5-12-2011	Amend	6-1-2011
817-090-0035	5-5-2011	Amend	6-1-2011	833-020-0011	2-1-2011	Amend	2-1-2011
817-090-0045	5-5-2011	Amend	6-1-2011	833-020-0051	2-1-2011	Amend	2-1-2011
817-090-0050	5-5-2011	Amend	6-1-2011	833-020-0081	1-1-2011	Amend	1-1-2011
817-090-0055	5-5-2011	Amend	6-1-2011	833-040-0021	1-1-2011	Amend	1-1-2011
817-090-0065	5-5-2011	Amend	6-1-2011	833-050-0081	1-1-2011	Amend	1-1-2011
817-090-0070	5-5-2011	Amend	6-1-2011	833-055-0001	1-1-2011	Repeal	1-1-2011
817-090-0075	5-5-2011	Amend	6-1-2011	833-055-0010	1-1-2011	Repeal	1-1-2011
817-090-0080	5-5-2011	Amend	6-1-2011	833-055-0020	1-1-2011	Repeal	1-1-2011

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833-060-0062	1-1-2011	Adopt	1-1-2011	836-080-0180	2-4-2011	Adopt	3-1-2011
833-100-0021	1-1-2011	Amend	1-1-2011	836-080-0183	2-4-2011	Adopt	3-1-2011
833-110-0021	1-1-2011	Amend	1-1-2011	836-080-0185	2-4-2011	Adopt	3-1-2011
833-120-0011	5-15-2011	Amend(T)	6-1-2011	836-080-0188	2-4-2011	Adopt	3-1-2011
833-120-0021	5-15-2011	Amend(T)	6-1-2011	836-080-0193	2-4-2011	Adopt	3-1-2011
833-120-0031	5-15-2011	Amend(T)	6-1-2011	836-080-0800	3-1-2011	Adopt	2-1-2011
833-120-0041	5-15-2011	Amend(T)	6-1-2011	836-080-0805	3-1-2011	Adopt	2-1-2011
833-130-0080	1-1-2011	Adopt	1-1-2011	836-080-0810	3-1-2011	Adopt	2-1-2011
836-009-0007	1-1-2011	Amend	2-1-2011	836-100-0010	2-10-2011	Adopt	3-1-2011
836-011-0000	1-1-2011	Amend	2-1-2011	836-100-0010	7-5-2011	Am. & Ren.	8-1-2011
836-011-0250	2-4-2011	Adopt	3-1-2011	836-100-0010(T)	2-10-2011	Repeal	3-1-2011
836-011-0253	2-4-2011	Adopt	3-1-2011	836-100-0011	7-5-2011	Adopt	8-1-2011
836-011-0255	2-4-2011	Adopt	3-1-2011	836-100-0015	2-10-2011	Adopt	3-1-2011
836-011-0258	2-4-2011	Adopt	3-1-2011	836-100-0015	7-5-2011	Repeal	8-1-2011
836-011-0260	2-4-2011	Adopt	3-1-2011	836-100-0015(T)	2-10-2011	Repeal	3-1-2011
836-011-0515	12-15-2010	Amend	1-1-2011	836-100-0016	7-5-2011	Adopt	8-1-2011
836-031-0600	2-23-2011	Amend	4-1-2011	836-100-0025	7-5-2011	Adopt	8-1-2011
836-031-0620	2-23-2011	Amend	4-1-2011	836-100-0030	7-5-2011	Adopt	8-1-2011
836-031-0630	2-23-2011	Amend	4-1-2011	836-100-0035	7-5-2011	Adopt	8-1-2011
836-031-0640	2-23-2011	Amend	4-1-2011	836-100-0040	7-5-2011	Adopt	8-1-2011
836-031-0650	2-23-2011	Repeal	4-1-2011	836-100-0045	7-5-2011	Adopt	8-1-2011
836-031-0660	2-23-2011	Repeal	4-1-2011	836-100-0100	7-15-2011	Adopt	8-1-2011
836-031-0670	2-23-2011	Amend	4-1-2011	836-100-0105	7-15-2011	Adopt	8-1-2011
836-031-0680	2-23-2011	Amend	4-1-2011	836-100-0110	7-15-2011	Adopt	8-1-2011
836-031-0690	2-23-2011	Amend	4-1-2011	836-100-0115	7-15-2011	Adopt	8-1-2011
836-051-0030	2-23-2011	Adopt	4-1-2011	836-100-0120	7-15-2011	Adopt	8-1-2011
836-051-0032	2-23-2011	Adopt	4-1-2011	837-012-0315	1-1-2011	Amend(T)	2-1-2011
836-051-0034	2-23-2011	Adopt	4-1-2011	837-012-0315	6-29-2011	Amend	6-1-2011
836-051-0036	2-23-2011	Adopt	4-1-2011	837-012-0330	1-1-2011	Amend(T)	2-1-2011
836-051-0038	2-23-2011	Adopt	4-1-2011	837-012-0330	6-29-2011	Amend	6-1-2011
836-051-0040	2-23-2011	Adopt	4-1-2011	837-012-0510	5-2-2011	Amend	4-1-2011
836-052-0114	2-23-2011	Amend	4-1-2011	837-012-0515	5-2-2011	Amend	4-1-2011
836-052-0145	2-23-2011	Amend	4-1-2011	837-012-0520	5-2-2011	Amend	4-1-2011
836-052-0151	2-23-2011	Amend	4-1-2011	837-012-0525	5-2-2011	Amend	4-1-2011
836-052-0160	2-23-2011	Amend	4-1-2011	837-012-0535	5-2-2011	Amend	4-1-2011
836-052-0636	2-10-2011	Amend	3-1-2011	837-012-0540	5-2-2011	Amend	4-1-2011
836-052-0756	2-10-2011	Amend	3-1-2011	837-012-0550	5-2-2011	Amend	4-1-2011
836-052-0776	2-10-2011	Amend	3-1-2011	837-012-0555	5-2-2011	Amend	4-1-2011
836-052-0790	2-10-2011	Adopt	3-1-2011	837-012-0560	5-2-2011	Amend	4-1-2011
836-052-1000	2-23-2011	Amend	4-1-2011	837-012-0565	5-2-2011	Amend	4-1-2011
836-053-0510	2-23-2011	Amend	4-1-2011	837-040-0020	4-1-2011	Amend	4-1-2011
836-053-1030	7-7-2011	Amend(T)	8-1-2011	837-041-0050	12-1-2010	Amend	1-1-2011
836-053-1100	7-7-2011	Amend(T)	8-1-2011	837-047-0100	12-28-2010	Adopt	1-1-2011
836-053-1310	7-7-2011	Amend(T)	8-1-2011	837-047-0110	12-28-2010	Adopt	1-1-2011
836-053-1340	7-7-2011	Amend(T)	8-1-2011	837-047-0120	12-28-2010	Adopt	1-1-2011
836-053-1342	7-7-2011	Amend(T)	8-1-2011	837-047-0130	12-28-2010	Adopt	1-1-2011
836-053-1350	7-7-2011	Amend(T)	8-1-2011	837-047-0135	12-28-2010	Adopt	1-1-2011
836-071-0110	1-1-2011	Amend	2-1-2011	837-047-0140	12-28-2010	Adopt	1-1-2011
836-071-0118	1-1-2011	Adopt	2-1-2011	837-047-0150	12-28-2010	Adopt	1-1-2011
836-071-0120	1-1-2011	Amend	2-1-2011	837-047-0160	12-28-2010	Adopt	1-1-2011
836-080-0090	2-4-2011	Amend	3-1-2011	837-047-0170	12-28-2010	Adopt	1-1-2011
836-080-0095	2-4-2011	Am. & Ren.	3-1-2011	839-001-0200	1-1-2011	Amend	2-1-2011
836-080-0170	2-4-2011	Adopt	3-1-2011	839-011-0051	7-13-2011	Amend(T)	8-1-2011
836-080-0172	2-4-2011	Adopt	3-1-2011	839-011-0070	7-13-2011	Amend(T)	8-1-2011
836-080-0175	2-4-2011	Adopt	3-1-2011	839-011-0084	7-13-2011	Amend(T)	8-1-2011



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839-011-0140	7-13-2011	Amend(T)	8-1-2011	847-008-0050	7-13-2011	Amend	8-1-2011
839-011-0141	7-13-2011	Amend(T)	8-1-2011	847-008-0055	7-13-2011	Amend	8-1-2011
839-011-0142	7-13-2011	Amend(T)	8-1-2011	847-008-0070	4-25-2011	Amend	6-1-2011
839-011-0143	7-13-2011	Amend(T)	8-1-2011	847-008-0075	7-13-2011	Amend	8-1-2011
839-011-0145	7-13-2011	Amend(T)	8-1-2011	847-010-0100	2-11-2011	Renumber	3-1-2011
839-011-0290	7-13-2011	Amend(T)	8-1-2011	847-035-0001	2-11-2011	Amend	3-1-2011
839-020-0027	1-1-2011	Amend	2-1-2011	847-035-0001	7-13-2011	Amend	8-1-2011
839-025-0004	1-1-2011	Amend	2-1-2011	847-035-0025	7-13-2011	Amend	8-1-2011
839-025-0013	1-1-2011	Amend	2-1-2011	847-035-0030	2-11-2011	Amend	3-1-2011
839-025-0020	1-1-2011	Amend	2-1-2011	847-035-0030	4-8-2011	Amend	5-1-2011
839-025-0020	6-8-2011	Amend(T)	7-1-2011	847-035-0030	4-25-2011	Amend	6-1-2011
839-025-0035	1-1-2011	Amend	2-1-2011	847-050-0027	2-11-2011	Amend	3-1-2011
839-025-0060	1-1-2011	Amend	2-1-2011	847-050-0031	7-13-2011	Repeal	8-1-2011
839-025-0080	6-8-2011	Amend(T)	7-1-2011	847-050-0032	7-13-2011	Repeal	8-1-2011
839-025-0100	1-1-2011	Amend	2-1-2011	847-065-0005	2-11-2011	Amend	3-1-2011
839-025-0230	1-1-2011	Amend	2-1-2011	847-065-0010	4-25-2011	Amend	6-1-2011
839-025-0530	6-8-2011	Amend(T)	7-1-2011	847-065-0015	4-25-2011	Amend	6-1-2011
839-025-0700	1-1-2011	Amend	2-1-2011	847-065-0020	4-25-2011	Amend	6-1-2011
839-025-0700	4-1-2011	Amend	5-1-2011	847-065-0025	4-25-2011	Amend	6-1-2011
839-025-0700	7-1-2011	Amend	8-1-2011	847-065-0030	4-25-2011	Amend	6-1-2011
839-050-0440	2-1-2011	Amend	3-1-2011	847-065-0035	4-25-2011	Amend	6-1-2011
839-050-0445	2-1-2011	Amend	3-1-2011	847-065-0040	4-25-2011	Amend	6-1-2011
845-003-0670	1-1-2011	Amend	2-1-2011	847-065-0045	4-25-2011	Amend	6-1-2011
845-005-0311	3-1-2011	Amend	4-1-2011	847-065-0050	4-25-2011	Amend	6-1-2011
845-005-0331	3-1-2011	Amend	4-1-2011	847-065-0055	4-25-2011	Amend	6-1-2011
845-005-0355	3-1-2011	Amend	4-1-2011	847-065-0060	4-25-2011	Amend	6-1-2011
845-005-0440	1-1-2011	Amend	2-1-2011	847-065-0065	4-25-2011	Amend	6-1-2011
845-006-0345	1-1-2011	Amend	2-1-2011	847-065-0070	4-25-2011	Adopt	6-1-2011
845-006-0425	5-1-2011	Amend	6-1-2011	847-070-0018	7-13-2011	Repeal	8-1-2011
845-006-0480	3-1-2011	Amend	4-1-2011	847-070-0042	7-13-2011	Repeal	8-1-2011
845-008-0050	1-1-2011	Adopt	2-1-2011	847-070-0050	7-13-2011	Amend	8-1-2011
845-008-0070	1-1-2011	Adopt	2-1-2011	847-080-0019	7-13-2011	Repeal	8-1-2011
845-008-0080	1-1-2011	Adopt	2-1-2011	847-080-0020	7-13-2011	Repeal	8-1-2011
845-008-0090	1-1-2011	Adopt	2-1-2011	847-080-0025	7-13-2011	Repeal	8-1-2011
845-009-0010	1-1-2011	Amend	2-1-2011	848-005-0010	7-1-2011	Amend	8-1-2011
845-010-0146	11-20-2010	Adopt(T)	1-1-2011	850-035-0230	6-15-2011	Amend	7-1-2011
845-010-0154	1-1-2011	Am. & Ren.	2-1-2011	850-050-0200	4-12-2011	Adopt	5-1-2011
845-013-0030	5-1-2011	Amend	6-1-2011	850-060-0212	12-13-2010	Amend	1-1-2011
845-013-0050	5-1-2011	Amend	6-1-2011	850-060-0225	4-12-2011	Amend	5-1-2011
845-013-0070	12-3-2010	Amend(T)	1-1-2011	850-060-0226	12-13-2010	Amend	1-1-2011
845-015-0138	1-1-2011	Adopt	2-1-2011	850-060-0226	4-12-2011	Amend	5-1-2011
847-001-0005	4-25-2011	Amend	6-1-2011	850-060-0226	6-15-2011	Amend	7-1-2011
847-001-0015	4-25-2011	Amend	6-1-2011	851-002-0010	11-29-2010	Amend	1-1-2011
847-001-0022	4-25-2011	Adopt	6-1-2011	851-002-0040	11-29-2010	Amend	1-1-2011
847-002-0000	7-13-2011	Adopt	8-1-2011	851-021-0005	11-29-2010	Amend	1-1-2011
847-002-0005	7-13-2011	Adopt	8-1-2011	851-021-0010	11-29-2010	Amend	1-1-2011
847-002-0010	7-13-2011	Adopt	8-1-2011	851-021-0045	11-29-2010	Amend	1-1-2011
847-002-0015	7-13-2011	Adopt	8-1-2011	851-021-0055	11-29-2010	Amend	1-1-2011
847-002-0020	7-13-2011	Adopt	8-1-2011	851-021-0065	11-29-2010	Amend	1-1-2011
847-002-0025	7-13-2011	Adopt	8-1-2011	851-021-0090	11-29-2010	Amend	1-1-2011
847-002-0030	7-13-2011	Adopt	8-1-2011	851-031-0045	11-29-2010	Amend	1-1-2011
847-002-0035	7-13-2011	Adopt	8-1-2011	851-031-0070	11-29-2010	Amend	1-1-2011
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847-002-0045	7-13-2011	Adopt	8-1-2011	851-046-0005	12-2-2010	Repeal	1-1-2011
847-005-0005	7-13-2011	Amend(T)	8-1-2011	851-046-0010	12-2-2010	Repeal	1-1-2011

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851-046-0030	12-2-2010	Repeal	1-1-2011	855-010-0070	7-1-2011	Adopt	8-1-2011
851-046-0040	12-2-2010	Repeal	1-1-2011	855-010-0075	2-8-2011	Adopt(T)	3-1-2011
851-061-0020	7-11-2011	Amend	8-1-2011	855-010-0075	7-1-2011	Adopt	8-1-2011
851-061-0030	7-11-2011	Amend	8-1-2011	855-010-0080	2-8-2011	Adopt(T)	3-1-2011
851-061-0040	7-11-2011	Amend	8-1-2011	855-010-0080	7-1-2011	Adopt	8-1-2011
851-061-0050	7-11-2011	Amend	8-1-2011	855-010-0085	2-8-2011	Adopt(T)	3-1-2011
851-061-0075	7-11-2011	Adopt	8-1-2011	855-010-0085	7-1-2011	Adopt	8-1-2011
851-061-0080	7-11-2011	Amend	8-1-2011	855-010-0087	2-8-2011	Adopt(T)	3-1-2011
851-061-0090	7-11-2011	Amend	8-1-2011	855-010-0087	7-1-2011	Adopt	8-1-2011
851-061-0110	7-11-2011	Amend	8-1-2011	855-011-0005	12-23-2010	Adopt	2-1-2011
851-061-0130	7-11-2011	Amend	8-1-2011	855-011-0005(T)	12-23-2010	Repeal	2-1-2011
851-063-0030	6-23-2011	Amend(T)	7-1-2011	855-011-0020	12-23-2010	Adopt	2-1-2011
851-070-0000	12-2-2010	Adopt	1-1-2011	855-011-0020(T)	12-23-2010	Repeal	2-1-2011
851-070-0000(T)	12-2-2010	Repeal	1-1-2011	855-011-0030	12-23-2010	Adopt	2-1-2011
851-070-0005	12-2-2010	Adopt	1-1-2011	855-011-0030(T)	12-23-2010	Repeal	2-1-2011
851-070-0005(T)	12-2-2010	Repeal	1-1-2011	855-011-0040	12-23-2010	Adopt	2-1-2011
851-070-0010	12-2-2010	Adopt	1-1-2011	855-011-0040(T)	12-23-2010	Repeal	2-1-2011
851-070-0010(T)	12-2-2010	Repeal	1-1-2011	855-011-0050	12-23-2010	Adopt	2-1-2011
851-070-0020	12-2-2010	Adopt	1-1-2011	855-011-0050(T)	12-23-2010	Repeal	2-1-2011
851-070-0020(T)	12-2-2010	Repeal	1-1-2011	855-019-0120	7-1-2011	Amend	8-1-2011
851-070-0030	12-2-2010	Adopt	1-1-2011	855-019-0265	4-18-2011	Adopt	6-1-2011
851-070-0030(T)	12-2-2010	Repeal	1-1-2011	855-021-0010	12-23-2010	Amend	2-1-2011
851-070-0040	12-2-2010	Adopt	1-1-2011	855-041-0065	12-23-2010	Amend	2-1-2011
851-070-0040(T)	12-2-2010	Repeal	1-1-2011	855-041-0600	4-18-2011	Amend	6-1-2011
851-070-0050	12-2-2010	Adopt	1-1-2011	855-041-0645	4-18-2011	Adopt	6-1-2011
851-070-0050(T)	12-2-2010	Repeal	1-1-2011	855-045-0220	4-18-2011	Amend	6-1-2011
851-070-0060	12-2-2010	Adopt	1-1-2011	855-045-0240	4-18-2011	Amend	6-1-2011
851-070-0060(T)	12-2-2010	Repeal	1-1-2011	855-080-0021	4-11-2011	Amend	5-1-2011
851-070-0070	12-2-2010	Adopt	1-1-2011	855-080-0021(T)	4-11-2011	Repeal	5-1-2011
851-070-0070(T)	12-2-2010	Repeal	1-1-2011	855-110-0005	7-1-2011	Amend(T)	8-1-2011
851-070-0080	12-2-2010	Adopt	1-1-2011	855-110-0007	7-1-2011	Amend(T)	8-1-2011
851-070-0080(T)	12-2-2010	Repeal	1-1-2011	855-110-0010	7-1-2011	Amend(T)	8-1-2011
851-070-0090	12-2-2010	Adopt	1-1-2011	856-010-0010	6-29-2011	Amend	8-1-2011
851-070-0090(T)	12-2-2010	Repeal	1-1-2011	856-010-0010	6-29-2011	Amend	8-1-2011
851-070-0100	12-2-2010	Adopt	1-1-2011	856-010-0011	6-29-2011	Amend	8-1-2011
851-070-0100(T)	12-2-2010	Repeal	1-1-2011	856-010-0012	6-29-2011	Amend	8-1-2011
852-005-0005	7-1-2011	Amend	8-1-2011	856-010-0013	6-29-2011	Amend	8-1-2011
852-010-0080	7-1-2011	Amend	8-1-2011	856-010-0014	12-14-2010	Amend	1-1-2011
852-020-0045	7-1-2011	Amend	8-1-2011	856-010-0015	6-29-2011	Amend	8-1-2011
852-050-0005	7-1-2011	Amend	8-1-2011	856-010-0021	6-29-2011	Adopt	8-1-2011
852-050-0006	7-1-2011	Amend	8-1-2011	856-010-0022	6-29-2011	Amend	8-1-2011
852-050-0012	7-1-2011	Amend	8-1-2011	856-010-0031	6-29-2011	Adopt	8-1-2011
852-050-0025	7-1-2011	Adopt	8-1-2011	856-010-0035	6-29-2011	Amend	8-1-2011
855-010-0050	2-8-2011	Adopt(T)	3-1-2011	856-010-0045	6-29-2011	Amend	8-1-2011
855-010-0050	7-1-2011	Adopt	8-1-2011	856-010-0048	6-29-2011	Renumber	8-1-2011
855-010-0055	2-8-2011	Adopt(T)	3-1-2011	856-030-0040	6-29-2011	Adopt	8-1-2011
855-010-0055	7-1-2011	Adopt	8-1-2011	858-010-0007	1-25-2011	Amend	3-1-2011
855-010-0057	2-8-2011	Adopt(T)	3-1-2011	858-010-0010	1-25-2011	Amend	3-1-2011
855-010-0057	7-1-2011	Adopt	8-1-2011	858-010-0010	5-31-2011	Amend	7-1-2011
855-010-0060	2-8-2011	Adopt(T)	3-1-2011	858-010-0015	1-25-2011	Amend	3-1-2011
855-010-0060	7-1-2011	Adopt	8-1-2011	858-010-0016	5-31-2011	Amend	7-1-2011
855-010-0065	2-8-2011	Adopt(T)	3-1-2011	858-010-0017	5-31-2011	Amend	7-1-2011
855-010-0065	7-1-2011	Adopt	8-1-2011	858-010-0036	1-25-2011	Amend	3-1-2011
855-010-0067	2-8-2011	Adopt(T)	3-1-2011	858-010-0036	5-31-2011	Amend	7-1-2011
855-010-0067	7-1-2011	Adopt	8-1-2011	858-010-0039	1-25-2011	Amend	3-1-2011

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858-010-0065	5-31-2011	Amend	7-1-2011	860-027-0050	12-20-2010	Amend	2-1-2011
858-020-0085	5-31-2011	Amend	7-1-2011	860-027-0175	12-2-2010	Adopt	1-1-2011
858-040-0015	1-25-2011	Amend	3-1-2011	860-034-0393	12-20-2010	Amend	2-1-2011
858-040-0035	5-31-2011	Amend	7-1-2011	860-034-0730	12-20-2010	Amend	2-1-2011
859-300-0001	2-15-2011	Adopt	3-1-2011	860-038-0080	6-17-2011	Amend	8-1-2011
859-300-0001(T)	2-15-2011	Repeal	3-1-2011	860-038-0480	6-17-2011	Amend	8-1-2011
859-300-0010	2-15-2011	Adopt	3-1-2011	860-084-0190	11-19-2010	Amend	1-1-2011
859-300-0010(T)	2-15-2011	Repeal	3-1-2011	863-014-0003	6-22-2011	Amend(T)	8-1-2011
859-300-0020	2-15-2011	Adopt	3-1-2011	863-014-0010	6-22-2011	Amend(T)	8-1-2011
859-300-0020(T)	2-15-2011	Repeal	3-1-2011	863-014-0015	6-22-2011	Amend(T)	8-1-2011
859-300-0030	2-15-2011	Adopt	3-1-2011	863-014-0020	1-1-2011	Amend	1-1-2011
859-300-0030(T)	2-15-2011	Repeal	3-1-2011	863-014-0020	6-22-2011	Amend(T)	8-1-2011
859-300-0040	2-15-2011	Adopt	3-1-2011	863-014-0030	6-22-2011	Amend(T)	8-1-2011
859-300-0040(T)	2-15-2011	Repeal	3-1-2011	863-014-0035	6-22-2011	Amend(T)	8-1-2011
859-300-0050	2-15-2011	Adopt	3-1-2011	863-014-0040	6-22-2011	Amend(T)	8-1-2011
859-300-0050	7-5-2011	Amend(T)	8-1-2011	863-014-0050	6-22-2011	Amend(T)	8-1-2011
859-300-0050(T)	2-15-2011	Repeal	3-1-2011	863-014-0062	6-22-2011	Amend(T)	8-1-2011
859-300-0060	2-15-2011	Adopt	3-1-2011	863-014-0063	6-22-2011	Amend(T)	8-1-2011
859-300-0060(T)	2-15-2011	Repeal	3-1-2011	863-014-0065	6-22-2011	Amend(T)	8-1-2011
859-300-0070	2-15-2011	Adopt	3-1-2011	863-014-0066	6-22-2011	Adopt(T)	8-1-2011
859-300-0070(T)	2-15-2011	Repeal	3-1-2011	863-014-0076	6-22-2011	Amend(T)	8-1-2011
859-300-0080	2-15-2011	Adopt	3-1-2011	863-014-0095	6-22-2011	Amend(T)	8-1-2011
859-300-0080(T)	2-15-2011	Repeal	3-1-2011	863-020-0025	2-4-2011	Amend(T)	3-1-2011
859-300-0090	2-15-2011	Adopt	3-1-2011	863-020-0025	6-22-2011	Amend(T)	8-1-2011
859-300-0090(T)	2-15-2011	Repeal	3-1-2011	863-020-0025(T)	6-22-2011	Suspend	8-1-2011
859-300-0100	2-15-2011	Adopt	3-1-2011	863-022-0010	6-22-2011	Amend(T)	8-1-2011
859-300-0100(T)	2-15-2011	Repeal	3-1-2011	863-022-0015	6-22-2011	Amend(T)	8-1-2011
859-300-0110	2-15-2011	Adopt	3-1-2011	863-022-0025	6-22-2011	Amend(T)	8-1-2011
859-300-0110(T)	2-15-2011	Repeal	3-1-2011	863-022-0060	6-22-2011	Adopt(T)	8-1-2011
859-300-0120	2-15-2011	Adopt	3-1-2011	863-024-0003	6-22-2011	Amend(T)	8-1-2011
859-300-0120(T)	2-15-2011	Repeal	3-1-2011	863-024-0010	6-22-2011	Amend(T)	8-1-2011
859-300-0130	2-15-2011	Adopt	3-1-2011	863-024-0015	6-22-2011	Amend(T)	8-1-2011
859-300-0130(T)	2-15-2011	Repeal	3-1-2011	863-024-0020	6-22-2011	Amend(T)	8-1-2011
859-300-0140	2-15-2011	Adopt	3-1-2011	863-024-0030	6-22-2011	Amend(T)	8-1-2011
859-300-0140(T)	2-15-2011	Repeal	3-1-2011	863-024-0045	6-22-2011	Amend(T)	8-1-2011
859-300-0150	2-15-2011	Adopt	3-1-2011	863-024-0050	6-22-2011	Amend(T)	8-1-2011
859-300-0150(T)	2-15-2011	Repeal	3-1-2011	863-024-0062	6-22-2011	Amend(T)	8-1-2011
859-300-0160	2-15-2011	Adopt	3-1-2011	863-024-0063	6-22-2011	Amend(T)	8-1-2011
859-300-0160(T)	2-15-2011	Repeal	3-1-2011	863-024-0065	6-22-2011	Amend(T)	8-1-2011
859-300-0170	2-15-2011	Adopt	3-1-2011	863-024-0066	6-22-2011	Adopt(T)	8-1-2011
859-300-0170(T)	2-15-2011	Repeal	3-1-2011	863-024-0076	6-22-2011	Amend(T)	8-1-2011
859-300-0180	2-15-2011	Adopt	3-1-2011	863-024-0095	6-22-2011	Amend(T)	8-1-2011
859-300-0180(T)	2-15-2011	Repeal	3-1-2011	863-025-0065	1-1-2011	Amend	1-1-2011
859-300-0190	2-15-2011	Adopt	3-1-2011	863-025-0068	1-1-2011	Adopt	1-1-2011
859-300-0190(T)	2-15-2011	Repeal	3-1-2011	875-010-0006	3-2-2011	Amend	4-1-2011
859-300-0200	2-15-2011	Adopt	3-1-2011	875-010-0016	3-2-2011	Amend	4-1-2011
859-300-0200(T)	2-15-2011	Repeal	3-1-2011	875-010-0021	3-2-2011	Amend	4-1-2011
859-300-0210	2-15-2011	Adopt	3-1-2011	875-020-0005	3-2-2011	Repeal	4-1-2011
859-300-0210(T)	2-15-2011	Repeal	3-1-2011	875-020-0010	3-2-2011	Repeal	4-1-2011
859-300-0220	2-15-2011	Adopt	3-1-2011	875-020-0015	3-2-2011	Repeal	4-1-2011
859-300-0220(T)	2-15-2011	Repeal	3-1-2011	875-020-0020	3-2-2011	Repeal	4-1-2011
859-300-0230	2-15-2011	Adopt	3-1-2011	875-020-0025	3-2-2011	Repeal	4-1-2011
859-300-0230(T)	2-15-2011	Repeal	3-1-2011	875-020-0030	3-2-2011	Repeal	4-1-2011
860-022-0041	2-23-2011	Amend(T)	4-1-2011	875-020-0035	3-2-2011	Repeal	4-1-2011
860-024-0020	5-4-2011	Amend	6-1-2011	875-020-0040	3-2-2011	Repeal	4-1-2011



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875-020-0050	3-2-2011	Repeal	4-1-2011	877-030-0025	1-1-2011	Amend	1-1-2011
875-020-0055	3-2-2011	Repeal	4-1-2011	877-030-0030	1-1-2011	Amend	1-1-2011
875-030-0010	3-2-2011	Amend	4-1-2011	877-030-0040	1-1-2011	Amend	1-1-2011
875-030-0020	3-2-2011	Amend	4-1-2011	877-030-0050	1-1-2011	Repeal	1-1-2011
875-030-0025	3-2-2011	Amend	4-1-2011	877-030-0070	1-1-2011	Amend	1-1-2011
877-001-0006	1-1-2011	Adopt	1-1-2011	877-030-0080	1-1-2011	Amend	1-1-2011
877-001-0015	1-1-2011	Adopt	1-1-2011	877-030-0090	1-1-2011	Amend	1-1-2011
877-001-0020	1-1-2011	Adopt	1-1-2011	877-030-0100	1-1-2011	Amend	1-1-2011
877-001-0020	7-5-2011	Amend(T)	8-1-2011	877-035-0000	1-1-2011	Repeal	1-1-2011
877-001-0025	1-1-2011	Adopt	1-1-2011	877-035-0010	1-1-2011	Repeal	1-1-2011
877-005-0101	1-1-2011	Adopt	1-1-2011	877-035-0012	1-1-2011	Repeal	1-1-2011
877-010-0005	1-1-2011	Amend	1-1-2011	877-035-0013	1-1-2011	Repeal	1-1-2011
877-010-0010	1-1-2011	Amend	1-1-2011	877-035-0015	1-1-2011	Repeal	1-1-2011
877-010-0015	1-1-2011	Amend	1-1-2011	877-040-0000	1-1-2011	Amend	1-1-2011
877-010-0015	7-5-2011	Amend(T)	8-1-2011	877-040-0003	1-1-2011	Amend	1-1-2011
877-010-0020	1-1-2011	Amend	1-1-2011	877-040-0010	1-1-2011	Amend	1-1-2011
877-010-0020	7-5-2011	Amend(T)	8-1-2011	877-040-0019	1-1-2011	Adopt	1-1-2011
877-010-0025	1-1-2011	Amend	1-1-2011	877-040-0050	1-1-2011	Amend	1-1-2011
877-010-0030	1-1-2011	Amend	1-1-2011	877-040-0050	7-5-2011	Amend(T)	8-1-2011
877-010-0040	1-1-2011	Amend	1-1-2011	918-001-0006	7-1-2011	Repeal	6-1-2011
877-010-0045	1-1-2011	Amend	1-1-2011	918-098-1000	3-11-2011	Amend	4-1-2011
877-015-0105	1-1-2011	Adopt	1-1-2011	918-098-1000	7-12-2011	Amend(T)	8-1-2011
877-015-0105	7-5-2011	Amend(T)	8-1-2011	918-098-1010	3-11-2011	Amend	4-1-2011
877-015-0108	1-1-2011	Adopt	1-1-2011	918-098-1015	3-11-2011	Amend	4-1-2011
877-015-0108	7-5-2011	Amend(T)	8-1-2011	918-098-1020	3-11-2011	Amend	4-1-2011
877-015-0131	1-1-2011	Adopt	1-1-2011	918-098-1025	3-11-2011	Amend	4-1-2011
877-015-0136	1-1-2011	Adopt	1-1-2011	918-098-1028	3-11-2011	Adopt	4-1-2011
877-015-0136	7-5-2011	Amend(T)	8-1-2011	918-098-1210	3-11-2011	Amend	4-1-2011
877-015-0146	1-1-2011	Adopt	1-1-2011	918-098-1215	3-11-2011	Amend	4-1-2011
877-015-0155	1-1-2011	Adopt	1-1-2011	918-098-1300	3-11-2011	Amend	4-1-2011
877-020-0000	1-1-2011	Amend	1-1-2011	918-098-1305	3-11-2011	Amend	4-1-2011
877-020-0005	1-1-2011	Amend	1-1-2011	918-098-1310	3-11-2011	Amend	4-1-2011
877-020-0005	7-5-2011	Amend(T)	8-1-2011	918-098-1315	3-11-2011	Amend	4-1-2011
877-020-0008	1-1-2011	Amend	1-1-2011	918-098-1320	3-11-2011	Amend	4-1-2011
877-020-0008	7-5-2011	Amend(T)	8-1-2011	918-098-1325	3-11-2011	Amend	4-1-2011
877-020-0009	1-1-2011	Amend	1-1-2011	918-098-1330	3-11-2011	Amend	4-1-2011
877-020-0010	1-1-2011	Amend	1-1-2011	918-098-1450	3-11-2011	Amend	4-1-2011
877-020-0010	7-5-2011	Amend(T)	8-1-2011	918-098-1510	5-1-2011	Adopt(T)	5-1-2011
877-020-0015	1-1-2011	Repeal	1-1-2011	918-098-1510	7-1-2011	Adopt	8-1-2011
877-020-0016	1-1-2011	Amend	1-1-2011	918-098-1520	5-1-2011	Adopt(T)	5-1-2011
877-020-0016	7-5-2011	Amend(T)	8-1-2011	918-098-1520	7-1-2011	Adopt	8-1-2011
877-020-0020	1-1-2011	Repeal	1-1-2011	918-098-1530	5-1-2011	Adopt(T)	5-1-2011
877-020-0030	1-1-2011	Repeal	1-1-2011	918-098-1530	7-1-2011	Adopt	8-1-2011
877-020-0036	7-5-2011	Amend(T)	8-1-2011	918-098-1540	5-1-2011	Adopt(T)	5-1-2011
877-020-0046	1-1-2011	Amend	1-1-2011	918-098-1540	7-1-2011	Adopt	8-1-2011
877-020-0055	1-1-2011	Amend	1-1-2011	918-098-1550	5-1-2011	Adopt(T)	5-1-2011
877-020-0057	1-1-2011	Amend	1-1-2011	918-098-1550	7-1-2011	Adopt	8-1-2011
877-020-0060	1-1-2011	Amend	1-1-2011	918-098-1560	5-1-2011	Adopt(T)	5-1-2011
877-022-0005	1-1-2011	Amend	1-1-2011	918-098-1560	7-1-2011	Adopt	8-1-2011
877-025-0001	1-1-2011	Amend	1-1-2011	918-098-1570	5-1-2011	Adopt(T)	5-1-2011
877-025-0006	1-1-2011	Amend	1-1-2011	918-098-1570	7-1-2011	Adopt	8-1-2011
877-025-0006	7-5-2011	Amend(T)	8-1-2011	918-100-0020	7-1-2011	Amend	8-1-2011
877-025-0011	1-1-2011	Amend	1-1-2011	918-100-0040	7-1-2011	Amend	8-1-2011
877-025-0011	7-5-2011	Amend(T)	8-1-2011	918-251-0000	4-1-2011	Amend	4-1-2011
877-025-0016	1-1-2011	Amend	1-1-2011	918-251-0010	4-1-2011	Repeal	4-1-2011

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918-251-0050	4-1-2011	Repeal	4-1-2011	918-465-0040	7-1-2011	Adopt	8-1-2011
918-251-0060	4-1-2011	Repeal	4-1-2011	918-465-0070	7-1-2011	Adopt	8-1-2011
918-251-0080	4-1-2011	Repeal	4-1-2011	918-480-0001	7-1-2011	Amend	6-1-2011
918-251-0090	3-11-2011	Amend	4-1-2011	918-480-0002	7-1-2011	Amend	6-1-2011
918-282-0270	4-1-2011	Amend	5-1-2011	918-480-0005	7-1-2011	Amend	6-1-2011
918-282-0270	4-1-2011	Amend(T)	5-1-2011	918-480-0010	1-1-2011	Amend	2-1-2011
918-282-0270	7-1-2011	Amend	8-1-2011	918-480-0010	2-15-2011	Amend	3-1-2011
918-282-0280	4-1-2011	Suspend	5-1-2011	918-480-0010	4-15-2011	Amend(T)	5-1-2011
918-282-0280	7-1-2011	Repeal	8-1-2011	918-480-0010	7-1-2011	Amend	6-1-2011
918-305-0005	4-1-2011	Amend	4-1-2011	918-480-0020	7-1-2011	Amend	6-1-2011
918-305-0030	3-11-2011	Amend	4-1-2011	918-480-0030	7-1-2011	Amend	6-1-2011
918-305-0100	4-1-2011	Amend	4-1-2011	918-480-0100	7-1-2011	Amend	6-1-2011
918-305-0105	4-1-2011	Amend	4-1-2011	918-480-0110	7-1-2011	Amend	6-1-2011
918-305-0110	4-1-2011	Repeal	4-1-2011	918-480-0120	7-1-2011	Amend	6-1-2011
918-305-0120	4-1-2011	Repeal	4-1-2011	918-480-0130	7-1-2011	Amend	6-1-2011
918-305-0130	4-1-2011	Repeal	4-1-2011	918-480-0140	7-1-2011	Amend	6-1-2011
918-305-0150	4-1-2011	Repeal	4-1-2011	918-480-0150	7-1-2011	Amend	6-1-2011
918-305-0160	4-1-2011	Repeal	4-1-2011	918-525-0005	5-2-2011	Amend(T)	6-1-2011
918-305-0165	4-1-2011	Repeal	4-1-2011	918-525-0035	5-2-2011	Amend(T)	6-1-2011
918-305-0180	4-1-2011	Repeal	4-1-2011	918-674-0033	3-11-2011	Amend	4-1-2011
918-305-0190	4-1-2011	Repeal	4-1-2011	918-690-0300	2-15-2011	Amend	3-1-2011
918-305-0205	4-1-2011	Repeal	4-1-2011	918-690-0310	2-15-2011	Repeal	3-1-2011
918-305-0210	4-1-2011	Repeal	4-1-2011	918-690-0325	2-15-2011	Repeal	3-1-2011
918-305-0250	4-1-2011	Repeal	4-1-2011	918-690-0330	2-15-2011	Repeal	3-1-2011
918-305-0265	4-1-2011	Repeal	4-1-2011	918-690-0360	2-15-2011	Repeal	3-1-2011
918-305-0270	4-1-2011	Repeal	4-1-2011	918-690-0410	2-15-2011	Amend	3-1-2011
918-305-0280	4-1-2011	Repeal	4-1-2011	918-690-0420	2-15-2011	Amend	3-1-2011
918-305-0290	4-1-2011	Repeal	4-1-2011	918-690-0430	2-15-2011	Repeal	3-1-2011
918-305-0300	4-1-2011	Repeal	4-1-2011	918-750-0100	2-15-2011	Amend	3-1-2011
918-305-0310	4-1-2011	Repeal	4-1-2011	918-750-0110	2-15-2011	Amend	3-1-2011
918-305-0320	4-1-2011	Repeal	4-1-2011	918-750-0120	2-15-2011	Repeal	3-1-2011
918-400-0645	12-1-2010	Adopt	1-1-2011	918-750-0130	2-15-2011	Repeal	3-1-2011
918-400-0660	12-1-2010	Amend	1-1-2011	918-750-0140	2-15-2011	Repeal	3-1-2011
918-400-0755	1-1-2011	Adopt	2-1-2011	918-750-0150	2-15-2011	Repeal	3-1-2011
918-400-0800	12-1-2010	Amend	1-1-2011	918-750-0160	2-15-2011	Repeal	3-1-2011
918-440-0000	3-11-2011	Amend	4-1-2011	918-750-0170	2-15-2011	Repeal	3-1-2011
918-440-0010	3-11-2011	Amend	4-1-2011	918-750-0180	2-15-2011	Repeal	3-1-2011
918-440-0015	3-11-2011	Amend	4-1-2011	918-750-0190	2-15-2011	Repeal	3-1-2011
918-440-0030	3-11-2011	Amend	4-1-2011	943-001-0005	7-1-2011	Adopt	8-1-2011
918-440-0040	3-11-2011	Am. & Ren.	4-1-2011	943-001-0007	7-1-2011	Adopt	8-1-2011
918-440-0050	3-11-2011	Amend	4-1-2011	943-001-0009	7-1-2011	Adopt(T)	8-1-2011
918-440-0500	3-11-2011	Amend	4-1-2011	943-001-0020	7-1-2011	Adopt(T)	8-1-2011
918-440-0510	3-11-2011	Amend	4-1-2011	943-003-0000	7-1-2011	Adopt	8-1-2011
918-460-0000	3-11-2011	Amend	4-1-2011	943-003-0010	7-1-2011	Adopt	8-1-2011
918-460-0010	3-11-2011	Amend	4-1-2011	943-005-0000	7-1-2011	Adopt(T)	8-1-2011
918-460-0015	1-1-2011	Amend	2-1-2011	943-005-0005	7-1-2011	Adopt(T)	8-1-2011
918-460-0015	2-15-2011	Amend	3-1-2011	943-005-0010	7-1-2011	Adopt(T)	8-1-2011
918-460-0015	5-13-2011	Amend(T)	6-1-2011	943-005-0015	7-1-2011	Adopt(T)	8-1-2011
918-460-0016	3-11-2011	Repeal	4-1-2011	943-005-0020	7-1-2011	Adopt(T)	8-1-2011
918-460-0050	3-11-2011	Amend	4-1-2011	943-005-0025	7-1-2011	Adopt(T)	8-1-2011
918-460-0100	7-1-2011	Adopt	8-1-2011	943-005-0030	7-1-2011	Adopt(T)	8-1-2011
918-460-0500	3-11-2011	Adopt	4-1-2011	943-007-0000	7-1-2011	Adopt(T)	8-1-2011
918-460-0510	3-11-2011	Adopt	4-1-2011	943-007-0500	7-1-2011	Adopt(T)	8-1-2011
918-465-0010	7-1-2011	Adopt	8-1-2011	943-012-0005	7-1-2011	Adopt(T)	8-1-2011
918-465-0020	7-1-2011	Adopt	8-1-2011	943-012-0010	7-1-2011	Adopt(T)	8-1-2011

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943-012-0020	7-1-2011	Adopt(T)	8-1-2011	943-045-0490	7-1-2011	Adopt(T)	8-1-2011
943-012-0025	7-1-2011	Adopt(T)	8-1-2011	943-045-0500	7-1-2011	Adopt(T)	8-1-2011
943-014-0000	7-1-2011	Adopt(T)	8-1-2011	943-045-0510	7-1-2011	Adopt(T)	8-1-2011
943-014-0010	7-1-2011	Adopt(T)	8-1-2011	943-045-0520	7-1-2011	Adopt(T)	8-1-2011
943-014-0015	7-1-2011	Adopt(T)	8-1-2011	943-120-0100	7-1-2011	Adopt(T)	8-1-2011
943-014-0020	7-1-2011	Adopt(T)	8-1-2011	943-120-0110	7-1-2011	Adopt(T)	8-1-2011
943-014-0030	7-1-2011	Adopt(T)	8-1-2011	943-120-0112	7-1-2011	Adopt(T)	8-1-2011
943-014-0040	7-1-2011	Adopt(T)	8-1-2011	943-120-0114	7-1-2011	Adopt(T)	8-1-2011
943-014-0050	7-1-2011	Adopt(T)	8-1-2011	943-120-0116	7-1-2011	Adopt(T)	8-1-2011
943-014-0060	7-1-2011	Adopt(T)	8-1-2011	943-120-0118	7-1-2011	Adopt(T)	8-1-2011
943-014-0070	7-1-2011	Adopt(T)	8-1-2011	943-120-0120	7-1-2011	Adopt(T)	8-1-2011
943-014-0200	7-1-2011	Adopt(T)	8-1-2011	943-120-0130	7-1-2011	Adopt(T)	8-1-2011
943-014-0205	7-1-2011	Adopt(T)	8-1-2011	943-120-0140	7-1-2011	Adopt(T)	8-1-2011
943-045-0000	7-1-2011	Adopt(T)	8-1-2011	943-120-0150	7-1-2011	Adopt(T)	8-1-2011
943-045-0250	7-1-2011	Adopt(T)	8-1-2011	943-120-0160	7-1-2011	Adopt(T)	8-1-2011
943-045-0260	7-1-2011	Adopt(T)	8-1-2011	943-120-0165	7-1-2011	Adopt(T)	8-1-2011
943-045-0280	7-1-2011	Adopt(T)	8-1-2011	943-120-0170	7-1-2011	Adopt(T)	8-1-2011
943-045-0290	7-1-2011	Adopt(T)	8-1-2011	943-120-0180	7-1-2011	Adopt(T)	8-1-2011
943-045-0300	7-1-2011	Adopt(T)	8-1-2011	943-120-0190	7-1-2011	Adopt(T)	8-1-2011
943-045-0310	7-1-2011	Adopt(T)	8-1-2011	943-120-0200	7-1-2011	Adopt(T)	8-1-2011
943-045-0320	7-1-2011	Adopt(T)	8-1-2011	943-120-0300	7-1-2011	Adopt(T)	8-1-2011
943-045-0330	7-1-2011	Adopt(T)	8-1-2011	943-120-0310	7-1-2011	Adopt(T)	8-1-2011
943-045-0340	7-1-2011	Adopt(T)	8-1-2011	943-120-0320	7-1-2011	Adopt(T)	8-1-2011
943-045-0350	7-1-2011	Adopt(T)	8-1-2011	943-120-0325	7-1-2011	Adopt(T)	8-1-2011
943-045-0360	7-1-2011	Adopt(T)	8-1-2011	943-120-0330	7-1-2011	Adopt(T)	8-1-2011
943-045-0370	7-1-2011	Adopt(T)	8-1-2011	943-120-0340	7-1-2011	Adopt(T)	8-1-2011
943-045-0400	7-1-2011	Adopt(T)	8-1-2011	943-120-0350	7-1-2011	Adopt(T)	8-1-2011
943-045-0410	7-1-2011	Adopt(T)	8-1-2011	943-120-0360	7-1-2011	Adopt(T)	8-1-2011
943-045-0420	7-1-2011	Adopt(T)	8-1-2011	943-120-0370	7-1-2011	Adopt(T)	8-1-2011
943-045-0430	7-1-2011	Adopt(T)	8-1-2011	943-120-0380	7-1-2011	Adopt(T)	8-1-2011
943-045-0440	7-1-2011	Adopt(T)	8-1-2011	943-120-0400	7-1-2011	Adopt(T)	8-1-2011
943-045-0450	7-1-2011	Adopt(T)	8-1-2011	943-120-1505	7-1-2011	Adopt(T)	8-1-2011
943-045-0460	7-1-2011	Adopt(T)	8-1-2011	972-040-0000	3-7-2011	Amend	4-1-2011
943-045-0470	7-1-2011	Adopt(T)	8-1-2011				