

OREGON BULLETIN

Supplements the 2014 *Oregon Administrative Rules Compilation*

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Secretary of State
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INFORMATION ABOUT ADMINISTRATIVE RULES

General Information

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

Background on Oregon Administrative Rules

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

OAR Citations

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

Understanding an Administrative Rule’s “History”

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

Locating Current Versions of Administrative Rules

The online version of the OAR Compilation is updated on the first of each month to include all rule actions filed with the Administrative Rules Unit by the 15th of the previous month. The annual printed OAR Compilation volumes contain text for all rules filed through

November 15 of the previous year. Administrative Rules created or changed after publication in the print Compilation will appear in a subsequent edition of the online Bulletin. These are listed by rule number in the Bulletin’s OAR Revision Cumulative Index, which is updated monthly. The listings specify each rule’s effective date, rule-making action, and the issue of the Bulletin that contains the full text of the adopted or amended rule.

Locating Administrative Rule Publications

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

Filing Administrative Rules and Notices

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

Administrative Rules Coordinators and Delegation of Signing Authority

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

Publication Authority

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

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

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OTHER NOTICES

REQUEST FOR COMMENTS PROPOSAL TO CHANGE REIMBURSEMENT TO CERTAIN PRIMARY CARE PHYSICIANS USING THE SITE OF SERVICE ADJUSTMENTS

COMMENTS DUE: January 15, 2014

PROPOSAL: Subject to changes made by the Affordable Care Act, the Oregon Health Authority (OHA) changed reimbursement to primary care physicians with a specialty or subspecialty designation of family medicine, general internal medicine or pediatric medicine. Originally this reimbursement method was not subject to the site of service adjustments due to MMIS limitations. Effective January 1, 2014 these MMIS limitations have been corrected and claims will begin to be processed using the place of service indicated on the claim.

The ACA primary care regulation was published in the Federal Register/ Vol. 77, No. 215 on November 6, 2012, available at <http://www.gpo.gov/fdsys/pkg/FR-2012-11-06/pdf/2012-26507.pdf>

EFFECTIVE DATE: on or after January 1, 2014

HOW TO COMMENT: Send written comments by fax, mail or email to:

Jesse Anderson, State Plan Manager
Division of Medical Assistance Programs
500 Summer Street NE
Salem, Oregon 97301
Fax: 503-947-1119
Email: jesse.anderson@state.or.us

NEXT STEPS: OHA will consider all comments received. A State Plan Amendment will be submitted to the Centers for Medicare and Medicaid.

REQUEST FOR COMMENTS PROPOSED REMEDIAL ACTION FOR THE BOX CANYON LANDFILL

COMMENTS DUE: 5 p.m., Friday, January 31, 2014

PROJECT LOCATION: McTaggart Road, two miles southeast of Madras, Oregon

PROPOSAL: Based on the results of the investigation conducted to date, DEQ recommends a remedial action for the Box Canyon Landfill near Madras, Oregon.

This recommended action was selected in accordance with Oregon Revised Statutes (ORS) 465.200 through 465.455 and Oregon Administrative Rules (OAR) Chapter 340, Division 122, Sections 0010 to 0140.

HIGHLIGHTS: The Box Canyon Landfill is located on approximately 20 acres on the west side of McTaggart Road, two miles southeast of Madras in Jefferson County. The landfill was operated from 1972 until June 1997, and accepted approximately 650 tons of waste per month. Waste consisted primarily of municipal solid waste from the City of Madras, and also contained some brush, industrial waste, metal and recyclables. A 3-foot-thick final soil cover was placed in the landfill in 2000. The primary environmental issue at this site is the presence of volatile organic compounds in groundwater.

To address this issue, DEQ recommends the following actions:

- Groundwater monitoring should continue, though at a reduced level.
- Monitoring and maintenance of the landfill's vegetated soil cover should continue.
- Methane monitoring should continue.
- A deed restriction should be prepared that specifies restrictions on land and water use.

HOW TO COMMENT: Send comments by 5 p.m., January 31, 2014, to DEQ Project Manager Bob Schwarz at 400 E. Scenic Drive, Suite 307, The Dalles, Oregon, 97058, schwarz.bob@deq.state.or.us or by fax to 541-298-7330.

To review the project file, call Mr. Schwarz at 541-298-7255 x230 for a file review appointment.

To access site summary information and other documents in the DEQ Environmental Cleanup Site Information database, go to <http://www.deq.state.or.us/lq/ECSI/ecsi.htm>, then enter ECSI# 2192

in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled 2192 in the Site ID/Info column.

THE NEXT STEP: DEQ will consider all public comments received by the end of the public comment period. Based on this review, we will determine whether this decision needs to be modified or reconsidered.

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

REQUEST FOR COMMENTS PROPOSED SITE DELISTING FROM CONFIRMED RELEASE LIST AND INVENTORY

COMMENTS DUE: 5 p.m., Friday, Jan.31, 2013

PROJECT LOCATION: Pacific Pride motor fuels card lock site, 6230 SW Macadam Ave. Portland, Oregon. John's Landing neighborhood.

PROPOSAL: DEQ proposes to remove this site from the Confirmed Release List and Inventory. The Confirmed Release List records Oregon properties where releases of hazardous substances have been documented. The inventory is a list of Oregon properties where confirmed releases pose a threat to human health or the environment and require further investigation and or cleanup actions.

DEQ has concluded that no further action is necessary at the Pacific Pride card lock site since any contaminants remaining in the subsurface have been demonstrated to not present an unacceptable risk to human health or the environment.

HIGHLIGHTS: Sunset Fuel Company developed the Pacific Pride site to dispense heating oil and motor fuels from approximately 1967 to the present. In 1983, the Pacific Pride franchise began leasing the property to dispense gasoline and diesel fuel as a card lock facility. How to comment: Send comments to DEQ Project Manager, Kenneth Thiessen at Oregon Dept. of Environmental Quality, 2020 SW 4th Ave. Suite 400, Portland, Oregon 97201, or Kenneth.Thiessen@deq.state.or.us. For more information contact Thiessen at 503-229-6015.

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

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

To access summary information and documents about this site go to: <http://www.deq.state.or.us/Webdocs/Forms/Output/FPCController.ashx?SourceId=4772&SourceIdType=11>

THE NEXT STEP: DEQ will consider all public comments to this proposed delisting of the Pacific Pride card lock site from the Confirmed Release List and Inventory prior to making a decision to complete regulatory closure of this property.

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

REQUEST FOR COMMENTS PROPOSED SITE DELISTING FROM CONFIRMED RELEASE LIST AND INVENTORY

COMMENTS DUE: 5 p.m., Friday, Jan. 31, 2013

PROJECT LOCATION: Former Sunset Fuels site, 6140 SW Macadam Ave. Portland, Oregon. John's Landing neighborhood.

PROPOSAL: DEQ proposes removing this site from the Confirmed Release List and Inventory. The Confirmed Release List records Oregon properties where releases of hazardous substances have been documented. The Inventory is a list of Oregon properties where confirmed releases pose a threat to human health or the environment and require further investigation and or cleanup actions.

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DEQ has concluded that no further action is necessary at the former Sunset Fuels Site since any contaminants remaining in the sub-surface have been demonstrated to not present an unacceptable risk to human health or the environment.

HIGHLIGHTS: Sunset Fuel Company developed the property from approximately 1950 to 1967 for use as a retail fuel distribution facility including wood, coal, sawdust, fuel oil, and gasoline. In the mid-1960s, the bulk fuel storage facility was demolished and replaced with a 22,400 square foot warehouse building in 1967.

HOW TO COMMENT: Send comments to DEQ Project Manager, Kenneth Thiessen at Oregon Dept. of Environmental Quality, 2020 SW 4th Ave. Suite 400, Portland, Oregon 97201, or Kenneth.Thiessen@deq.state.or.us. For more information contact Thiessen at 503-229-6015.

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

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

To access summary information and documents about this site go to: <http://www.deq.state.or.us/Webdocs/Forms/Output/FPCController.ashx?SourceId=4723&SourceIdType=11>

THE NEXT STEP: DEQ will consider all public comments to this proposed delisting of the former Sunset Fuels site from the Confirmed Release List and Inventory prior to making a decision to complete regulatory closure of this property.

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

REQUEST FOR COMMENTS

PROPOSED NO FURTHER ACTION DETERMINATION FOR SUNRIVER AMPHITHEATER SITE

COMMENTS DUE: 5 p.m., Friday, January 31, 2014

PROJECT LOCATION: Beaver Drive, Sunriver, Oregon

PROPOSAL: Based on the results of the investigation and cleanup conducted to date, DEQ recommends a Conditional No Further Action determination for the Sunriver Owners Association Amphitheater site in Sunriver, Oregon. This determination is based on the condition that the precautions discussed below are followed.

This recommended action was selected in accordance with Oregon Revised Statutes (ORS) 465.200 through 465.455 and Oregon Administrative Rules (OAR) Chapter 340, Division 122, Sections 0010 to 0140.

HIGHLIGHTS: The community of Sunriver was developed between approximately 1968 and 1972 on the grounds of Camp Abbot, a former U.S. Army training facility during World War II. Nearly all of the Camp Abbot buildings were demolished shortly after the Army ceased operations at the facility. Prior to recent development, the site consisted of open forested land, with the exception of three constructed features: 1) a bowl-shaped area known as the amphitheater; 2) a mounded area known as Snow Mountain; and 3) an abandoned railroad embankment.

The Sunriver Owners Association discovered asbestos containing material (ACM) on the ground surface at the site in 2002. The source of ACM is uncertain, but is presumed to be related to the former Camp Abbot structures, including roofing material, siding, piping, and pipe insulation. SROA, with guidance and oversight from DEQ, conducted a number of inspection and abatement actions at the site since 2002. Buried asbestos debris resurfaces, due to freeze and thaw actions in soil.

Investigations of ACM in soil began in 2002 when ACM was observed at the site and continued when SROA entered into the Voluntary Cleanup Program with DEQ in 2004. Asbestos fibers in outdoor soil are not inherently hazardous, unless the asbestos is released from the source material into air where it can be inhaled. If inhaled, asbestos fibers can increase the risk of developing lung cancer, mesothelioma, pleural fibrosis, and asbestosis.

Five abatement activities have been conducted to physically remove ACM from surface soils since 2004. Approximately 1,419 pounds (plus 5 cubic yards) of ACM were removed and transported to Crook County landfill.

Soil that contains ACM was covered with an engineered cap during the spring and summer of 2011. The cap consists of a demarcation layer (non-woven geotextile), overlain by at least 3 to 4 inches of Portland cement-concrete/ asphalt concrete and base rock; and/or 2 feet of clean soil.

A Contaminated Media Management Plan (CMMP) was developed as part of the final remedy to: 1) protect current and future worker health from exposure to asbestos release from ACM in soil; 2) inspect and maintain the engineered cap; 3) manage ACM-impacted soil, if encountered.

SROA is in the process of filing and recording a DEQ-approved Easement and Equitable Servitude (EES) with the Deschutes County Recorder. This EES will: 1) memorialize the presence of hazardous substances at the site; 2) document the requirement to maintain and monitor engineering controls; 3) require implementation of the CMMP; and 4) provide for indefinite access to the site by DEQ. **HOW TO COMMENT:** Send comments by 5 p.m., January 31, 2014, to DEQ Project Manager Bob Schwarz at 400 E. Scenic Drive, Suite 307, The Dalles, Oregon, 97058, schwarz.bob@deq.state.or.us or by fax to 541-298-7330.

To review the project file, call Mr. Schwarz at 541-298-7255 x230 for a file review appointment.

To access site summary information and other documents in the DEQ Environmental Cleanup Site Information database, go to <http://www.deq.state.or.us/lq/ECSI/ecsi.htm>, then enter ECSI# 4179 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled 4179 in the Site ID/Info column.

THE NEXT STEP: DEQ will consider all public comments received by the end of the public comment period. Based on this review, we will determine whether this decision needs to be modified or reconsidered. Otherwise, we will issue the Conditional No Further Action determination once the EES is recorded with the County.

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

DEQ PROPOSES

NO FURTHER ENVIRONMENTAL ACTION FORMER BNSF PROPERTY AKA WTD INDUSTRIES 13 HIGHWAY 99N, EUGENE, OREGON

COMMENTS DUE: January 30, 2014

PROJECT LOCATION: 13 Highway 99, Eugene, Oregon

PROPOSAL: DEQ proposes to make a no further action determination for contamination related to past wood treatment at the former BNSF property on Highway 99 in Eugene.

BACKGROUND: For detailed project information please see a copy of the final report prepared by the property owner's consultant, on DEQ's website at: <http://bit.ly/1c2ibM4>

The property has a long history of use as a lumber mill, which included the use of wood preservative chemicals for sap stain treatment of stored logs or finished lumber.

Soil sampling showed that residual petroleum hydrocarbons, pentachlorophenol, and dioxin contamination remains on the property, which is currently vacant. A continuous layer of crushed rock and pavement currently exists across the site, and it effectively caps shallow contaminated soils where they occur. DEQ has concluded that this soil cap prevents direct exposure to site soils by current or possible future occupants of the property.

Shallow groundwater sampled immediately east of the site on the adjacent Zip-O-Log property is contaminated by low levels of pentachlorophenol possibly originating from the former BNSF property. However, there are no drinking water wells on either property or in the immediate vicinity, and the area is supplied by municipal

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water. After inquiring with the property owner and the owner of the adjacent Zip-O-Logs property, DEQ concludes that shallow groundwater is not likely to be used for any water supply purposes.

DEQ therefore finds that there is no current or future unacceptable risk posed to human health or the environment by residual contamination from the former BNSF property, given its likely future use for industrial purposes. DEQ recommends no further action to investigate or clean up soil and groundwater contamination remaining on the property.

DEQ has requested that the current property owner develop a plan to ensure that the existing soil cap is permanently maintained to ensure its integrity, and a deed restriction has been recorded with Lane County to prevent well drilling on the property.

HOW TO COMMENT: Written comments must be received by January 30, 2014. Comments should be submitted to DEQ's Eugene office, 165 East 7th Street, Eugene, Oregon 97401 or by e-mail at aitken.greg@deq.state.or.us. Questions may also be directed to Greg Aitken at the Eugene address or by calling him at 541-687-7361

THE NEXT STEP: DEQ will consider all public comments before taking final action on this matter. A public meeting will be held to receive verbal comments on the proposed cleanup action upon written request by ten or more persons, or by a group with ten or more members.

NOTICES OF PROPOSED RULEMAKING

Notices of Proposed Rulemaking and Proposed Rulemaking Hearings

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

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

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

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

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

Board of Chiropractic Examiners Chapter 811

Rule Caption: Third hearing for new OAR 811-010-0125 "Master of the Ship"

Date:	Time:	Location:
1-23-14	1 p.m.	University of Western States, Hampton Hall 2900 NE 32nd Ave. Portland, Oregon

Hearing Officer: Dave McTeague, Executive Director

Stat. Auth.: ORS 684

Stats. Implemented: ORS 684.155(1)(b)

Proposed Amendments: 811-035-0015

Last Date for Comment: 1-23-14, Close of Hearing

Summary: Unprofessional Conduct — add "Master of the Ship" proposed language. (This IS a change previously proposed to adopt a NEW rule.). Proposes to provide that chiropractic clinic owners share responsibility for employee/associate compliance.

Rules Coordinator: Kelly J. Beringer

Address: Board of Chiropractic Examiners, 3218 Pringle Rd. SE, Suite 150, Salem, OR 97302

Telephone: (503) 373-1573

Board of Licensed Professional Counselors and Therapists Chapter 833

Rule Caption: Intern registration effective dates and renewal requirements; licensee and registered intern informed consent requirements.

Stat. Auth.: ORS 675.705–675.835

Stats. Implemented: ORS 675.705–675.835

Proposed Amendments: 833-050-0061, 833-050-0131, 833-100-0021

Last Date for Comment: 1-31-14, 5 p.m.

Summary: The revised rules would require that registered interns continue to renew their internships during the time between completing internship hours and becoming licensed and may only

practice under supervision of a licensed mental health professional during that time period.

The revised rule allows for waiver of distributing an informed consent document to all clients.

Rules Coordinator: Becky Eklund

Address: Board of Licensed Professional Counselors and Therapists, 3218 Pringle Rd. SE, Suite 250, Salem, OR 97302

Telephone: (503) 378-5499, ext. 3

Board of Psychologist Examiners Chapter 858

Rule Caption: Resident client progress notes.

Stat. Auth.: ORS 675.010–675.150

Stats. Implemented: ORS 675.030, 675.065 & 675.110

Proposed Amendments: 858-010-0036

Last Date for Comment: 2-28-14, 5 p.m.

Summary: The proposed amendment removes the requirement that post-degree supervisors must countersign residents' client progress notes.

Rules Coordinator: LaRee Felton

Address: Board of Psychologist Examiners, 3218 Pringle Rd. SE, Suite 130, Salem, OR 97302

Telephone: (503) 373-1196

Bureau of Labor and Industries Chapter 839

Rule Caption: Public employer requirement to reference veteran special qualifications and transferable skills in job announcements.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 408.230, 408.235, 408.237

Proposed Amendments: 839-006-0450

Last Date for Comment: 2-4-14, 5 p.m.

Summary: The amendment clarifies that public employers must include in a job recruitment announcement any special qualifications and transferable skills required or requested in addition to minimum qualifications for the position, so that veterans applying for the position know to include and address those in their application materials.

Rules Coordinator: Marcia Ohlemiller

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

Telephone: (971) 673-0784

Citizens' Initiative Review Commission Chapter 710

Rule Caption: Rules related to procedure and administration for Citizens' Initiative Review Commission

Date:	Time:	Location:
1-29-14	11 a.m.	506 S.W. Mill St., Suite 710 Portland, OR

Hearing Officer: Tony Iaccarino

Stat. Auth.: ORS 182.462(1), 183, 183.341, 250.137(3)(b) & 2013 OL Ch. 722 Sec. 11

Stats. Implemented: ORS 182.462(1), 183, 183.341 & 2013 OL Ch. 722 Sec. 11

Proposed Adoptions: 710-001-0000, 710-001-0005, 710-005-0005

Last Date for Comment: 1-29-14, 12 p.m.

Summary: The first two proposed rules are procedural: the first identifies the procedures by which the Citizens' Initiative Review Commission, a newly established semi-independent state agency, will provide notice of rulemaking; the second affirms that the Commission shall adopt the Attorney General's Model Rules of Procedure. The third and final proposed rule is administrative, specifying the Commission's 2013–15 Biennium Budget, and the method for amending the budget if necessary.

Rules Coordinator: Tony Iaccarino

NOTICES OF PROPOSED RULEMAKING

Address: Citizens' Initiative Review Commission, P.O. Box 9156,
Portland, OR 97207-9156
Telephone: (503) 508-0886

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Construction Contractors Board
Chapter 812

Rule Caption: Fees for course approval, Series B courses, rosters, timelines, certificates and renewal

Date:	Time:	Location:
1-28-14	11 a.m.	West Salem Roth's IGA Santiam Rm. 425 Glen Creek Rd. Salem, OR

Hearing Officer: Rob Yorke

Stat. Auth.: ORS 670.310, 701.235 & 2013 OL Ch. 718

Other Auth.: 2013 OL Ch. 718

Stats. Implemented: 2013 OL Ch. 718

Proposed Adoptions: 812-022-0029

Proposed Amendments: 812-022-0010, 812-022-0015, 812-022-0021, 812-022-0025, 812-022-0026, 812-022-0027, 812-022-0028, 812-022-0034, 812-022-0035

Last Date for Comment: 1-28-14, Close of Hearing

Summary: 812-022-0010 is amended to allow providers that obtained approval under the old law or obtain approval under the new law to continue to offer BEST or building codes courses that were approved under the old law. This will be without additional cost or application requirements for the providers or courses. And, SB 783, Section 7(2), permits a phase-in approach to developing the new system, until January 1, 2015. For the first three months of 2014, renewing contractors may elect to renew under the old or the new law.

812-022-0015 is amended to clarify that it is the "scheduled renewal date," not when the actual renewal occurs, that establishes the look-back period for licensure for six years.

812-022-0021 is amended to clarify that plumbing or electrical contractor's owner or employee must complete the trade licensing continuing education to qualify the contractor for the exemption.

812-022-0025 is amended to remove the ability to apply as a provider and submit course approval at the same time; and to permit community colleges and SBDCs to become providers without paying the \$2,000 application fee. It will also permit community colleges and SBDCs to become providers without submitting a \$20,000 surety bond.

812-022-0026 is amended to permit community colleges and SBDCs to become providers without paying the \$2,000 application fee. It will also permit community colleges and SBDCs to become providers without submitting a \$20,000 surety bond.

812-022-0027 is amended to delete references to the agency agreements with providers. The rule can be revised at a later date, if and when, the agency begins entering into provider agreements. And it is amended to permit community colleges and SBDCs to become providers without obtaining a \$20,000 surety bond.

812-022-0028 is amended to require RCE provider approval prior to submitting a Series A course for approval.

812-022-0029 is adopted to establish a \$100 fee for course approval of any Series A course.

812-022-0034 is amended to describe when contractors may take Series B courses and require RCE provider approval prior to submitting a Series B course for registration.

812-022-0035 is amended to require providers to maintain student rosters for Series B courses. Describes information that must be included in student rosters. Requires providers to issue certificate of completion for each Series B course and indicates what information must be contained in certificate.

NOTE: In order to save postage and printing costs in these difficult times, CCB is only providing a copy of the notice. To view the language of each individual rule change, please go to our web site at http://www.oregon.gov/CCB/Laws_Rules.shtml#Administrative_Rule_Notices. If you don't have web access, contact Rules Coordi-

nator Cathy Dixon at (503) 934-2185 for assistance in receiving a copy.

Rules Coordinator: Catherine Dixon

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

Telephone: (503) 934-2185

.....
Department of Agriculture
Chapter 603

Rule Caption: Adopts Grade "A" Pasteurized Milk Ordinance, 2013 Revision

Date:	Time:	Location:
1-30-14	10 a.m.	Oregon Department of Agriculture 635 Capitol St. NE Basement Hearing Rm. Salem, OR 97301

Hearing Officer: Eric Edmunds

Stat. Auth.: ORS 561.020 & 621

Stats. Implemented: ORS 621.058

Proposed Amendments: 603-024-0211

Last Date for Comment: 1-31-14, 5 p.m.

Summary: The Grade "A" Pasteurized Milk Ordinance (PMO) is a document that addresses the need for continued vigilance at every stage of production, processing, pasteurization and distribution of milk and milk products. The document is released biennially in odd-numbered years after the National Conference on Interstate Milk Shipments (NCIMS). The Conference consists of many aspects of the dairy industry; it includes dairy farmers, plant personnel, inspectors, policy analysts, lawmakers, legal enforcement, academics, and consumers. During the Conference members deliberate and consider proposals submitted by various individuals from state and local regulatory agencies, FDA, U.S. Department of Agriculture (USDA), producers, processors, consumers, and others who have an interest in ensuring that the dairy products being produced and consumed are safe.

After considering relevant proposals and issues, the NCIMS releases current revisions of the PMO, which is recommended for legal adoption by States, Counties, and Municipalities, in order to encourage a greater uniformity and a higher level of excellence of milk sanitation practice in the United States. ODA intends to adopt the Grade "A" Pasteurized Milk Ordinance, 2013 Revision (PMO, 2013 Revision) by reference to ensure that the shipment and acceptance of milk and milk products in interstate and intrastate commerce is uniform and of a high sanitary quality. The PMO, 2013 Revision will become effective on November 8, 2014.

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: Adopts National Shellfish Sanitation Program: Guide for the Control of Molluscan Shellfish, 2011 Revision

Date:	Time:	Location:
1-30-14	9 a.m.	Oregon Department of Agriculture 635 Capitol St. NE Basement Hearing Rm. Salem, OR 97301

Hearing Officer: Eric Edmunds

Stat. Auth.: ORS 561.190 & 622.180

Stats. Implemented: ORS 622.180

Proposed Amendments: 603-100-0010

Last Date for Comment: 1-31-14, 5 p.m.

Summary: The National Shellfish Sanitation Program (NSSP) is the federal/state cooperative program recognized by the U.S. Food and Drug Administration (FDA) and the Interstate Shellfish Sanitation Conference (ISSC) for the sanitary control of shellfish produced and sold for human consumption. The NSSP promotes and improves the sanitation of shellfish (oysters, clams, mussels and scallops) moving

NOTICES OF PROPOSED RULEMAKING

in interstate commerce through federal/state cooperation and uniformity of State shellfish programs. As an NSSP participant, the Oregon Department of Agriculture (ODA) works with other States, FDA, the Environmental Protection Agency (EPA), the National Oceanic and Atmospheric Association (NOAA), and the shellfish industry to provide guidance and counsel on matters for the sanitary control of shellfish.

The ISSC provides a formal structure for ODA to participate in establishing regulatory guidelines and procedures for uniform state application of the Program. After FDA concurs with the NSSP Model Ordinance proposed by ISSC, the guidelines are published in current revisions of the NSSP Model Ordinance. The Model Ordinance includes guidelines to ensure that the shellfish produced in Oregon are in compliance with sanitary measures, and are safe for human consumption. The most current revision is titled National Shellfish Sanitation Program: Guide for the Control of Molluscan Shellfish, 2011 Revision. ODA intends to adopt the Guide for the Control of Molluscan Shellfish, 2011 Revision, which will become effective upon filing a permanent administrative rule certificate.

Rules Coordinator: Sue Gooch

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

Telephone: (503) 986-4583

**Department of Agriculture,
Oregon Trawl Commission
Chapter 656**

Rule Caption: Amends commissioner qualifications, chair and other officers, and per diem compensation.

Stat. Auth.: ORS 576, 576.206, 576.225, 576.265, 576.285, 576.304, 2013 OL Ch. 90

Other Auth.: OAR 656-001-000 Motion approved at 8/22/13 & 11/7/13 meetings of the Oregon Trawl Commission.

Stats. Implemented: ORS 576, 576.206, 576.225, 576.265, 576.285 & 2013 OL Ch. 90

Proposed Amendments: 656-030-0020, 656-030-0040, 656-040-0010

Last Date for Comment: 1-22-14, 12 p.m.

Summary: OAR 656-030-0010 The Oregon Trawl Commission consists of eight (8) commissioners. The current Administrative Rules under 656-030-0020 (2)(c) states "At least one member will be a handler". The change clarifies that two members will be handlers.

OAR 656-030-0020 (3) is deleted.

OAR 656-030-0020 (4) is renumbered to (3) and revised to update the rule number referenced and to reduce the length of vacancy from one (1) year to 90 days.

OAR 656-030-0040 does not include the office of Secretary-Treasurer. This proposed rule change will add the office of Secretary-Treasurer to the commission. This rule change complies with ORS 576.285.

OAR 656-040-0010 (2) changes per diem for commissioners from \$30 to \$100. The 2009 Oregon Legislature approved HB 2458 which amended ORS 576.265 to exempt commodity commissions from the per diem limits set in ORS 292.495.

Rules Coordinator: Brad Pettinger

Address: Department of Agriculture, Oregon Trawl Commission, 16289 Hwy. 101 S, Suite C, Brookings, OR 97415

Telephone: (541) 469-7830

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

Rule Caption: Sets minimum number of times directors of financial institutions must meet

Date:
1-30-14

Time:
1:30 p.m.

Location:
Labor & Industries Bldg.,
Conference Rm. 260
350 Winter St. NE
Salem, OR 97301

Hearing Officer: TK Keen

Stat. Auth.: ORS 707.670

Other Auth.: 2013 OL Ch. 104, Sec. 1 (Enrolled HB 2070)

Stats. Implemented: ORS 707.670

Proposed Adoptions: 441-505-2000

Last Date for Comment: 2-6-14, 5 p.m.

Summary: Like any corporation, the board of directors appointed to direct and control the overall affairs of a banking institution (i.e., certain state-chartered banks) meets according to the terms of the institution's bylaws or articles of incorporation. However, unlike other corporations, the Oregon Bank Act (ORS chapters 706 to 716) specifies the default frequency of board meetings. Prior to 2013, boards of directors of banking institutions met at least once a month. Banking institutions could obtain approval from the Director of the Department of Consumer and Business Services to meet once every calendar quarter. In 2013, the Legislature adopted changes to the Oregon Bank Act through the passage of HB 2070. Among the changes in the bill, the Bank Act now requires the Director of the Department of Consumer and Business Services to set the frequency of board meetings by rule. This proposed rulemaking activity sets the minimum number of regularly-scheduled meetings as four times per year, with flexibility by the Director to require additional meetings if needed to meet the unique situation of a particular banking institution.

Rules Coordinator: Shelley Greiner

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

Telephone: (503) 947-7484

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

Rule Caption: Adoption of Annual and Supplemental Statement Blanks and Instructions for Reporting Year 2013

Stat. Auth.: ORS 731.244, 731.574, 733.210

Stats. Implemented: ORS 731.574, 733.210

Proposed Amendments: 836-011-0000

Last Date for Comment: 1-20-14, 5 p.m.

Summary: This rulemaking prescribes, for reporting year 2013, the required forms for the annual and supplemental financial statements required of insurers and health care service contractors under ORS 731.574, as well as the necessary instructions for completing the forms.

Rules Coordinator: Victor Garcia

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

Telephone: (503) 947-7260

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

Rule Caption: Amendment of rules governing electronic data interchange for reporting medical bill data

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.264

Proposed Amendments: 436-160-0410

Last Date for Comment: 1-24-14, Close of Business

Summary: The agency proposes to correct the requirement code lists in the appendices to OAR 436-160-0410, as needed. Specifically, for data element DN 0504, "FACILITY CODE," the requirement code for an institutional SV2 cancellation is listed as "NA," but should be "F" (fatal technical).

Rules Coordinator: Fred Bruyns

NOTICES OF PROPOSED RULEMAKING

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

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Department of Corrections
Chapter 291

Rule Caption: Earned Time Credits for Crimes Committed on or after July 1, 2013

Stat. Auth.: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120–421.122, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120–421.122, 423.020, 423.030 & 423.075

Proposed Adoptions: 291-097-0231

Last Date for Comment: 2-14-14, 4:30 p.m.

Summary: This rule is necessary to establish by administrative rule changes made to ORS 421.121 with regard to earned time credits from 2010 legislation (SB 1007) that went into effect on July 1, 2013. Inmates serving sentences for crimes committed on or after July 1, 2013 may earn sentence reduction credits up to 20 percent. Some inmates are not eligible for any earned time credits, including inmates serving a sentence for a Measure 11 crime (mandatory minimum).

Rules Coordinator: Janet R. Worley

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

Telephone: (503) 945-0933

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Rule Caption: Cross-Gender Searches and Searches of Transgender and Intersex Inmates in ODOC Custody

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

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

Proposed Adoptions: 291-041-0018

Proposed Amendments: 291-041-0020

Last Date for Comment: 2-14-14, 4:30 p.m.

Summary: The Prison Rape Elimination Act (PREA) was passed unanimously by Congress and signed into law by President Bush in 2003. The U. S Department of Justice finalized and published national PREA standards (28 C.F.R. Part 115) for all prisons, jails, lock-ups, and detention facilities in the United States in 2012. The final rule adopts national standards to prevent, detect, and respond to incidents of sexual violence, sexual coercion, and sexual solicitation. These rule modifications are necessary to ensure ODOC administrative rules for conducting cross-gender searches and searches of transgender and intersex inmates align with the national PREA standards.

Rules Coordinator: Janet R. Worley

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

Telephone: (503) 945-0933

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Rule Caption: Inmate Grievances Regarding Allegations of Sexual Abuse

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

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

Proposed Adoptions: 291-109-0200

Proposed Amendments: 291-109-0180

Proposed Repeals: 291-109-0125

Last Date for Comment: 2-14-14, 4:30 p.m.

Summary: The Prison Rape Elimination Act (PREA) was passed unanimously by Congress and signed into law by President Bush in 2003. The U. S Department of Justice finalized and published national PREA standards (28 C.F.R. Part 115) for all prisons, jails, lock-ups, and detention facilities in the United States in 2012. The final rule adopts national standards to prevent, detect, and respond to incidents of sexual violence, sexual coercion, and sexual solicitation. These rule modifications are necessary to ensure ODOC administrative rules for processing of inmates grievances regarding allegations of sexual abuse align with the national PREA standards.

Rules Coordinator: Janet R. Worley

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

Telephone: (503) 945-0933

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Rule Caption: Savanna Haven Property

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

Stats. Implemented: ORS 179.040, 184.423, 276.054, 423.020, 423.030 & 423.075

Proposed Adoptions: 291-073-0100, 291-073-0110

Last Date for Comment: 2-14-14, 4:30 p.m.

Summary: These rules are necessary to establish as policy of the Department of Corrections the appropriate utilization of approximately 104 acres of real property owned by the department situated in Marion County, Oregon, inside the City of Salem bordering the Oregon State Correctional Institution. Consistent with the Oregon Sustainability Act, it is the policy of the department to maintain and utilize the property in a manner that preserves the habitat values of the existing oak savanna and secures the area from commercial and industrial encroachment.

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: Adds requirement for periodic review of certain facilities eligible for the Oregon Renewable Portfolio Standard.

Date:	Time:	Location:
1-23-14	10 a.m.	OR Dept. of Energy 625 Marion St. NE Salem, OR 97301

Hearing Officer: Kacia Brockman

Stat. Auth.: ORS 469.040, 469A.020 & 469A.130

Stats. Implemented: ORS 469A.020–469A.025, 469A.130–469A.135

Proposed Adoptions: 330-160-0035, 330-160-0037, 330-160-0038, 330-160-0060, 330-160-0070

Proposed Amendments: 330-160-0015, 330-160-0020, 330-160-0025, 330-160-0030, 330-160-0040, 330-160-0050

Last Date for Comment: 1-23-14, 5 p.m.

Summary: This rulemaking is intended to streamline and increase transparency of the requirements for facilities that generate electricity eligible for the Oregon Renewable Portfolio Standard. Included in the proposed rule amendments are: a description of the application process for RPS certification, notification requirements for facilities that undergo changes, renewal requirements for low-impact hydro facilities, requirements for periodic review of multiple-fuel facilities, and a one-time review of the performance of certain hydro efficiency upgrades. Facilities generating electricity from other eligible resources are not subject to review or renewal. The proposed rules also include updated references to the Western Renewable Energy Generation Information System Operating Rules and updated language regarding the tracking of stranded electricity. The rules will become effective upon filing. Text of the proposed rules and hearing details can be found on the department website: <http://www.oregon.gov/energy/RENEW/Pages/RPS-Rulemaking.aspx>

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: Align Diesel Grant Program with Federal Guidelines

NOTICES OF PROPOSED RULEMAKING

Date: 1-16-14
Time: 5 p.m.
Location: 811 SW 6th Ave.
Portland, OR

Hearing Officer: DEQ staff
Stat. Auth.: ORS 468.020 & 468A.80
Stats. Implemented: ORS 468A.803
Proposed Amendments: 340-259-0010
Last Date for Comment: 1-21-14, 5 p.m.
Summary: Short summary

DEQ proposes minor changes to the clean diesel grant and loan program rules.

Brief history

The 2013 Oregon Legislature unanimously adopted Senate Bill 249. The bill authorized DEQ to administer federal grants for clean diesel projects and to complete the projects according to federal grant guidelines rather than the more limited state guidelines. Authority to administer clean diesel grants was first provided to DEQ in 2007. Projects that qualified for grants were limited to retrofitting diesel exhaust controls, non-road engine repowers and scrapping pre-1994 trucks. The federal program guidelines provide for many other eligible activities including idle reduction, aerodynamic enhancements and vehicle replacement.

Although the legislation included an emergency clause making it effective upon filing, DEQ must adopt implementing rules. Failure to adopt the proposed rule would prevent DEQ from offering the broader range projects that are now more attractive to Oregon's potential applicants interested in reducing harmful emissions from diesel engines.

Regulated parties

Participation in the grant program is voluntary. The proposed rules would affect owners of diesel powered vehicles and equipment as sub-recipients of DEQ-secured grant funds. The successful implementation of projects supported by grants authorized under this proposal would affect Oregonians by reducing harmful emissions.

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: Incorporate Lane Regional Air Protection Agency Rules for open burning into State Implementation Plan

Date: 1-22-14
Time: 5:30 p.m.
Location: LRAPA
1010 Main St.
Springfield, OR 97477

Hearing Officer: Merlyn Hough
Stat. Auth.: ORS 468.020, 468A.035 & 468A.135
Other Auth.: LRAPA Title 13 General Duties & Powers of Board & Director LRAPA Title 14 Rules of Practice & Procedure
Stats. Implemented: ORS 468 & 468A
Proposed Amendments: 340-200-0040
Last Date for Comment: 1-27-14, 5 p.m.
Summary: Short summary

DEQ proposes to incorporate Lane Regional Air Protection Agency revised regulations for open burning into Oregon's State Implementation Plan in Oregon Administrative Rule 340-200-0040. The LRAPA Board of Directors adopted open burning rules revisions in an effort to meet federal air quality standards for fine particulate matter, to bring LRAPA in line with state rules and to better coordinate with state and federal requirements. The LRAPA rules were revised to:

- Clarify when and where small recreational fires such as patio fireplace could occur and identify acceptable fuels for these fires,
- Include Hazeldell and Siuslaw Rural Fire Protection Districts in the special open-burning control area at the districts' request,
- Allow daily end time on burn days to be set earlier than sunset,
- Restrict the open burning season in the outlying areas of Lane County, and

- Correct the meaning of the LRAPA acronym to Lane Regional Air Protection Agency.

Brief history

LRAPA, in consultation with DEQ and the U.S. Environmental Protection Agency, is responsible for ensuring that Lane County communities comply with federal air quality health standards, including enacting plans to restore healthy air quality in any area violating standards. LRAPA conducts air monitoring, permitting and compliance, inspection and enforcement, and regulates open burning and asbestos abatement throughout Lane County. It also has a woodstove advisory program, an open burning advisory program and conducts special projects focused on air quality. The agency is funded by local dues from Lane County and the cities of Lane County, industrial and other permitting fees, and LRAPA coordinates with DEQ to obtain EPA funding and state general funds.

On March 14, 2008, the LRAPA Board of Directors adopted the Title 47 open burning rules, provided at the end of this document, and the rules have been in effect in Lane County since their adoption. The Environmental Quality Commission and DEQ have oversight authority to ensure LRAPA meets Clean Air Act requirements. The State Implementation Plan is the State of Oregon Clean Air Act Implementation Plan as adopted by EQC under OAR 340-200-0040 and approved by EPA. EQC's role is to review LRAPA rules to determine if they comply with state law and the Clean Air Act, approve those rules if they comply, and direct DEQ to submit the approved rules to EPA for federal approval as State Implementation Plan amendments.

Typically, DEQ submits LRAPA rules to EQC for incorporation into the State Implementation Plan immediately upon adoption by the LRAPA board. However, in this case, DEQ determined that the public notice process held jointly by DEQ and LRAPA several years ago did not meet requirements for State Implementation Plan rules, which are above and beyond requirements for normal rulemaking. Performing rulemaking is resource intensive and DEQ was unable to perform the additional public notice requirements until now.

Regulated parties

This proposal does not change the regulated parties or requirements for regulated parties from the rules that LRAPA's board adopted in 2008. The 2008 rules affect residential open burning in Lane County.

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: Incorporate Lane Regional Air Protection Agency Rules for permit streamlining into State Implementation Plan

Date: 1-22-14
Time: 5:30 p.m.
Location: LRAPA
1010 Main St.
Springfield, OR

Hearing Officer: Merlyn Hough
Stat. Auth.: ORS 468.020, 468A.035 & 468A.135
Other Auth.: LRAPA Title 13 General Duties & Powers of Board & Director LRAPA Title 14 Rules of Practice & Procedure
Stats. Implemented: ORS 468 & 468A
Proposed Amendments: 340-200-0040
Last Date for Comment: 1-27-14, 5 p.m.
Summary: Short summary

DEQ proposes to incorporate Lane Regional Air Protection Agency revised regulations for permit streamlining into Oregon's State Implementation Plan in Oregon Administrative Rule 340-200-0040. The LRAPA Board of Directors adopted permit streamlining rules revisions in an effort to maximize efficiencies in LRAPA's permitting program while maintaining the existing level of environmental protection, bring LRAPA in line with state rules, and better coordinate with state and federal requirements.

The LRAPA rules contain:

NOTICES OF PROPOSED RULEMAKING

- State and federal National Emission Standards for Hazardous Air Pollutants and New Source Performance Standards that were in effect at the time of LRAPA's rule adoption.

- Streamlined and improved permitting processes comparable to DEQ rules adopted in 2001 and 2007.

- Narrowing of an agriculture exemption comparable to DEQ rules adopted in 2008.

- Minor corrections and adjustments adopted by LRAPA's Board in January 2010 to the regulations previously adopted by LRAPA's Board in October 2008.

Brief history

LRAPA, in consultation with DEQ and the U.S. Environmental Protection Agency, is responsible for ensuring that Lane County communities comply with federal air quality health standards, including enacting plans to restore healthy air quality in any area violating standards. LRAPA conducts air monitoring, permitting and compliance, inspection and enforcement, and regulates open burning and asbestos abatement throughout Lane County. It also has a woodstove advisory program, an open burning advisory program and conducts special projects focused on air quality. The agency is funded by local dues from Lane County and the cities of Lane County, industrial and other permitting fees, and LRAPA coordinates with DEQ to obtain EPA funding and state general funds.

On October 14, 2008 and January 12, 2010, the LRAPA Board of Directors adopted the permit streamlining rules, provided at the end of this document, and the rules have been in effect in Lane County since their adoption. The Environmental Quality Commission and DEQ have oversight authority to ensure LRAPA meets Clean Air Act requirements. The State Implementation Plan is the State of Oregon Clean Air Act Implementation Plan as adopted by EQC under OAR 340-200-0040 and approved by EPA. EQC's role is to review LRAPA rules to determine if they comply with state law and the Clean Air Act, approve those rules if they comply, and direct DEQ to submit the approved rules to EPA for federal approval as State Implementation Plan amendments.

Typically, DEQ submits LRAPA rules to EQC for incorporation into the State Implementation Plan immediately upon adoption by the LRAPA board. However, in this case, DEQ determined that the public notice process held jointly by DEQ and LRAPA several years ago did not meet requirements for State Implementation Plan rules, which are above and beyond requirements for normal rulemaking. Performing rulemaking is resource intensive and DEQ was unable to perform the additional public notice requirements until now.

Regulated parties

This proposal does not change the regulated parties or requirements for regulated parties from the rules that LRAPA's board adopted in 2008 and 2010. The regulated parties include businesses in LRAPA's jurisdiction subject to Air Contaminant Discharge Permits and Title V Operating Permits.

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: Incorporate Lane Regional Air Protection Agency Rules for permitting requirements into State Implementation Plan

Date:	Time:	Location:
1-22-14	5:30 p.m.	LRAPA 1010 Main St. Springfield, OR

Hearing Officer: Merlyn Hough

Stat. Auth.: ORS 468.020, 468.065 & 468A.135

Other Auth.: LRAPA Title 13 General Duties & Powers of Board & Director LRAPA Title 14 Rules of Practice & Procedure

Stats. Implemented: ORS 468 & 468A

Proposed Amendments: 340-200-0040

Last Date for Comment: 1-27-14, 5 p.m.

Summary: Short summary

DEQ proposes to incorporate Lane Regional Air Protection Agency revised regulations for air quality permits into Oregon's State Implementation Plan in Oregon Administrative Rule 340-200-0040. The LRAPA Board of Directors adopted the rules revisions in an effort to bring LRAPA in line with state rules and better coordinate with state and federal requirements.

The LRAPA rules contain:

- U.S. Environmental Protection Agency's thresholds for New Source Review and Prevention of Significant Deterioration for fine particulate matter (PM2.5) and greenhouse gases

- New and amended federal New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants applicable to non-major or area sources including aluminum, copper, and other nonferrous foundries; chemical manufacturing; ferroalloy production; metal fabrication and finishing; paint stripping and miscellaneous surface coating operations; and plating and polishing operations

- Permitting requirements necessary to implement the federal standards

- Registration options as an alternative to permitting

- Exemptions to permitting for emergency-use and small electrical power generating units

- Statutory requirements for small scale local energy projects

- Corrections to rule citations and definitions of terms

Brief history

LRAPA, in consultation with DEQ and the U.S. Environmental Protection Agency, is responsible for ensuring that Lane County communities comply with federal air quality health standards, including enacting plans to restore healthy air quality in any area violating standards. LRAPA conducts air monitoring, permitting and compliance, inspection and enforcement, and regulates open burning and asbestos abatement throughout Lane County. It also has a woodstove advisory program, an open burning advisory program and conducts special projects focused on air quality. The agency is funded by local dues from Lane County and the cities of Lane County, industrial and other permitting fees, and LRAPA coordinates with DEQ to obtain EPA funding and state general funds.

On April 25, 2011, the LRAPA Board of Directors adopted the permitting rules, provided at the end of this document, and the rules have been in effect in Lane County since their adoption. The Environmental Quality Commission and DEQ have oversight authority to ensure LRAPA meets Clean Air Act requirements. The State Implementation Plan is the State of Oregon Clean Air Act Implementation Plan as adopted by EQC under OAR 340-200-0040 and approved by EPA. EQC's role is to review LRAPA rules to determine if they comply with state law and the Clean Air Act, approve those rules if they comply, and direct DEQ to submit the approved rules to EPA for federal approval as State Implementation Plan amendments.

Typically, DEQ submits LRAPA rules to EQC for incorporation into the State Implementation Plan immediately upon adoption by the LRAPA board. However, in this case, DEQ determined that the public notice process held jointly by DEQ and LRAPA several years ago did not meet requirements for State Implementation Plan rules, which are above and beyond requirements for normal rulemaking. Performing rulemaking is resource intensive and DEQ was unable to perform the additional public notice requirements until now.

Regulated parties

This proposal does not change the regulated parties or requirements for regulated parties from the rules that LRAPA's board adopted in 2011. The regulated parties are subject to LRAPA's Air Contaminant Discharge Permit and Title V Operating Permit requirements. The 2011 LRAPA rules:

- Affect facilities in Lane County.

- Regulate emissions of PM2.5 and greenhouse gases at all stationary sources emitting more than the 'de minimis' level of these pollutants.

NOTICES OF PROPOSED RULEMAKING

• Regulate motor vehicle and mobile equipment surface coating and metal fabrication facilities subject to new and modified National Emission Standards for Hazardous Air Pollutants.

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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Department of Fish and Wildlife
Chapter 635

Rule Caption: Amend rules relating to capture of Peregrine and other species allowed for falconry

Date:	Time:	Location:
2-7-14	8 a.m.	Oregon Dept. of Fish & Wildlife 4034 Fairview Industrial Dr. SE Salem, OR 97302

Hearing Officer: Fish & Wildlife Commission

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

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

Proposed Amendments: Rules in 635-055

Last Date for Comment: 2-7-14, 8 a.m.

Summary: Amend rules related to the capture of Peregrine Falcons for use in falconry and consider changes to species allowed to be taken from the wild for falconry.

Rules Coordinator: Therese Kucera

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

Telephone: (503) 947-6033

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Rule Caption: Regulations to Establish a Recreational Control Zone at Youngs Bay in the Lower Columbia River

Date:	Time:	Location:
2-7-14	8 a.m.	Oregon Dept. of Fish & Wildlife 4034 Fairview Industrial Dr. SE Salem, OR 97302

Hearing Officer: Fish & Wildlife Commission

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Proposed Adoptions: Rules in 635-014, 635-023

Proposed Amendments: Rules in 635-014, 635-023

Proposed Repeals: Rules in 635-014, 635-023

Last Date for Comment: 2-7-14, 8 a.m.

Summary: Proposed rule amendments are related to establishing a recreational control zone prohibiting angling adjacent to the mouth of Youngs Bay in the lower Columbia River as described in Senate Bill 830 (2013).

Rules Coordinator: Therese Kucera

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

Telephone: (503) 947-6033

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

Rule Caption: Nursing Facility Policy for Treatment or Referral of Acute Sexual Assault Victims

Date:	Time:	Location:
1-21-14	2 p.m.	Human Services Bldg. 500 Summer St. NE, Rm. 160 Salem, OR 97301

Hearing Officer: Staff

Stat. Auth.: ORS 410.070, 441.055 & 441.615

Other Auth.: SB 557 (2011 Regular Session) & 2011 OL Ch. 511

Stats. Implemented: ORS 147.403, 441.055 & 441.615

Proposed Amendments: 411-085-0005, 411-085-0210

Last Date for Comment: 1-23-14, 5 p.m.

Summary: The Department of Human Services (Department) is proposing to amend OAR 411-085-0005 and 411-085-0210 for nursing facilities to implement Senate Bill 557 (2011 Regular Session) by requiring nursing facilities to develop and adopt a policy for the referral and treatment of residents who may be victims of acute sexual assault. Proposed rule changes also reflect current practice and Department terminology and correct formatting and punctuation.

Rules Coordinator: Christina Hartman

Address: Department of Human Services, Aging and People with Disabilities and Developmental Disabilities, 500 Summer St. NE, E-10, Salem, OR 97301-1074

Telephone: (503) 945-6398

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Rule Caption: Disability Determination Services Rates of Payment — Medical

Date:	Time:	Location:
1-21-14	3 p.m.	Human Services Bldg. 500 Summer St. NE, Rm. 160 Salem, OR 97301

Hearing Officer: Staff

Stat. Auth.: ORS 344.530

Stats. Implemented: ORS 344.511–344.690

Proposed Amendments: 411-200-0010, 411-200-0020, 411-200-0030, 411-200-0035, 411-200-0040

Last Date for Comment: 1-23-14, 5 p.m.

Summary: The Department of Human Services (Department) is proposing to amend the rules for Disability Determination Services (DDS) rates of payment in OAR chapter 411, division 200 to comply with the Code of Federal Regulations.

The proposed rules:

- Remove DDS from the Workers' Compensation fee schedule;
- Link DDS to the United States Department of Health and Human Services (HHS) fee schedule for consultative examinations;
- Remove entities that no longer fit the intent of the rule;
- Reflect current practice and Department terminology; and
- Correct formatting and punctuation.

Rules Coordinator: Christina Hartman

Address: Department of Human Services, Aging and People with Disabilities and Developmental Disabilities, 500 Summer St. NE, E-10, Salem, OR 97301-1074

Telephone: (503) 945-6398

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Rule Caption: Nursing Facility Staffing

Date:	Time:	Location:
2-18-14	2:30 p.m.	Human Services Bldg. 500 Summer St. NE, Rm. 160 Salem, Oregon 97301

Hearing Officer: Staff

Stat. Auth.: ORS 410.070, 410.090, 441.055, 441.073 & 441.615

Stats. Implemented: ORS 410.070, 410.090, 441.055, 441.073 & 441.615

Proposed Amendments: 411-086-0100

Proposed Repeals: 411-086-0100(T)

Last Date for Comment: 2-21-14, 5 p.m.

Summary: The Department of Human Services (Department) is proposing to amend OAR 411-086-0100 to:

- Make permanent temporary rule language that became effective on October 1, 2013 to implement the operational application of the increased nursing assistant staffing to resident ratio for nursing facilities;
- Implement the minimum standard of the increased nursing assistant staffing to residential ratio for nursing facility evening and night shifts to become effective on March 31, 2014;
- Ensure that appropriate forms for public information about the staffing responsibilities of the nursing facility are displayed;
- Reflect current practice and Department terminology; and
- Correct formatting and punctuation.

Rules Coordinator: Christina Hartman

NOTICES OF PROPOSED RULEMAKING

Address: Department of Human Services, Aging and People with Disabilities and Developmental Disabilities, 500 Summer St. NE, E-10, Salem, OR 97301-1074
Telephone: (503) 945-6398

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Rule Caption: Nursing Facility Capacity Reduction
Date: 2-18-14 **Time:** 1:30 p.m. **Location:** Human Services Bldg.
500 Summer Street NE, Rm. 160
Salem, OR 97301

Hearing Officer: Staff
Stat. Auth.: ORS 410.070 & 414.065
Other Auth.: HB 2216 (2013) & 2013 OL Ch. 608
Stats. Implemented: ORS 410.070 & 414.065
Proposed Adoptions: 411-070-0437
Proposed Amendments: 411-070-0005, 411-070-0300, 411-070-0442
Proposed Repeals: 411-070-0005(T), 411-070-0300(T), 411-070-0437(T), 411-070-0442(T)
Last Date for Comment: 2-21-14, 5 p.m.

Summary: The Department of Human Services (Department) is proposing to update the rules in OAR chapter 411, division 070 for Medicaid nursing facilities to make permanent temporary rule language that became effective on October 7, 2013 to implement HB 2216 (2013) which directs the Department to implement a nursing facility capacity reduction.

The proposed rules:

- Establish a statewide bed reduction target for nursing facilities to bring Oregon's occupancy rate closer to the national level;
- Provide an augmented rate for nursing facilities that purchase beds from nursing facilities that are no longer needed;
- Reduce nursing facility reimbursement rates if identified reduction targets are not achieved;
- Authorize annual rebasing of the nursing facility rate; and
- Extend the Nursing Facility Financial Statement deadline to October 31 of each year with no extensions.

Rules Coordinator: Christina Hartman
Address: Department of Human Services, Aging and People with Disabilities and Developmental Disabilities, 500 Summer St. NE, E-10, Salem, OR 97301-1074
Telephone: (503) 945-6398

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Department of Human Services, Child Welfare Programs Chapter 413

Rule Caption: Changing OARs affecting Child Welfare programs
Date: 1-21-14 **Time:** 8 a.m. **Location:** 500 Summer St. NE, Rm. 255
Salem, OR

Hearing Officer: Annette Tesch
Stat. Auth.: ORS 409.050 & 418.005
Other Auth.: Fostering Connections to Success & Increasing Adoptions Act of 2008 (H.R. 6893/P.L. 110-351); 42 USC 671
Stats. Implemented: ORS 409.010, 411.141 & 418.005
Proposed Amendments: 413-070-0900, 413-070-0905, 413-070-0909, 413-070-0917, 413-070-0919, 413-070-0925, 413-070-0934, 413-070-0939, 413-070-0949, 413-070-0959, 413-070-0964, 413-070-0969, 413-070-0974
Last Date for Comment: 1-22-14, 5 p.m.

Summary: These rules (OAR 413-070-0900 to 413-070-0974) about guardianship assistance are being amended to update and clarify various requirements and processes related to guardianship assistance. These rules are being amended to include cases in which the child is in the care or custody of a tribe rather than the Department, and to clarify that certain timeframes are to be counted in calendar days. OAR 413-070-0905 is also being amended to update the circumstances in which a foster parent may be considered a relative for purposes of guardianship assistance. OAR 413-070-0909 is also being

amended to remove language that no longer applies regarding non-relative guardianship assistance. OAR 413-070-0917 is also being amended to clarify the documentation requirements and timeframes for requests for extensions of guardianship assistance for young adults. OAR 413-070-0934 is also being amended to add a timeframe when negotiation of the guardianship assistance agreement is delayed. OAR 413-070-0939 is also being amended to update and streamline the review process when there is disagreement about the base rate payment. OAR 413-070-0964 is also being amended to remove the requirement to submit a copy of the annual report to the Department; to add language allowing the Department to provide information to the guardian, court, or tribe; to request information from guardians, and to establish a timeframe for guardians to respond to inquiries from the Adoption Assistance and Guardianship Assistance Unit. OAR 413-070-0974 is also being amended to state that a child receiving guardianship assistance who is subsequently adopted by the guardian may be eligible for adoption assistance.

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 January 22, 2014 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 - Child Welfare Programs, 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, Child Welfare Programs, 500 Summer St. NE, E-48, Salem, OR 97301-1066
Telephone: (503) 945-6067

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Rule Caption: Changing OARs affecting Child Welfare programs
Date: 1-21-14 **Time:** 8 a.m. **Location:** 500 Summer St. NE, Rm. 255
Salem, OR

Hearing Officer: Annette Tesch
Stat. Auth.: ORS 409.050, 418.005, 418.340
Other Auth.: Adoption Assistance & Child Welfare Act of 1980 (P.L. 96-272); 42 USC 671, 673
Stats. Implemented: ORS 409.010, 418.005, 418.330, 418.335, 418.340
Proposed Amendments: 413-130-0000, 413-130-0010, 413-130-0015, 413-130-0020, 413-130-0040, 413-130-0050, 413-130-0055, 413-130-0070, 413-130-0075, 413-130-0077, 413-130-0080, 413-130-0110, 413-130-0125, 413-130-0130
Last Date for Comment: 1-22-14, 5 p.m.

Summary: These rules (OAR 413-130-0000 to 413-130-0130) about adoption assistance are being amended to update and clarify various requirements, processes, and cross-references related to adoption assistance. Several rules are being amended to clarify that certain timeframes are to be counted in calendar days. OAR 413-130-0010 and 413-130-0080 are also being amended to raise the cap on non-recurring adoption expenses that the Department may reimburse. OAR 413-130-0050 is also being amended to add a timeframe when negotiation of the adoption assistance agreement is delayed. OAR 413-130-0055 is also being amended to clarify the documentation requirements and timeframes for requests for extensions of adoption assistance for young adults. OAR 413-130-0070 is also being amended to update and streamline the review process when there is disagreement about the base rate payment. OAR 413-130-0130 is also being amended to clarify the circumstances in which historic information about the child can be reviewed.

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 January 22, 2014 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 - Child Welfare Programs,

NOTICES OF PROPOSED RULEMAKING

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, Child Welfare Programs, 500 Summer St. NE, E-48, Salem, OR 97301-1066

Telephone: (503) 945-6067

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Rule Caption: Changing OARs affecting Child Welfare programs

Date:	Time:	Location:
1-21-14	8 a.m.	500 Summer St. NE, Rm. 255 Salem, OR

Hearing Officer: Annette Tesch

Stat. Auth.: ORS 409.050, 418.005 & 418.240

Stats. Implemented: ORS 409.010, 418.205–418.325 & 418.990–418.998

Proposed Amendments: 413-215-0918

Last Date for Comment: 1-22-14, 5 p.m.

Summary: OAR 413-215-0918 about consents, disclosures, and authorizations in the context of outdoor youth programs is being amended to remove references to the use of seclusion because seclusion does not occur in outdoor youth program settings

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

Written comments may be submitted until January 22, 2014 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 - Child Welfare Programs, 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, Child Welfare Programs, 500 Summer St. NE, E-48, Salem, OR 97301-1066

Telephone: (503) 945-6067

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Department of Public Safety Standards and Training Chapter 259

Rule Caption: Instructor Certification clarification including minimum requirements, updated definitions, expiration dates, experience, and housekeeping.

Stat. Auth.: ORS 181.640, 181.650, 181.652, 181.653, 181.661, 181.662, 181.664, 181.667 & 183.341

Stats. Implemented: ORS 181.640, 181.650, 181.652, 181.653, 181.661, 181.662, 181.664 & 181.667

Proposed Amendments: 259-008-0005, 259-008-0020, 259-008-0067, 259-008-0080, 259-008-0090

Last Date for Comment: 1-21-14, Close of Business

Summary: DPSST requires anyone instructing a mandated course be certified as an instructor. After reviewing the instructor certification process in its entirety, DPSST proposes the following changes to administrative rule:

The DPSST Standards and Certification Section will continue to certify instructors who meet the minimum standards for certification, to include training, experience, education and criminal history. Standards and Certification will no longer certify instructors on a categorical or topical level. Once an individual meets the minimum requirements and has been certified as an instructor, agencies will be free to use them to instruct mandated courses as they see fit.

This rule adds definitions for “Academy Training Division” and “Standards and Certification,” to differentiate the responsibilities of the Department as a certifying agency and the Department as an employer of certified personnel, as appropriate throughout the rule set.

The F-4 Personnel Action Reporting requirement has been expanded to include agencies employing certified instructors.

Instructor certification will no longer expire after two years. The certification will lapse after five years if the individual has not been

utilized as an instructor. Recertification as an instructor will require reapplication up to and including the successful completion of an Instructor Development Course, depending on the amount of time the certification has been lapsed.

The minimum experience requirement for instructor certification has been clarified. Instructors are required to have a minimum of three-years of certified experience as a public safety officer. The ability for Standards and Certification to waive this requirement based on other relevant professional or educational experience has also been clarified. This encompasses all individuals formerly referred to as “Applied Professions Instructors” and “Subject Matter Expert Instructors.”

The rule governing training records has been expanded to include certified instructors.

Finally, minor housekeeping changes are made for clarity and consistency.

Rules Coordinator: Linsay Hale

Address: Department of Public Safety Standards and Training, 4190 Aumsville Hwy SE, Salem, OR 97317

Telephone: (503) 378-2431

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Rule Caption: Update and clarify the contested case process regarding default orders; housekeeping.

Stat. Auth.: ORS 181.640, 181.661, 181.662, 181.664, 181.878, 181.882, 181.885 & 183.341

Stats. Implemented: ORS 181.640, 181.661, 181.662, 181.664, 181.878 & 181.885.

Proposed Amendments: 259-008-0070, 259-009-0070, 259-060-0300

Last Date for Comment: 1-21-14, Close of Business

Summary: HB 2790 (2010) changed the timeline for serving Notices of Intent to Deny or Revoke Certification or Licensure (NOI). Currently, an NOI is served and the contested case process begins immediately following a Policy Committee’s decision to deny or revoke certification or licensure. If the officer fails to request a hearing within the allotted timeframe, the NOI becomes a final order by default denying or revoking certification or licensure.

This proposed rule clarifies that, even if an NOI defaults to a final order due to lack of timely request for a hearing, DPSST not issue any notifications or make any notations concerning a revocation or denial until the Board has reviewed and affirmed a Policy Committee’s recommendation. This will prevent injury should the Board ultimately disagree with a Policy Committee recommendation.

Finally, an error was discovered in OAR 259-009-0070. Unlawful Use of a Weapon is incorrectly listed as a Category I offense, rather than a Category II offense. Looking at the rule history, this appears to be in error. This proposed rule change will categorize Unlawful Use of a Weapon as a Category II offense.

Rules Coordinator: Linsay Hale

Address: Department of Public Safety Standards and Training, 4190 Aumsville Hwy SE, Salem, OR 97317

Telephone: (503) 378-2431

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Department of Transportation, Highway Division Chapter 734

Rule Caption: Establishment of Speed Limits on Interstate Highways (Except Variable Speed Zones, see OAR 734-020-0018)

Stat. Auth.: ORS 184.616, 184.619, 810.010, 810.180 & 2003 OL Ch. 819

Stats. Implemented: ORS 810.180 & 2003 OL Ch. 819

Proposed Amendments: 734-020-0010

Last Date for Comment: 1-21-14, Close of Business

Summary: ORS 810.180 authorizes the Department of Transportation to conduct speed zone investigations and set speeds on most public roads, including interstate highways. As amended, 734-020-0010 will allow for making small changes to the locations of bound-

NOTICES OF PROPOSED RULEMAKING

aries of current designated speeds (i.e. 55 mph and 60 mph sections) and to streamline the process for establishing new designations of speeds up to one mile in length to improve safety. The process for establishing speed limits on the Interstate more than one mile in length would basically remain the same, with changes allowing the Speed Zone Review Panel to determine if certain considerations are necessary.

Rules Coordinator: Lauri Kunze

Address: Department of Transportation, Highway Division, 355 Capitol St. NE, MS 51, Salem, OR 97301

Telephone: (503) 986-3171

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Department of Transportation, Transportation Safety Division Chapter 737

Rule Caption: Oregon Safe Routes to School Fund definitions

Stat. Auth.: ORS 184.616, 184.619, 184.740 & 184.741

Stats. Implemented: ORS 184.741(2)(c)

Proposed Amendments: 737-025-0010

Last Date for Comment: 1-21-14, Close of Business

Summary: ORS 184.741 states that the Department of Transportation, in consultation with the Transportation Safety Committee, shall establish a safe routes to schools program to assist communities in identifying and reducing barriers and hazards to children walking or bicycling to and from school. In early program development discussions the Oregon Transportation Safety Committee requested that there be a Safe Routes to School Advisory Committee to assist the TSD Program Manager.

This rulemaking amends the definition of Safe Routes to School Advisory Committee to remove the reference to nine members.

Rules Coordinator: Lauri Kunze

Address: Department of Transportation, Transportation Safety Division, 355 Capitol St. NE, MS 51, Salem, OR 97301

Telephone: (503) 986-3171

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Oregon Criminal Justice Commission Chapter 213

Rule Caption: Amends Oregon Sentencing Guidelines to implement enactments of the 2013 Legislature

Stat. Auth.: ORS 137.667

Stats. Implemented: ORS 137.667; SB 6 (2013), SB 124 (2013), SB 141(2013), SB 482 (2013), SB 673 (2013), HB 2334 (2013) & HB 3194 (2013)

Proposed Adoptions: Rules in 213-018

Proposed Amendments: Rules in 213-003, 213-008, 213-017, 213-019

Proposed Repeals: Temporary rules in 213-017, 213-018, 213-019

Last Date for Comment: 1-28-14, Close of Business

Summary: These rules are needed to implement 2013 legislative enactments. Some of these changes have already been implemented as temporary rules.

Under ORS 137.667(2), the Oregon Criminal Justice Commission (the Commission) may adopt changes to the Oregon Sentencing Guidelines. SB 124 (2013) was effective June 6, 2013. That bill states that, for sentences imposed on or after that date, the court may consider "evidence regarding the defendant's status as a servicemember as defined in ORS 135.881" as a mitigating factor in sentencing. SB 124 (2013).

Under ORS 137.667(1), the Commission is required to review legislation creating new crimes and modifying existing crimes, and adopt any necessary changes to the sentencing guidelines. SB 6 (2013) became effective August 1, 2013. That bill contains a directive to the Commission to classify felony Animal Abuse in the First Degree as crime category 6 of the sentencing guidelines grid. Section 2, SB 6 (2013). The bill also requires the Commission to classify Aggravated Animal Abuse in the First Degree as crime category 6 of the sentencing guidelines grid. Section 3, SB 6 (2013).

Moreover, the bill requires the Commission to classify felony Animal Neglect in the Second Degree as a crime category 6 if 11 to 40 animals were the subject of the neglect, and as a crime category 7 if more than 40 animals were the subject of the neglect or if the offense is a felony because of circumstances described in ORS 167.325(3)(a) or (3)(c). Section 4, SB 6 (2013). Finally, the bill requires the Commission to classify felony Animal Neglect in the First Degree as a crime category 6 if 10 to 40 animals were the subject of the neglect, and at a crime category 7 if more than 40 animals were the subject of the neglect or if the offense is a felony because of circumstances described in ORS 167.330(3)(a) or (3)(c). Section 5, SB 6 (2013). HB 3194 became effective July 25, 2013, and applies to sentences imposed on or after August 1, 2013. That bill contains a directive to the Commission to classify a felony offense of Driving While Suspended or Revoked under ORS 811.182 as a crime category 4 of the sentencing guidelines. Section 3, HB 3194 (2013). The bill requires the Commission to maintain the classification of felony Driving While Suspended or Revoked under ORS 811.182 as a crime category 6 of the sentencing guidelines if the if the suspension or revocation resulted from either a) any degree of Murder, Manslaughter or Criminally Negligent Homicide or an Assault that causes serious physical injury, resulting from the operation of a motor vehicle, or b) Aggravated Vehicular Homicide or Aggravated Driving while Suspended or Revoked. The bill also removes certain Delivery to Minors offenses from Crime Category 8 of the sentencing guidelines and makes other changes pertaining to sentencing and supervision of offenders. With regard to these and other bills, the Commission also must decide whether to categorize new and modified crimes as person crimes, and decide crime seriousness scale categorization (if any) for new and modified crimes for which it has not received an express legislative classification.

These rules are needed to permanently implement the legislative enactments in these bills.

Rules Coordinator: Craig Prins

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

Telephone: (503) 378-4830

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Oregon Department of Education Chapter 581

Rule Caption: Establishes Regional STEM Hubs and STEM/CTE Program Grants

Date:	Time:	Location:
2-27-14	9 a.m.	255 Capital St. NE, Rm. 251A Salem, OR

Hearing Officer: Emily Nazarov

Stat. Auth.: 2013 OL Ch. 661, Sec. 4 (Enrolled HB 3232)

Stats. Implemented: 2013 OL Ch. 661, Sec. 4 (Enrolled HB 3232)

Proposed Adoptions: 581-017-0300, 581-017-0305, 581-017-0308, 581-017-0311, 581-017-0314, 581-017-0317, 581-017-0320, 581-017-0323, 581-017-0326, 581-017-0329, 581-017-0332

Last Date for Comment: 2-27-14, 5 p.m.

Summary: Under the Connecting to the World of Work Program in HB 3232, funds were designated for the purpose of creating or expanding regional STEM Hubs and for providing STEAM and CTE programs and activities with grants. The rules implement the Hubs and grants.

Rules Coordinator: Cindy Hunt

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

Telephone: (503) 947-5651

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Rule Caption: Oregon Minority Educators Retention Grant Program

Date:	Time:	Location:
2-27-14	9 a.m.	255 Capital St. NE, Rm. 251A Salem, OR

Hearing Officer: Emily Nazarov

NOTICES OF PROPOSED RULEMAKING

Stat. Auth.: 2013 OL Ch. 661, Sec. 1 (Enrolled HB 3233)
Stats. Implemented: 2013 OL Ch. 661, Sec. 1 (Enrolled HB 3233)
Proposed Adoptions: 581-018-0380, 581-018-0385, 581-018-0390, 581-018-0395, 581-018-0397, 581-018-0399
Last Date for Comment: 2-27-14, 5 p.m.
Summary: The rules establish the Oregon Minority Educator Retention Grant Program as one of the methods to address the specific direction of HB 3233. Grants are competitive and award based. The targeted outcome is to increase the number of education professionals who are non white, hispanic or whose native language is not English.
Rules Coordinator: Cindy Hunt
Address: Oregon Department of Education, 255 Capitol St. NE, Salem, OR 97310
Telephone: (503) 947-5651

Rule Caption: Establishes Oregon Minority Educator Pipeline Model Grant Program
Date: 2-27-14 **Time:** 9 a.m. **Location:** 255 Capital St. NE, Rm. 251A Salem, OR

Hearing Officer: Emily Nazarov
Stat. Auth.: 2013 OL Ch. 661, Sec. 1 (Enrolled HB 3233)
Stats. Implemented: 2013 OL Ch. 661, Sec. 1 (Enrolled HB 3233)
Proposed Adoptions: 581-018-0400, 581-018-0405, 581-018-0410, 581-018-0415, 581-018-0420, 581-018-0424
Last Date for Comment: 2-27-14, 5 p.m.
Summary: The rules establish an Oregon Educator Pipeline Models Grant program, the purpose of which is to support stakeholders to collaborate to expand models for recruiting and retaining educators who are culturally or linguistically diverse. The targeted outcome is to increase the number of education professionals.
Rules Coordinator: Cindy Hunt
Address: Oregon Department of Education, 255 Capitol St. NE, Salem, OR 97310
Telephone: (503) 947-5651

Rule Caption: Poverty Eligibility Determination for Purposes of State School Fund Distribution
Stat. Auth.: ORS 327.013 & 327.125
Stats. Implemented: ORS 327.013
Proposed Adoptions: 581-023-0102
Last Date for Comment: 1-23-14, 12 p.m.
Summary: The State School Funding formula allows an additional weighting factor for students in poverty. The rule addresses how to determine poverty eligibility for purposes of the State School Fund distribution.
Rules Coordinator: Cindy Hunt
Address: Oregon Department of Education, 255 Capitol St. NE, Salem, OR 97310
Telephone: (503) 947-5651

Oregon Health Authority Chapter 943

Rule Caption: Requirements for contracting Business Associates to comply with federal security and privacy statutes and rules
Date: 1-22-14 **Time:** 2 p.m. **Location:** 500 Summer St. NE, Rm. 137 D Salem, OR 97301

Hearing Officer: Staff
Stat. Auth.: ORS 413.042
Stats. Implemented: ORS 179.505, 192.553, 192.556–192.581, 413.032, 413.042 & 414.065
Proposed Adoptions: 943-014-0400, 943-014-0410, 943-014-0415, 943-014-0420, 943-014-0430, 943-014-0435, 943-014-0440, 943-014-0445, 943-014-0450, 943-014-0455, 943-014-0460, 943-014-0465
Proposed Repeals: 943-014-0050

Last Date for Comment: 1-24-14, 5 p.m.
Summary: In January 2013, the Department of Health and Human Services issued new guidelines for the Health Insurance Portability and Accountability Act. These guidelines affect the Oregon Health Authority as the state's Medicaid agency as well as some of the Authority's other functions and many of the Authority's partners and associates. The Authority needs to adopt these rules to meet compliance requirements for partners meeting the business associates definition.
The Authority is repealing OAR 943-014-0050 because the requirements of that rule being replaced by the new rules.
Rules Coordinator: Evonne Alderete
Address: Oregon Health Authority, 500 Summer St. NE, Salem, OR 97301
Telephone: (503) 932-9663

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

Rule Caption: Permanent adoption of rules entitled Licensed Children's Emergency Safety Intervention Specialist.
Date: 1-22-14 **Time:** 1 p.m. **Location:** 500 Summer St. NE, Rm.160 Salem, OR

Hearing Officer: Nola Russell
Stat. Auth.: ORS 413.042 & 426.415
Stats. Implemented: ORS 109.675, 161.390–161.400, 179.505, 413.520–413.522, 426.380–426.395, 426.490–426.500, 430.010, 430.205–430.210, 430.240–430.640, 430.850–430.955, 443.400–443.460, 443.991 & 743A.168
Proposed Adoptions: 309-022-0100, 309-022-0105, 309-022-0110, 309-022-0115, 309-022-0120, 309-022-0125, 309-022-0130, 309-022-0135, 309-022-0140, 309-022-0145, 309-022-0150, 309-022-0155, 309-022-0160, 309-022-0165, 309-022-0170, 309-022-0175, 309-022-0180, 309-022-0185, 309-022-0190, 309-022-0192, 309-022-0195, 309-022-0200, 309-022-0205, 309-022-0210, 309-022-0215, 309-022-0220, 309-022-0225, 309-022-0230
Proposed Repeals: 309-032-1500, 309-032-1505, 309-032-1510, 309-032-1515, 309-032-1520, 309-032-1525, 309-032-1530, 309-032-1535, 309-032-1540, 309-032-1545, 309-032-1550, 309-032-1555, 309-032-1560, 309-032-1565, 309-034-0400, 309-034-0410, 309-034-0420, 309-034-0430, 309-034-0440, 309-034-0450, 309-034-0460, 309-034-0470, 309-034-0480, 309-034-0490, 309-034-0500
Last Date for Comment: 1-28-14, Close of Business
Summary: These rules address a variety of issues related to the provision of Intensive Treatment Services and the licensing of Children's Emergency Safety Intervention Specialists. These rules detail the minimum expectations for providers licensed by the Addictions and Mental Health Division.
Rules Coordinator: Nola Russell
Address: Oregon Health Authority, Addictions and Mental Health Division: Mental Health Services, 500 Summer St. NE, E86, Salem, OR 97301-1118
Telephone: (503) 945-7652

Rule Caption: Permanent adoption of OAR 309-019-100 through 309-019-200.
Date: 1-22-14 **Time:** 1 p.m. **Location:** 500 Summer St. NE, Rm.160 Salem, OR

Hearing Officer: Nola Russell
Stat. Auth.: ORS 413.042
Stats. Implemented: ORS 109.675, 161.390–161.400, 413.520–413.522, 430.010, 430.205–430.210, 430.240–430.640, 430.850, 430.850–430.955, 461.549, 743A.168, 813.010–813.052 & 813.200–813.270

NOTICES OF PROPOSED RULEMAKING

Proposed Adoptions: 309-019-0100, 309-019-0105, 309-019-0110, 309-019-0115, 309-019-0120, 309-019-0125, 309-019-0130, 309-019-0135, 309-019-0140, 309-019-0145, 309-019-0150, 309-019-0155, 309-019-0160, 309-019-0165, 309-019-0170, 309-019-0175, 309-019-0180, 309-019-0185, 309-019-0190, 309-019-0195, 309-019-0200, 309-019-0205, 309-019-0210, 309-019-0215, 309-019-0220

Proposed Repeals: 309-019-0100(T), 309-019-0105(T), 309-019-0110(T), 309-019-0115(T), 309-019-0120(T), 309-019-0125(T), 309-019-0130(T), 309-019-0135(T), 309-019-0140(T), 309-019-0145(T), 309-019-0150(T), 309-019-0155(T), 309-019-0160(T), 309-019-0165(T), 309-019-0170(T), 309-019-0175(T), 309-019-0180(T), 309-019-0185(T), 309-019-0190(T), 309-019-0195(T), 309-019-0200(T), 309-019-0205(T), 309-019-0210(T), 309-019-0215(T), 309-019-0220(T)

Last Date for Comment: 1-28-14, Close of Business

Summary: These rules prescribe minimum standards for the services and supports provided by addictions and mental providers approved by the Addictions and Mental Health Division of the Oregon Health Authority. These rules:

1. Promote recovery, resiliency, wellness, independence and safety for individuals receiving addictions and mental health supports;
2. Specify standards for services and supports that are person-directed, youth guided, family-driven, culturally competent, trauma-informed and wellness-informed; and
3. Promote functional and rehabilitative outcomes for individuals that are developmentally appropriate.

Rules Coordinator: Nola Russell

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

Telephone: (503) 945-7652

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Rule Caption: Proposed repeal to OAR 309-100-0000 entitled Patient and Resident Rights.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 179.360 & 426.385

Proposed Repeals: 309-100-0000

Last Date for Comment: 1-28-14, Close of Business

Summary: This rule addresses non-discriminatory admission practices for the Oregon State Hospital system.

Rules Coordinator: Nola Russell

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

Telephone: (503) 945-7652

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Rule Caption: Proposed repeals to OAR 309-011-0070 through 309-011-0095 entitled Non Discrimination on Basis of Handicap.

Stat. Auth.: OAR 413.042

Stats. Implemented: ORS 659A.103 & 659A.142

Proposed Repeals: 309-011-0070 – 309-011-0095

Last Date for Comment: 1-28-14, Close of Business

Summary: These rules prescribe the procedures to be followed by the Addictions and Mental Health Division and its contractors to prevent discrimination on the basis of physical or mental handicap. These rules carry out the provisions of ORS 659A.103 and 659A.142.

Rules Coordinator: Nola Russell

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

Telephone: (503) 945-7652

Oregon Health Authority, Division of Medical Assistance Programs Chapter 410

Rule Caption: Amendment of HERC Prioritized List of Health Services reflecting approved modifications effective October 1, 2013

Date:	Time:	Location:
1-15-14	10:30 a.m.	500 Summer St. NE, Rm. 137C Salem, OR 97301

Hearing Officer: Sandy Cafourek

Stat. Auth.: ORS 192.527, 192.528, 413.042 & 414.065

Other Auth.: HB 2100

Stats. Implemented: ORS 192.527, 192.528, 414.010, 414.065 & 414.727

Proposed Amendments: 410-141-0520

Last Date for Comment: 1-17-14, 5 p.m.

Summary: The OHP Program administrative rules govern the Division of Medical Assistance Programs' payments for services provided to clients. The Division needs to permanently amend 410-141-0520 to reference the Oregon Health Services Commission's Prioritized List of Health Services' January 1, 2011–December 31, 2013, Prioritized List of Health Services effective October 1, 2013, including interim modifications and technical changes made for 2009 national code set.

Rules Coordinator: Sandy Cafourek

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

Telephone: (503) 945-6430

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Rule Caption: Rules related to Substance Use Disorder Residential Treatment Managed Care Enrollment Process and Procedures

Date:	Time:	Location:
1-15-14	10:30 a.m.	500 Summer St. NE, Rm. 137C Salem, OR 97301

Hearing Officer: Sandy Cafourek

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.065

Proposed Adoptions: 410-141-0065, 410-141-3065

Last Date for Comment: 1-17-14, 5 p.m.

Summary: The Division needs to amend these rules to clarify the Substance Use Disorder Residential Treatment Services managed care enrollment process and procedures. All other revisions are to clarify current policy or for housekeeping purposes.

Rules Coordinator: Sandy Cafourek

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

Telephone: (503) 945-6430

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Rule Caption: Amend Pharmacy and Therapeutics Committee rule to remove expiration date and clarity given to safety

Date:	Time:	Location:
1-15-14	10:30 a.m.	500 Summer St. NE, Rm. 137C Salem, OR 97301

Hearing Officer: Sandy Cafourek

Stat. Auth.: ORS 413.042, 414.065, 414.355, 414.360, 414.365, 414.370 & 414.380

Other Auth.: HB 2100 & ORS sited

Stats. Implemented: ORS 414.065 & 2011 OL

Proposed Amendments: 410-121-0111

Last Date for Comment: 1-17-14, 5 p.m.

Summary: Rule changes include the removal of expiration date and addition of clarification regarding responsibility of committee to recipient safety.

Rules Coordinator: Sandy Cafourek

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

Telephone: (503) 945-6430

NOTICES OF PROPOSED RULEMAKING

Rule Caption: Align with Department of Human Services OAR Chapter 461, medical eligibility rules
Stat. Auth.: ORS 413.042
Stats. Implemented: ORS 413.042 & 414.065
Proposed Amendments: 410-120-0006
Last Date for Comment: 1-16-14, 5 p.m.

Summary: 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) revision of medical eligibility rules in Chapter 461, the Division is amending OAR 410-120-0006 to assure that the Division's medical eligibility rule aligns with and reflects information found in the Department's medical 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 conjunction.

Rules Coordinator: Sandy Cafourek
Address: Oregon Health Authority, Division of Medical Assistance Programs, 500 Summer St. NE, Salem, OR 97301
Telephone: (503) 945-6430

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**Oregon Health Authority,
Office of Private Health Partnerships
Chapter 442**

Rule Caption: Family Health Insurance Assistance Program (FHIAP) abolished; Administrative Rules repealed
Stat. Auth.: ORS 414.858

Other Auth.: 2013 OL Ch. 681 (Enrolled HB 2240)

Stats. Implemented: ORS 414.841-414.864

Proposed Repeals: 442-005-0000, 442-005-0010, 442-005-0020, 442-005-0030, 442-005-0040, 442-005-0050, 442-005-0060, 442-005-0070, 442-005-0080, 442-005-0090, 442-005-0100, 442-005-0110, 442-005-0120, 442-005-0130, 442-005-0140, 442-005-0150, 442-005-0160, 442-005-0170, 442-005-0180, 442-005-0190, 442-005-0200, 442-005-0210, 442-005-0220, 442-005-0230, 442-005-0235, 442-005-0240, 442-005-0250, 442-005-0260, 442-005-0270, 442-005-0275, 442-005-0280, 442-005-0290, 442-005-0300, 442-005-0310, 442-005-0320, 442-005-0330, 442-005-0340

Last Date for Comment: 1-24-14, 5 p.m.

Summary: The Oregon Health Authority, Office of Private Health Partnerships, is proposing to permanently repeal Oregon Administrative Rules related to the Family Health Insurance Assistance Program within the Office of Private Health Partnerships.

Due to Medicaid expansion as a result of federal legislation, this program is no longer necessary.

Rules Coordinator: Wanda Davis

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

Telephone: (503) 378-5901

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Rule Caption: Healthy KidsConnect Private Health Option abolished, Administrative Rules repealed

Stat. Auth.: ORS 414.231, 414.826 & 735.707

Other Auth.: 2013 OL Ch. 365 §1 (Enrolled HB 2091)

Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839

Proposed Repeals: 442-010-0010, 442-010-0020, 442-010-0030, 442-010-0040, 442-010-0050, 442-010-0055, 442-010-0060, 442-010-0070, 442-010-0075, 442-010-0080, 442-010-0085, 442-010-0090, 442-010-0100, 442-010-0120, 442-010-0130, 442-010-0140, 442-010-0150, 442-010-0160, 442-010-0170, 442-010-0180, 442-010-0190, 442-010-0210, 442-010-0215, 442-010-0220, 442-010-0230, 442-010-0240, 442-010-0260, 442-010-0270

Last Date for Comment: 1-24-14, 5 p.m.

Summary: The Oregon Health Authority, Office of Private Health Partnerships, is proposing to permanently repeal Oregon Administrative Rules related to the Healthy KidsConnect Private Health Option within the Office of Private Health Partnerships.

Due to Medicaid expansion as a result of federal legislation, this program is no longer necessary.

Rules Coordinator: Wanda Davis

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

Telephone: (503) 378-5901

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**Oregon Health Authority,
Oregon Educators Benefit Board
Chapter 111**

Rule Caption: Amended to update and include new definitions used by OEBB

Date:	Time:	Location:
1-22-14	10:30 a.m.	1225 Ferry St. SE OEBB Boardroom Salem, OR 97301

Hearing Officer: OEBB Staff

Stat. Auth.: ORS 243.860 to 243.886

Stats. Implemented: ORS 243.864(1)(a)

Proposed Amendments: 111-010-0015

Last Date for Comment: 1-31-14, 5 p.m.

Summary: Amendments to 111-010-0015 include and update and new definitions used by OEBB. Due to the expanding eligibility criteria, OEBB added a definition that will encompass all of our eligible groups. Additionally, these proposed amendments updates OEBB's definition of 'spouse' to be in line with state and federal regulation.

Rules Coordinator: April Kelly

Address: Oregon Health Authority, Oregon Educators Benefit Board, 1225 Ferry St. SE, Salem, OR 97301

Telephone: (503) 378-6588

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Rule Caption: Amendments update language when a member returns to benefits eligible status and other housekeeping amendments

Date:	Time:	Location:
1-22-14	10:30 a.m.	1225 Ferry St. SE OEBB Boardroom Salem, OR 97301

Hearing Officer: OEBB Staff

Stat. Auth.: ORS 243.860-243.886

Stats. Implemented: ORS 243.864(1)(a)

Proposed Amendments: 111-040-0001, 111-040-0005, 111-040-0010, 111-040-0011, 111-040-0015, 111-040-0025, 111-040-0030, 111-040-0040, 111-040-0050

Last Date for Comment: 1-31-14, 5 p.m.

Summary: Proposed amendments update language when a member returns to a benefit eligible status. Proposed housekeeping amendments to this rule align with the new definition in Division 10, Definitions.

Rules Coordinator: April Kelly

Address: Oregon Health Authority, Oregon Educators Benefit Board, 1225 Ferry St. SE, Salem, OR 97301

Telephone: (503) 378-6588

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**Oregon Health Authority,
Public Health Division
Chapter 333**

Rule Caption: Certification of backflow assembly testers, cross connection specialists, and water system operators

Date:	Time:	Location:
1-22-14	10 a.m.	Portland State Office Bldg. 800 NE Oregon St., Rm. 1B Portland, OR 97232

Hearing Officer: Jana Fussell

Stat. Auth.: ORS 448.131

Stats. Implemented: ORS 431.110, 431.120, 431.150, 448.131, 448.150, 448.268, 448.273, 448.278, 448.279, 448.280, 448.285,

NOTICES OF PROPOSED RULEMAKING

448.290, 448.405, 448.450, 448.455, 448.460, 448.465, 448.990 & 448.994

Proposed Adoptions: 333-061-0232

Proposed Amendments: 333-061-0020, 333-061-0065, 333-061-0072, 333-061-0073, 333-061-0090, 333-061-0210, 333-061-0220, 333-061-0225, 333-061-0228, 333-061-0230, 333-061-0235, 333-061-0245, 333-061-0250, 333-061-0260, 333-061-0265, 333-061-0270, 333-061-0272

Proposed Repeals: 333-061-0205, 333-061-0290

Last Date for Comment: 1-24-14, 5 p.m.

Summary: The Oregon Health Authority (Authority), Public Health Division is proposing to permanently adopt, amend and repeal Oregon Administrative Rules in chapter 333, division 61 relating to the certification of backflow assembly testers, cross connection specialists, and water system operators.

The proposed rule adoption and amendments have been identified as a means to improve public health protection by improving accountability amongst water system operators. Proposed rule amendments also streamline the certification process for backflow assembly testers, cross connection specialists, and water system operators. The proposed rule repeal has been identified as a means to improve rule clarity by removing redundant or unnecessary regulatory language.

Proposed rule provisions would reduce the frequency at which water system operators must renew their certification, require individual water system operators to submit accurate documents to the Authority, and protect public health by requiring water system operators to notify the Authority when threats to the public health are observed. Proposed amendments would also generally improve rule clarity and remove redundant regulatory language.

Rules Coordinator: Brittany Sande

Address: Oregon Health Authority, Public Health Division, 800 NE Oregon St., Suite 930, Portland, OR 97232

Telephone: (971) 673-1291

Rule Caption: Patient notification by practitioners as required by the passage of SB 683 (2013)

Date:	Time:	Location:
3-11-14	1 p.m.	Portland State Office Bldg. 800 NE Oregon St., Rm. 1E Portland, OR 97232

Hearing Officer: Jana Fussell

Stat. Auth.: ORS 441.098

Stats. Implemented: ORS 441.098, 2013 OL Ch. 552

Proposed Adoptions: 333-072-0200, 333-072-0205, 333-072-0210, 333-072-0215, 333-072-0220, 333-072-0225

Last Date for Comment: 3-11-14, 5 p.m.

Summary: The Oregon Health Authority, Public Health Division is proposing to adopt Oregon Administrative Rules in chapter 333, division 72 relating to notice of patient choice and financial interest in response to the passage of SB 683 during the 2013 legislative session.

The Legislature delegated to the Oregon Health Authority rule-making authority to implement SB 683's requirements for certain medical practitioners to provide notice of patient choice and notice of financial interest when making referrals for diagnostic tests, health care services or treatment.

The proposed rules provide for oral and written notice of patient choice and financial choice at designated times.

Implementation of the rules will ensure that health care consumers are aware of their rights to choose care providers and when their provider has a financial interest in a facility to which they are being referred.

Rules Coordinator: Brittany Sande

Address: Oregon Health Authority, Public Health Division, 800 NE Oregon St., Suite 930, Portland, OR 97232

Telephone: (971) 673-1291

Rule Caption: Amendment of State Public Health Laboratory test fees

Stat. Auth.: ORS 431.310

Stats. Implemented: ORS 431.310

Proposed Amendments: 333-024-0240

Proposed Repeals: 333-024-0241

Last Date for Comment: 1-22-14, 5 p.m.

Summary: The Oregon Health Authority, Public Health Division, Oregon State Public Health Laboratory is proposing to permanently amend and repeal administrative rules in chapter 333, division 24. The proposed amendment of OAR 333-024-0240 will amend State Public Health Laboratory test fees to align them with the August 2013 Division of Medical Assistance Programs (DMAP) Fee for Service Fee Schedule, with the proposed fee changes becoming effective March 1, 2014. OAR 333-024-0241 is being repealed as it pertains to effective dates of rules and is no longer necessary since that information is provided in the history line of each rule.

Rules Coordinator: Brittany Sande

Address: Oregon Health Authority, Public Health Division, 800 NE Oregon St., Suite 930, Portland, OR 97232

Telephone: (971) 673-1291

Oregon Liquor Control Commission Chapter 845

Rule Caption: Expands training requirement to cover all employees selling for off-premises consumption; creates new training option.

Date:	Time:	Location:
1-28-14	10 a.m.	9079 SE McLoughlin Blvd. Portland, OR 97222

Hearing Officer: Annabelle Henry

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

Stats. Implemented: ORS 471.730(1)

Proposed Amendments: 845-009-0130

Last Date for Comment: 2-11-14, 5 p.m.

Summary: This rule describes training requirements for Off-Premises Sales employees. Specifically, it requires an Off-Premises Sales licensee to ensure that each employee read, sign and date a Commission-provided training brochure, or a comparable licensee-provided training brochure, before allowing the employee to sell alcoholic beverages. The proposed amendments would allow a service permit to satisfy this training requirement, effectively creating a new training option, which would eliminate training redundancies among employees now required to hold a service permit to dispense securely covered containers provided by the consumer and employees who elect to obtain a service permit for other reasons. The proposed amendments also extend the training requirements described in this rule to all other employees who sell alcohol for off-premises consumption and restructure the rule to improve its clarity.

Rules Coordinator: Annabelle Henry

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

Telephone: (503) 872-5004

Rule Caption: Delegates authority to approve redemption centers to the Commission's Executive Director (Administrator).

Date:	Time:	Location:
1-30-14	10 a.m.	9079 SE McLoughlin Blvd. Portland, OR 97222

Hearing Officer: Annabelle Henry

Stat. Auth.: ORS 459A.735(1), (3) & (4), 459A.737(4)

Stats. Implemented: ORS 459A.735

Proposed Amendments: 845-020-0020

Last Date for Comment: 2-13-14, 5 p.m.

Summary: This rule describes the criteria for approving redemption centers for the return of empty beverage containers. The proposed

NOTICES OF PROPOSED RULEMAKING

amendments would delegate the authority to approve redemption centers from the Commissioners to the Commission's Executive Director (the Administrator).

Rules Coordinator: Annabelle Henry

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

Telephone: (503) 872-5004

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Oregon Public Employees Retirement System Chapter 459

Rule Caption: Clarify participant eligibility and service time used in apportioning the health insurance premium.

Date:	Time:	Location:
2-25-14	2 p.m.	PERS Boardroom 11410 SW 68th Pkwy. Tigard, OR

Hearing Officer: Daniel Rivas

Stat. Auth.: ORS 238.410, 238.650 & 238A.450

Stats. Implemented: ORS 238.410, 238.415, 238.420 & 238A.050

Proposed Amendments: 459-035-0001, 459-035-0050

Last Date for Comment: 3-4-14, 5 p.m.

Summary: ORS 238.415 established the Retiree Health Insurance Premium Account (RHIPA) that pays a monthly subsidy that is applied toward the cost of healthcare coverage for eligible retired state employees who are not Medicare eligible. This subsidy applies only to PERS retirees who retire from a state employer and who immediately apply for their pension. The State of Oregon is the sole employer participating and funding the RHIPA program for their eligible state employees.

Participants of the RHIPA program are eligible state employees or a surviving spouse or dependent of a deceased eligible state employee who retired for service or disability and who must have 8 years or more of "qualifying service." The monthly premium subsidy is apportioned based on a retired state employee's "qualifying service" time, beginning with 8 years of service at 50 percent subsidy and incrementally increasing the service time to 30 years or more with the maximum subsidy paid to a career state employee.

There is confusion regarding the appropriate "qualifying service" that is used in determining eligibility and the amount of health insurance premium subsidy for a retired state employee. The revisions of these rules will clarify that RHIPA eligibility and subsidy is based on "qualifying service" from employment with a state employer only.

Rules Coordinator: Daniel Rivas

Address: Oregon Public Employees Retirement System, PO Box 23700, Tigard, OR 97281

Telephone: (503) 603-7713

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Rule Caption: Revise definition of "major fraction of a month" for purposes of determining retirement credit.

Date:	Time:	Location:
2-25-14	2 p.m.	PERS Boardroom 11410 SW 68th Pkwy. Tigard, OR 97223

Hearing Officer: Daniel Rivas

Stat. Auth.: ORS 238.650 & 238A.450

Stats. Implemented: ORS 238.005, 238.300 & 238A.140

Proposed Amendments: 459-010-0014, 459-075-0150

Last Date for Comment: 3-4-14, 5 p.m.

Summary: The proposed modifications revise the definition of "major fraction of a month" in 459-010-0014(1)(c) and 459-075-0150(1)(b) to remove the "50 hours in any calendar month" reference for purposes of determining retirement credit.

Rules Coordinator: Daniel Rivas

Address: Oregon Public Employees Retirement System, PO Box 23700, Tigard, OR 97281

Telephone: (503) 603-7713

Rule Caption: Clarify the receipt stamp affixation/display requirement for received items.

Date:	Time:	Location:
2-25-14	2 p.m.	PERS Boardroom 11410 SW 68th Pkwy. Tigard, OR 97223

Hearing Officer: Daniel Rivas

Stat. Auth.: ORS 238.650 & 238A.450

Stats. Implemented: ORS 238 & 238A

Proposed Amendments: 459-005-0220

Last Date for Comment: 3-4-14, 5 p.m.

Summary: Clarify the receipt stamp affixation/display requirement to include the receipt log for checks, and the presumption that if no date stamp is displayed the item will be deemed filed and received three business days before the imaged date.

Rules Coordinator: Daniel Rivas

Address: Oregon Public Employees Retirement System, PO Box 23700, Tigard, OR 97281

Telephone: (503) 603-7713

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Rule Caption: Adopt the Attorney General's Model Rules of Procedure.

Date:	Time:	Location:
2-25-14	2 p.m.	PERS Boardroom 11410 SW 68th Pkwy. Tigard, OR

Hearing Officer: Daniel Rivas

Stat. Auth.: ORS 183.341 & 238.650

Stats. Implemented: ORS 238.078, 238.082, 238.092, 399.075 & 2007 OL Ch. 499 & 774

Proposed Amendments: 459-001-0005

Last Date for Comment: 3-4-14, 5 p.m.

Summary: OAR 459-001-0005 adopted the Attorney General's Model Rules of Procedure that became effective on January 1, 2008 as the PERS Board's rules of procedure. The Model Rules were updated on January 31, 2012; the proposed rule modification adopts this new version as the Board's rules of procedure.

Rules Coordinator: Daniel Rivas

Address: Oregon Public Employees Retirement System, PO Box 23700, Tigard, OR 97281

Telephone: (503) 603-7713

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Rule Caption: Update rules to reflect 2014 Internal Revenue Code (IRC) compensation limitations.

Stat. Auth.: ORS 238.630, 238.650, 238A.370 & 238A.450

Stats. Implemented: ORS 238 & 238A

Proposed Amendments: 459-005-0525, 459-005-0545, 459-080-0500

Last Date for Comment: 1-31-14, 1:30 p.m.

Summary: Annually, the Internal Revenue Service revises various dollar limits based on cost of living adjustments. These revisions are used throughout the PERS plan's statutes and rules, but revisions to the limits must be adopted by the legislature or PERS Board to be effective.

The IRS' revisions that are to be effective for calendar year 2014 have been announced. The rule modifications incorporate these adjustments and make non-substantive edits to update citations and effective dates. These updates are necessary to ensure PERS compliance with the IRC's limits on the amount of annual compensation allowed for determining contributions and benefits, the limits on annual benefits, and the limits on annual additions to PERS.

Rules Coordinator: Daniel Rivas

Address: Oregon Public Employees Retirement System, PO Box 23700, Tigard, OR 97281

Telephone: (503) 603-7713

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Rule Caption: Update rule to reflect the most recent Social Security annual compensation limitations.

NOTICES OF PROPOSED RULEMAKING

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.078, 238.082, 238.092, 399.075 & 2007 OL Ch. 499 & 774

Proposed Amendments: 459-017-0060

Last Date for Comment: 1-31-14, 1:30 p.m.

Summary: Under ORS 238.082, a Tier One or Tier Two retired member who returns to PERS-covered employment may continue to receive their retirement benefits so long as they work less than 1,040 hours in a calendar year or the number of hours the member can work and not exceed the Social Security annual compensation limits.

The Social Security Administration has announced the 2014 Social Security annual compensation limits. The new limits are \$15,480 (for retired members who have not reached full retirement age under the Social Security Act), and \$41,400 (for the calendar year in which the retired member reaches full retirement age under the Social Security Act and only for compensation for the months before reaching full retirement age).

The proposed modifications to OAR 459-017-0060 reflect the 2014 Social Security earnings limitations. The new limitations are not effective for PERS purposes until adopted by the Board.

Rules Coordinator: Daniel Rivas

Address: Oregon Public Employees Retirement System, PO Box 23700, Tigard, OR 97281

Telephone: (503) 603-7713

Oregon University System, Western Oregon University Chapter 574

Rule Caption: Revisions to special course fees and general services fees.

Stat. Auth.: ORS 351.070 & 351.072

Stats. Implemented: ORS 351.070 & 351.072

Proposed Amendments: 574-050-0005

Last Date for Comment: 1-22-14, 5 p.m.

Summary: Amendments will allow for increases, additions, and revisions of special course fees and general services fees.

Rules Coordinator: Dawn Brown

Address: Oregon University System, Western Oregon University, 345 N Monmouth Ave., Monmouth, OR 97361

Telephone: (503) 838-8472

Oregon Utility Notification Center Chapter 952

Rule Caption: Housekeeping and Clarifying Amendments and Adoption of a Permanent Notice Rule.

Stat. Auth.: ORS Ch. 183, 757

Stats. Implemented: ORS 183.341, 757.542-757.562 & 757.993

Proposed Adoptions: 952-001-0003

Proposed Amendments: 952-001-0010, 952-001-0020, 952-001-0030, 952-001-0040, 952-001-0050, 952-001-0060, 952-001-0070, 952-001-0080, 952-001-0090, 952-001-0100

Proposed Repeals: 952-001-0003(T)

Last Date for Comment: 1-24-14, 5 p.m.

Summary: The proposed rule changes provide housekeeping amendments and clarification to the existing rules, and adopt permanently the notice rule that was adopted on a temporary basis. The Oregon Utility Notification Center (OUNC) Board of Directors felt it was necessary to update and clarify the rules after considering questions and comments from stakeholders and reviewing the Pipeline and Hazardous Material Safety Administration (PHMSA) Summary of Damage Prevention Laws commonly known as the "Damage Prevention Characterization Tool." The tool may be found online using the link at <http://primis.phmsa.dot.gov/comm/DamagePreventionSummary.htm?nocache=4786>

HOW TO COMMENT: You may comment on the proposed rules by sending written comments by January 24, 2014 to: OUNC Rules Coordinator, Filing Center, P O Box 1088, Salem, Oregon 97308-

1088. Or, you can send written comments via email to: PUC.FilingCenter@state.or.us. Please reference "UNC 6" on your comments. Interested persons may review comments submitted via email online at <http://apps.puc.state.or.us/edockets/docket.asp?DocketID=18664>

Rules Coordinator: Diane Davis

Address: Oregon Utility Notification Center, 550 Capitol St. NE, Suite 215, Salem, OR 97301-2551

Telephone: (503) 378-4372

Secretary of State, Archives Division Chapter 166

Rule Caption: Amends sections of the county and special district records retention schedule and adds a definition

Date:	Time:	Location:
1-28-14	1 p.m.	800 Summer St. NE. Large Conference Rm. Salem, OR 97310

Hearing Officer: Stephanie Evans

Stat. Auth.: ORS 192 & 357

Stats. Implemented: ORS 192.005-192.170 & 357.805-357.895

Proposed Amendments: 166-005-0010, 166-150-0005, 166-150-0035, 166-150-0040, 166-150-0095, 166-150-0135, 166-150-0210

Last Date for Comment: 1-31-14, 4 p.m.

Summary: Amends the current records retention schedule for county and special district records to account for updates in the voting process for County Clerk, Elections Records section and updates the vital records maintained by County Clerk, General Records section to account for the creation of registered domestic partnerships.

Amends Law Enforcement section to create consistent retention periods between the animal control records owned by the cities and those owned by the counties.

Corrects errors in the Administrative Records, District Attorney Records, and Treasurer/Controller Records sections, and adds the definition of "special district" to the definitions section.

Rules Coordinator: Julie Yamaka

Address: Secretary of State, Archives Division, 800 Summer St. NE, Salem, OR 97310

Telephone: (503) 378-5199

Secretary of State, Elections Division Chapter 165

Rule Caption: Adopts 2014 Voters' Pamphlet Manual Incorporating Existing Rules from Division 16 and Existing Manuals

Stat. Auth.: ORS 246.150, 251.014, 251.065, 251.075 & 251.255

Stats. Implemented: ORS 251.046, 251.049, 251.055, 251.065, 251.075, 251.085, 251.087, 251.095, 251.115, 251.255 & 251.285

Proposed Adoptions: 165-016-0000

Proposed Repeals: 165-016-0040, 165-016-0045, 165-016-0050, 165-016-0055, 165-016-0060, 165-016-0070, 165-016-0080, 165-016-0095, 165-016-0100, 165-016-0105

Last Date for Comment: 1-21-14, Close of Business

Summary: This rule adopts the 2014 Voters' Pamphlet Manual and associated forms as the procedures and forms for submitting candidate statements, measure arguments, statements of arguments by any political party or assembly of electors, arguments in support of a legislative referral, explanatory statements, financial estimates and statements, statements prepared by the Legislative Counsel Committee under ORS 251.225 and county or metropolitan service district measures submitted under ORS 251.285. These rules set forth the process by which statements, photos, or arguments must be filed as well as the order in which they will appear in the state voters' pamphlet, allowable formatting and provides a process for contacting statement or argument filers regarding required revisions.

Rules Coordinator: Brenda Bayes

NOTICES OF PROPOSED RULEMAKING

Address: Secretary of State, Elections Division, 255 Capitol St. NE,
Suite 501, Salem, OR 97310
Telephone: (503) 986-1518

Rule Caption: Clarifies Hearing Request Forms for Contested Cases

Stat. Auth.: ORS 246.150

Stats. Implemented: ORS 260.232 & 260.995

Proposed Amendments: 165-001-0016

Last Date for Comment: 1-21-14, Close of Business

Summary: This rule is proposed for amendment to clarify that form SEL 850 is the hearing request form to be used for campaign finance transaction violations, form SEL 851 is the hearing request form for other campaign finance violations, not relating to campaign finance transactions and form SEL 852 is the hearing request form for non campaign finance violations.

Rules Coordinator: Brenda Bayes

Address: Secretary of State, Elections Division, 255 Capitol St. NE,
Suite 501, Salem, OR 97310

Telephone: (503) 986-1518

Teacher Standards and Practices Commission

Chapter 584

Rule Caption: Allows accredited master's degree in lieu of an unaccredited bachelor's degree.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120–342.430, 342.455–342.495 & 342.553

Proposed Amendments: 584-060-0013

Last Date for Comment: 3-6-14, 12 p.m.

Summary: Allows accredited master's degree in lieu of an unaccredited bachelor's degree.

Rules Coordinator: Victoria Chamberlain

Address: Teacher Standards and Practices Commission, 250
Division St. NE, Salem, OR 97301

Telephone: (503) 378-6813

ADMINISTRATIVE RULES

Board of Chiropractic Examiners Chapter 811

Rule Caption: Records 811-015-0005

Adm. Order No.: BCE 5-2013

Filed with Sec. of State: 11-27-2013

Certified to be Effective: 11-27-13

Notice Publication Date: 9-1-2013

Rules Amended: 811-015-0005

Subject: Requires retention of written file reviews similar to other requirements for maintaining other patient records

Rules Coordinator: Kelly J. Beringer—(503) 373-1573

811-015-0005

Records

(1) It will be considered unprofessional conduct not to keep complete and accurate records on all patients, including but not limited to case histories, examinations, diagnostic and therapeutic services, treatment plan, instructions in home treatment and supplements, work status information and referral recommendations.

(a) Each patient shall have exclusive records which shall be sufficiently detailed and legible as to allow any other Chiropractic physician to understand the nature of that patient's case and to be able to follow up with the care of that patient if necessary.

(b) Every page of chart notes will identify the patient by name, and the clinic of origin by name and address. Each entry will be identified by day, month, year, provider of service and author of the record.

(2) Practitioners with dual licenses shall indicate on each patient's records under which license the services were rendered.

(3) A patient's original records shall be kept by the Chiropractic physician a minimum of seven years from the date of last treatment. There is no requirement to keep any patient records older than seven years; except if the patient is a minor, the records shall be kept seven years or until the patient is 18 years of age, whichever is longer.

(a) If the treating chiropractic physician is an employee or associate, the duty to maintain original records shall be with the chiropractic business entity or chiropractic physician that employs or contracts with the treating chiropractic physician.

(b) Chiropractic physicians shall be responsible for keeping an available copy of all authored reports for seven years from the date authored.

(4) If a chiropractic physician releases original radiographic films to a patient or another party, upon the patient's written request, he/she should create an expectation that the films will be returned, and a notation shall be made in the patient's file or in an office log where the films are located (either permanently or temporarily). If a chiropractic physician has radiographic films stored outside his/her clinic, a notation shall be made in the patient's file or in an office log where the films are located and chiropractic physician must ensure those films are available for release if requested by the patient.

(5) The responsibility for maintaining original patient records may be transferred to another chiropractic business entity or to another chiropractic physician as part of a business ownership transfer transaction.

Stat. Auth.: ORS 684

Stats. Implemented: ORS 684.155

Hist.: 2CE 1-1978, f. 6-16-78, ef. 7-1-78; CE 5-1995, f. & cert. ef. 12-6-95; CE 4-1997, f. & cert. ef. 11-3-97; BCE 3-2000, cert. ef. 8-23-00; BCE 2-2006, f. & cert. ef. 2-9-06; BCE 5-2013, f. & cert. ef. 11-27-13

**Board of Examiners for Engineering and Land Surveying
Chapter 820**

Rule Caption: To repeal original permanent and temporary rules and to properly file temporary rules.

Adm. Order No.: BEELS 10-2013(Temp)

Filed with Sec. of State: 12-5-2013

Certified to be Effective: 12-5-13 thru 3-14-14

Notice Publication Date:

Rules Amended: 820-001-0020, 820-001-0025, 820-010-0010, 820-010-0227, 820-010-0228, 820-010-0305, 820-010-0442, 820-010-0620, 820-010-0621

Rules Suspended: 820-001-0020(T), 820-010-0010(T), 820-010-0227(T), 820-010-0228(T), 820-010-0305(T), 820-010-0442(T), 820-010-0620(T), 820-010-0621(T), 820-010-0260(T)

Subject: To repeal 1 permanent rule related to the Board's contracting policies and to repeal 9 temporary rules related to public

records requests, digital signatures and final documents, registration and applications for registration, and to properly refile all of these repealed rules as temporary rules.

Rules Coordinator: Mari Lopez—(503) 362-2666

820-001-0020

Fees for Public Records and Publications

(1) All requests for copies of public records pertaining to the Oregon State Board of Examiners for Engineering and Land Surveying, shall be submitted in writing, electronic mail, or by completion of the Public Records Request form provided by the Board. Requests are subject to disclosure according to the Public Records Law, ORS Chapter 192.

(2) The Board may charge a fee reasonably calculated for costs of providing and conveying copies of public records. Fees shall not exceed the cost of locating, compiling, making available for inspection, preparing copy in paper, audio, computer disk, and delivering public records. All estimated fees and charges must be paid before public records will be made available for inspection or copies provided.

(3) The Board shall notify a requestor of the estimated costs of making records available for inspection or providing copies of records to the requestor. If the estimated costs exceed \$25, the Board shall provide written notice and shall not act further to respond to the request unless and until the requestor confirms that the requestor wants the Board to proceed with making the public records available.

(4) The Board shall charge 25¢ per page for the first 20 pages and 15¢ per page thereafter to cover the costs of photocopying or scanning and normal and reasonable staff time to locate, separate, photocopy, or scan and return document(s) to file and to prepare and transmit public record(s) to requestors. If, for operational or other reasons, the Board uses the services of an outside facility to photocopy or scan requested records, the Board shall charge the actual costs incurred.

(5) "Page" refers to the number of copies produced. Staff will not reduce the copy size or otherwise manipulate records in order to fit additional records on a page, unless staff concludes that it would be the most effective use of their time. Consistent with ORS 192.240, all copies will be double-sided. A double-sided copy will be charged as two single pages.

(6) Additional charges for staff time may be made when responding to record requests that staff determines to require more than the normal and reasonable time for responding to routine record requests. Staff time shall be charged at \$30 per hour, with a \$7.50 minimum.

(7) The Board shall charge \$50 for a listing that contains registrants, certificate holders, and interns registered with the Board. Requests for formatting data will be charged as per subsection (6) of this rule.

(8) Actual costs for delivery of records such as first class postage and courier fees.

(9) The Board shall charge \$20 for certified copies.

(10) The Board shall charge \$10 for compact discs containing requests.

(11) The Board shall charge \$5 for each audio record transmitted by email.

(12) The Board shall charge actual attorney fees for the cost of time spent by the attorney in reviewing the public records request for compliance with disclosure exemptions contained in ORS Chapter 192.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: BEELS 2-2004, f. & cert. ef. 7-14-04; BEELS 2-2006, f. & cert. ef. 11-21-06; BEELS 6-2013, f. & cert. ef. 9-11-13; BEELS 7-2013(Temp), f. & cert. ef. 11-12-13 thru 5-9-14; BEELS 10-2013(Temp), f. & cert. ef. 12-5-13 thru 3-14-14

820-001-0025

Purchasing and Contracting

Effective May 8, 2012, the Board adopted the Department of Justice Public Contracts Manual that includes reference to ORS 279A, B, and C, and OAR chapter 137, divisions 46 and 47 as its purchasing and contracting policies.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: BEELS 1-2013, f. & cert. ef. 3-13-13; BEELS 10-2013(Temp), f. & cert. ef. 12-5-13 thru 3-14-14

820-010-0010

Definitions

The following definitions and guides have been adopted by the Board to assist registrants and the general public in their interpretation of specific portions of ORS 672.002 to 672.325.

(1) "Board" means the Oregon State Board of Examiners for Engineering and Land Surveying provided by ORS 672.240.

ADMINISTRATIVE RULES

(2) "Practice of engineering" refers to ORS 672.005 and 672.007.

(3) "Technician work" means the time spent on work where the personal responsibility and technical knowledge required are small; that is, where the individual performance of a task, set and supervised by others, is all that is required. It shall also include all time spent in work before an applicant is 18 years old "Technician work" does not include engineering work as described in section (4), land surveying work as described in section (7) or photogrammetric work as described in section (10). Engineering "technician work" includes, but is not limited to, work as an inspector, a laboratory assistant, a design assistant, a survey technician, or a draftsman. Land Surveying "technician work" includes, but is not limited to, work as a survey technician, a draftsman, an instrument plotter, or computation work under close supervision and not requiring the exercise of judgment in survey or map design, or decisions on boundary location. Photogrammetric mapping "technician work" includes but is not limited to, work as a photogrammetric mapping technician to perform technical photogrammetric or remote sensing tasks to extract spatial data from photographic imagery, digital imagery or other remotely-sensed data under close supervision and not requiring the exercise of judgment in project design or decisions related to authoritative photogrammetric measurements.

(4) "Engineering work," is work performed after a person is 18 years old and involves work of a higher grade and responsibility than that defined as "technician work." Credit for engineering work will only be given for time worked such that persons performing work for more than one entity during a given period of time will not receive multiple credit for dates worked. Time spent in engineering teaching subsequent to graduation shall be listed as "engineering work." Work performed in conjunction with a course of study provided by a community college, college, university, or any other educational program, for which tuition or similar payment is made, credit is earned, or as a requirement of the program, will not be considered "engineering work."

(5) "Responsible charge," as used in ORS 672.002(9), means to have supervision and control over engineering work as defined in 672.005(1), land surveying work, and photogrammetric mapping, as evidenced by performing substantially the following:

- (a) Establishing the manner or method by which services are rendered;
- (b) Establishing quality controls for the services rendered;
- (c) Communicating with clients;
- (d) Reviewing designs, calculations, plans, surveys or maps;
- (e) Supplying deficiencies found in or correcting errors contained in designs, calculations, plans, surveys or maps;
- (f) Making changes to documents, including but not limited to, designs, plans, plats, surveys or maps; and
- (g) With respect to land surveying, reviewing field evidence and making final decisions concerning the placement of survey monuments and surveyed lines.

(6) "Supervision and control," as used in ORS 672.002(10), means establishing the nature of, directing and guiding the preparation of, and approving the work product and accepting responsibility for the work product, as evidenced by performing the following:

- (a) Spending time directly supervising the work to assure that the person working under the licensee is familiar with the significant details of the work;
- (b) Providing oversight, inspection, observation and direction regarding the work being performed;
- (c) Providing adequate training for persons rendering services and working on projects under the licensee;
- (d) Maintaining readily accessible contact with the person providing services or performing work by direct proximity or by frequent communication about the services provided or the work performed. Communications between the licensee and persons under the licensee's supervision and control include face-to-face communications, electronic mail, and telephone communications and similar, other communications that are immediate and responsive; and
- (e) Applying the licensee's seal and signature to a document.

(7) "Practice of land surveying" refers to ORS 672.005(2) and 672.007.

(8) "Land surveying work" is work performed after a person is 18 years old and involves work of a higher grade and responsibility than that defined as "technician work". Engineering work, not related to the practice of land surveying, is not land surveying work. Credit for land surveying work will only be given for time worked such that persons performing work for more than one entity during a given period of time will not receive multiple credit for dates worked. Work performed in conjunction with a course

of study provided by a community college, college, university, or any other educational program, for which tuition or similar payment is made, credit is earned, or as a requirement of the program, will not be considered "land surveying work."

(9) "Practice of photogrammetric mapping" or "practice of photogrammetry" refers to ORS 672.002(7).

(10) "Photogrammetric work" is work performed after a person is 18 years old and involves work of a higher grade and responsibility than that defined as "technician work." Credit for photogrammetric work will only be given for time worked such that persons performing work for more than one entity during a given period of time will not receive multiple credit for dates worked. Time spent teaching photogrammetric mapping after graduation is "photogrammetric work." Work performed in conjunction with a course of study provided by a community college, college, university, or any other educational program, for which tuition or similar payment is made, credit is earned, or as a requirement of the program, will not be considered "photogrammetric work."

(11) Professional Development Hour (PDH) — A contact hour (nominal) of instruction or presentation. The common denominator for other units of credit.

(12) Continuing Education Unit (CEU) — Unit of credit customarily used for continuing education courses. One continuing education unit equals 10 hours of class in an approved continuing education course.

(13) College/Unit Semester/Quarter Hour — Credit for course work in an approved program or other related college course approved in accordance with article (e) of this section.

(14) Course/Activity — Any qualifying course or activity with a clear purpose and objective which will maintain, improve or expand the skills and knowledge relevant to the licensee's field of practice.

(15) Multiple Registrant means a person who is registered as both a land surveyor and an engineer or is registered as an engineer in two or more disciplines.

(16) "Digital signature" means a type of electronic signature, as allowed by the ORS 84.001 to 84.061, that transforms a message through the use of an algorithm or series of algorithms that provide a key pair, private and public, for signor verification, document security and authentication.

(17) "Certificate Authority" is the trusted third party that issues and manages digital certificates (private and public keys) for digital signatures.

(18) "Digital certificate" is required to affix a digital signature, for the recipient to verify the identity of the signor, and for the recipient to verify that the contents of the document have not been altered since the signature was affixed.

(19) The words "branch" and "discipline" are synonymous as used in OAR chapter 820 divisions 10 and 40.

(20) Acronyms:

- (a) ABET — Accreditation Board for Engineering and Technology, Inc.;
- (b) ACCE — American Council for Construction Education;
- (c) ASAC — Applied Science Accreditation Commission of ABET;
- (d) EAC — Engineering Accreditation Commission of ABET;
- (e) EI — Engineering Intern;
- (f) FE — Fundamentals of Engineering;
- (g) FLS — Fundamentals of Land Surveying;
- (h) LSI — Land Surveying Intern;
- (i) NCEES — National Council of Examiners for Engineering and Surveying;
- (j) TAC — Technology Accreditation Commission of ABET.
- (k) PE — Professional Engineer;
- (l) PLS — Professional Land Surveyor;
- (m) RPP — Registered Professional Photogrammetrist;
- (n) CWRE — Certified Water Right Examiner.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: EE 13, f. 3-29-72, ef. 4-15-72; EE 16, f. 3-5-74, ef. 3-25-74; EE 17, f. 4-22-74, ef. 5-11-74; EE 20, f. & ef. 12-15-77; EE 1-1987, f. & ef. 1-5-87; EE 1-1992, f. & cert. ef. 2-3-92; EE 1-1995, f. 8-15-95, cert. ef. 9-1-95; BEELS 1-1998, f. & cert. ef. 2-10-98; BEELS 1-2000, f. & cert. ef. 1-14-00; BEELS 4-2000, f. & cert. ef. 8-4-00; BEELS 5-2000, f. & cert. ef. 10-19-00; BEELS 1-2001, f. & cert. ef. 5-22-01; BEELS 1-2002, f. & cert. ef. 3-13-02; BEELS 1-2004, f. & cert. ef. 1-26-04; BEELS 2-2004, f. & cert. ef. 7-14-04; BEELS 1-2005, f. & cert. ef. 3-16-05; BEELS 6-2005, f. & cert. ef. 12-13-05; BEELS 2-2006, f. & cert. ef. 11-21-06; BEELS 2-2007, f. & cert. ef. 4-5-07; BEELS 5-2007, f. & cert. ef. 9-20-07; BEELS 2-2008, f. & cert. ef. 7-9-08; BEELS 3-2008, f. & cert. ef. 11-14-08; BEELS 2-2009, f. & cert. ef. 11-13-09; BEELS 6-2013, f. & cert. ef. 9-11-13; BEELS 7-2013(Temp); f. & cert. ef. 11-12-13 thru 5-9-14; BEELS 10-2013(Temp), f. & cert. ef. 12-5-13 thru 3-14-14

ADMINISTRATIVE RULES

820-010-0227

Educational and Experience Qualifications to Take the Fundamentals of Engineering (FE) Examination for Enrollment as an Engineering Intern (EI) and Applications Based on Non-Accredited Degrees

(1) An applicant that does not qualify pursuant to OAR 820-010-0225 may apply for admission to the FE examination based on a combination of education and experience in the practice of engineering. Applicants will be allowed to submit as qualifying work experience that work experience obtained based on employment up to the date of the FE examination.

(2) Degrees from educational institutions not identified in OAR 820-010-0225 may be considered as qualifying if they are evaluated by NCEES Credentials Evaluations, and the Board determines that the degree or course work is substantially equivalent to the educational degrees or courses required for degrees for those institutions listed in 820-010-0225. The cost for such evaluation will be borne by the applicant.

(3) Course work from institutions that are identified in OAR 820-010-0225 may be considered as qualifying if the coursework involves engineering principles or was obtained by the applicant while enrolled in an engineering program.

(4) Where an applicant applies for admission to the FE examination on the basis of sections (1) through (3) of this rule, the applicant must also demonstrate that the applicant's years of education when combined with the applicant's years of engineering work total at least 8 years. Work experience in excess of that needed to satisfy this requirement may be included by applicant in a subsequent application to apply for admission to the PE examination.

(5) The Board may give credit for qualifying course work in proportion to the amount of course work completed relative to the degree towards which the course work would apply. For example, completion of one year of a two-year Engineering Technology program may be considered equivalent to one year of education, requiring 7 years of engineering work experience, in accordance with section (4). Qualifying course work includes classes in engineering ethics, fundamentals and design.

(6) An applicant may qualify for admission to the FE examination on the basis of 8 years of engineering work without any qualifying degree or course work.

(7) Applicants for admission to the fundamentals of engineering examination on the basis of experience or combined education and experience will be required to provide a minimum of three references with knowledge of engineering technician work gained as defined in the OAR 820-010-0010.

(a) At least one of the three references must be registered in a NCEES jurisdiction.

(b) Qualifying experience accrued by the applicant must be accompanied by a reference that supervised the work product as meeting the definition of engineering technician work as defined in the OAR 820-010-0010.

(c) References must be submitted on the Board approved Reference Details form. The Reference Details form must be received by the Board office in a sealed envelope.

(d) The Board may, for good cause upon written application, reduce the number of references required.

(8) FE examination application fee is \$0.00.

Stat. Auth.: ORS 670.310, 672.095, & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: BEELS 2-2006, f. & cert. ef. 11-21-06; BEELS 5-2007, f. & cert. ef. 9-20-07; BEELS 3-2008, f. & cert. ef. 11-14-08; BEELS 2-2009, f. & cert. ef. 11-13-09; BEELS 6-2013, f. & cert. ef. 9-11-13; BEELS 7-2013(Temp); f. & cert. ef. 11-12-13 thru 5-9-14; BEELS 10-2013(Temp), f. & cert. ef. 12-5-13 thru 3-14-14

820-010-0228

Combined Educational and Experience Qualifications to Take the Fundamentals of Land Surveying (FLS) Examination for Enrollment as a Land Surveying Intern (LSI) and Applications Based on Non-accredited Degrees

(1) An applicant that does not qualify pursuant to OAR 820-010-0226 may apply for admission to the FLS examination based on a combination of education and experience in the practice of land surveying. Applicants will be allowed to submit as qualifying work experience that work experience obtained based on employment up to the date of the FLS examination.

(2) Degrees from educational institutions not identified in OAR 820-010-0226 may be considered as qualifying if they are evaluated by NCEES Credentials Evaluations, and the Board determines that the degree or course work is substantially equivalent to the educational degrees or courses required for degrees for those institutions listed in 820-010-0226. The cost for such evaluation will be borne by the applicant.

(3) Course work from institutions that are identified in OAR 820-010-0226 may be considered as qualifying if the coursework involves land sur-

veying principles or was obtained by the applicant while enrolled in a land surveying program.

(4) Where an applicant applies for admission to the FLS examination on the basis of sections (1) through (3) of this rule, the applicant must also demonstrate that the applicant's years of education when combined with the applicant's years of land surveying work total at least 8 years. Work experience in excess of that needed to satisfy this requirement may be included by applicant in a subsequent application to apply for admission to the PLS examination.

(5) The Board may give credit for qualifying course work in proportion to the amount of course work completed relative to the degree towards which the course work would apply. For example, completion of one year of a two-year Surveying Technology program may be considered equivalent to one year of education, requiring 7 years of surveying work experience, in accordance with section (4). Qualifying course work includes classes in land surveying ethics, fundamentals and application.

(6) An applicant may qualify for admission to the FLS examination on the basis of 8 years of land surveying work without any qualifying degree or course work.

(7) Applicants for admission to the fundamentals of land surveying examination on the basis of experience or combined education and experience will be required to provide a minimum of three references with knowledge of land surveying technician or photogrammetric mapping technician work gained as defined in the OAR 820-010-0010.

(a) At least one of the three references must be registered in a NCEES jurisdiction.

(b) Qualifying experience accrued by the applicant must be accompanied by a reference that supervised the work as meeting the definition of land surveying technician or photogrammetric mapping technician work as defined in the OAR 820-010-0010.

(c) References must be submitted on the Board approved Reference Details form. The Reference Details form must be received by the Board office in a sealed envelope.

(d) The Board may, for good cause upon written application, reduce the number of references required.

(8) FLS examination application fee is \$0.00.

Stat. Auth.: ORS 670.310, 672.095, & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: BEELS 2-2006, f. & cert. ef. 11-21-06; BEELS 5-2007, f. & cert. ef. 9-20-07; BEELS 3-2008, f. & cert. ef. 11-14-08; BEELS 2-2009, f. & cert. ef. 11-13-09; BEELS 6-2013, f. & cert. ef. 9-11-13; BEELS 7-2013(Temp); f. & cert. ef. 11-12-13 thru 5-9-14; BEELS 10-2013(Temp), f. & cert. ef. 12-5-13 thru 3-14-14

820-010-0305

Fees

(1) The Board has determined an outside testing provider will administer examinations on behalf of the Board. In addition to state fees, all approved applicants are charged for the test administration fee in addition to any book or scoring fees or any other examination-related fees. The applicant must pay all these costs in advance to the Board and the outside testing provider. The amount for each specific application is compiled in section (2) of this rule. Where applicable, the initial activation and certificate fee must be included. The total amount for each specific application is compiled in a fee schedule published separately. The amount to be submitted will be equal to a total of items (a) through (c) in this section. Actual dollar amounts for application, initial activation, renewal and certificate are listed in sections (2) and (3) of these rules:

(a) Fee for application.

(b) Fee for initial activation equal to one year renewal (one time fee applies to PE, PLS, RPP, and CWRE only; not applicable to reexamination).

(c) Fee for issuance of first certificate (one time fee applies to PE, PLS, RPP, and CWRE only).

(2) Fees for examination application:

(a) Initial fundamentals of engineering examination application — \$0.00.

(b) Initial fundamentals of land surveying examination application — \$0.00.

(c) Initial professional engineering (PE) examination application — \$100.

(d) Initial professional geotechnical examination application — \$375.

(e) Initial professional land surveying examination application — \$140.

(f) Initial professional photogrammetric mapping examination application — \$120.

(g) Certified Water Right Examiner test application — \$50.

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(h) Application for readmission to the Fundamentals of engineering examination — \$0.00.

(i) Application for readmission to the Fundamentals of land surveying examination — \$0.00.

(j) Application for readmission to the Professional engineering (PE) examination — \$90.

(k) Application for readmission to the Professional geotechnical examination — \$365.

(l) Application for readmission to the Professional land surveying (PLS) examination — \$130.

(m) Application for readmission to the Oregon law portion of PLS examination — \$55.

(n) Application for readmission to the National portion of PLS examination — \$75.

(o) Application for readmission to the Professional photogrammetric mapping examination — \$110.

(p) Application for readmission to the Certified Water Rights Examiner test — \$40.

(q) Proctor Request — \$100.

(3) Fees for certification, registration, and renewal:

(a) Professional wall certificate — \$35.

(b) Application for registration as a professional engineer — \$250.

(c) Application for registration as a professional land surveyor — \$250.

(d) Application for registration as a registered professional photogrammetrist — \$250.

(e) Temporary permit issued under ORS 672.109 and 672.127 — \$100.

(f) Re-issuance of lost or mutilated pocket card — \$10.

(g) Issuance of certificate without examination based on experience as provided under ORS 672.255 — \$250.

(h) Re-score of an Oregon specific examination item — \$50.

(i) Annual renewal of a professional engineering certificate — \$75.

(j) Annual renewal of a professional land surveyor certificate — \$75.

(k) Annual renewal of a registered professional photogrammetrist certificate — \$75.

(l) Delinquency renewal fee — \$80 for any part of each two-year renewal period during delinquency.

(m) Fee for reinstatement for inactive or retired registrant or certificate holder — \$225.

(n) Annual renewal of water right examiner certificate — \$20.

(o) Verification of certification(s) and/or registration(s) — \$15.

Stat. Auth.: ORS 670.310, 672.153, 672.155, & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: EE 2-1980, f. & ef. 5-14-80; EE 4-1981, f. & ef. 12-14-81; EE 2-1984(Temp), f. & ef. 5-7-84; EE 2-1984(Temp), f. & ef. 5-7-84; EE 4-1984, f. & ef. 12-11-84; EE 2-1987, f. & ef. 7-2-87; EE 3-1987, f. & ef. 8-25-87; EE 2-1989, f. 1-3-89, cert. ef. 1-15-89; EE 1-1990(Temp), f. & cert. ef. 5-21-90; EE 1-1991(Temp), f. 8-14-91, cert. ef. 9-1-91; EE 2-1991, f. & cert. ef. 9-23-91; EE 1-1992, f. & cert. ef. 2-3-92; EE 2-1992, f. & cert. ef. 2-4-92; EE 4-1992, f. & cert. ef. 7-22-92; EE 2-1993(Temp), f. & cert. ef. 2-22-93; EE 3-1993, f. & cert. ef. 6-3-93; EE 2-1994, f. & cert. ef. 7-22-94; EE 1-1995, f. 8-15-95, cert. ef. 9-1-95; EE 2-1997, f. & cert. ef. 8-6-97; BEELS 3-1998, f. & cert. ef. 5-11-98; BEELS 1-1999, f. 5-27-99, cert. ef. 7-1-99; BEELS 1-2000, f. & cert. ef. 1-14-00; BEELS 3-2000, f. 3-17-00, cert. ef. 3-20-00; BEELS 3-2001, f. & cert. ef. 11-26-01; BEELS 3-2002, f. & cert. ef. 11-13-02; BEELS 4-2002, f. & cert. ef. 12-3-02; BEELS 6-2005, f. & cert. ef. 12-13-05; BEELS 2-2006, f. & cert. ef. 11-21-06; BEELS 5-2007, f. & cert. ef. 9-20-07; BEELS 1-2008, f. & cert. ef. 3-12-08; BEELS 2-2009, f. & cert. ef. 11-13-09; BEELS 1-2010, f. & cert. ef. 5-12-10; BEELS 1-2011, f. & cert. ef. 1-14-11; BEELS 1-2012(Temp), f. & cert. ef. 3-16-12 thru 5-15-12; BEELS 2-2012, f. & cert. ef. 5-10-12; BEELS 6-2013, f. & cert. ef. 9-11-13; BEELS 7-2013(Temp), f. & cert. ef. 11-12-13 thru 5-9-14; BEELS 10-2013(Temp), f. & cert. ef. 12-5-13 thru 3-14-14

820-010-0442

Application Deadlines

(1) Deadlines to submit applications for admission to examinations based on the schedule contained in OAR 820-010-0440 are:

(a) December 1 is the deadline for applications for the Spring examination administration.

(b) January 1 is the deadline for applications for readmission to the Spring examination administration.

(c) June 1 is the deadline for applications for the Fall examination administration.

(d) July 1 is the deadline for applications for readmission to the Fall examination administration.

(2) Applicants may request to withdraw an application and fees paid to the Board for consideration from an examination administration. An application and fees paid to the Board may be withdrawn and forwarded to the next available examination administration only.

(a) Request must be made in writing; and

(b) Request must be made no later than March 1 to withdraw from the Spring examination administration or no later than September 1 to withdraw from the Fall examination administration; and

(c) The request can only be made once per application.

(3) Deadlines to submit applications for registration as a PE or RPP based on licensure by another jurisdiction (comity) or based on examination by another jurisdiction or NCEES (1st registration) are the first day of the month prior to the month of a Board meeting.

(4) Deadlines to submit applications for registration as a PLS based on licensure by another jurisdiction (comity) or based on examination by another jurisdiction or NCEES (1st registration) are:

(a) February 1st to sit for the Spring Oregon Specific Land Surveying examination.

(b) August 1st to sit for the Fall Oregon Specific Land Surveying examination.

(c) If successful results on the Oregon Specific Land Surveying examination are not attained, the applicant must comply with the readmission deadlines contained in subsection (1) of this rule.

(5) All applications must be postmarked or hand delivered by 5:00 p.m. on the deadline. If the deadline falls on a Saturday, Sunday, or legal Holiday, applications are accepted until 5:00 p.m. on the following business day.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: BEELS 3-2008, f. & cert. ef. 11-14-08; BEELS 2-2012, f. & cert. ef. 5-10-12; BEELS 6-2013, f. & cert. ef. 9-11-13; BEELS 7-2013(Temp), f. & cert. ef. 11-12-13 thru 5-9-14; BEELS 10-2013(Temp), f. & cert. ef. 12-5-13 thru 3-14-14
Hist.: BEELS 6-2005, f. & cert. ef. 12-13-05

820-010-0620

Official Seal

(1) Seals, as referenced by ORS 672.020(2) and 672.025(2), must contain the printed name of the registrant, the date of registration, the number of the registrant's certificate of registration, and the registrant's professional title. The registrant's printed name on the seal will be exactly the same as the name printed on registrant's certificate of registration.

(2) The size, design and content of the seal will be an exact replica, in style, of the examples shown in Exhibit 1 (Official Seals) for the profession or branch of the profession in which the registrant is licensed. (A tolerance of 1/4" is permitted as to the size of the seal). The expiration or renewal date may be made part of the seal. If the expiration or renewal date is not made part of the seal, it must be handwritten, in permanent ink, after the word "Expires" or "Renews." Reduced or enlarged seals are not permitted on final documents. In addition to these requirements, registrants will use the following seals:

(a) Professional engineers holding a structural engineering certificate will use the seal with the designation "Structural" above the words "Registered Professional Engineer," as shown in Exhibit 1-b. Other registered professional engineers will use the seal shown in Exhibit 1-a;

(b) Registered professional traffic engineer, who may practice only traffic engineering will use the seal shown in Exhibit 1-f;

(c) Registered professional land surveyors will use the seal shown in Exhibit 1-c;

(d) Registered professional photogrammetrists will use the seal shown in Exhibit 1-d;

(e) Registered water rights examiners will use the seal shown in Exhibit 1-e.

(3) The seal may be applied to a document by rubber stamp or it may be computer-generated onto the document.

(4) The registrant will sign through the middle of the seal or in the place on the seal as indicated for signature, in handwriting, and in permanent ink.

(5) A digital signature, for final documents is acceptable as an alternative to a handwritten signature in permanent ink if the digital signature:

(a) Is unique to the registrant using it;

(b) Is independently verifiable by a Certificate Authority (3rd Party);

(c) Is under the sole control of the registrant using it;

(d) Is linked to the document in such a manner that the digital signature is invalidated if any data in the document is changed; and

(e) Bears the phrase "digital signature" in place of a handwritten signature.

(6) Only individuals registered as professional engineers, professional traffic engineers, professional land surveyors, professional photogrammetrists, or certified water rights examiners may use a seal with a shape, form or wording similar to those shown in Exhibit 1. Using such a seal without registration constitutes falsely representing that the person is authorized to practice the profession.

ADMINISTRATIVE RULES

[ED. NOTE: Exhibits referenced are available from the agency.]

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: EE 13, f. 3-29-72, ef. 4-15-72; EE 16, f. 3-5-74, ef. 3-25-74; EE 20, f. & ef. 12-15-77; EE 2-1986, f. 3-26-86, ef. 3-31-86; EE 4-1987, f. & ef. 12-1-87; EE 1-1992, f. & cert. ef. 2-3-92; EE 1-1995, f. 8-15-95, cert. ef. 9-1-95; BEELS 1-1998, f. & cert. ef. 2-10-98; BEELS 1-2000, f. & cert. ef. 1-14-00; BEELS 3-2006(Temp), f. & cert. ef. 12-5-06 thru 6-3-07; Administrative Correction, 6-16-07; BEELS 4-2007, f. & cert. ef. 8-15-07; BEELS 2-2008, f. & cert. ef. 7-9-08; BEELS 2-2009, f. & cert. ef. 11-13-09; BEELS 6-2013, f. & cert. ef. 9-11-13; BEELS 7-2013(Temp), f. & cert. ef. 11-12-13 thru 5-9-14; BEELS 10-2013(Temp), f. & cert. ef. 12-5-13 thru 3-14-14

820-010-0621

Final Documents

(1) In addition to the final documents identified in ORS 672.020(2) and 672.025(2), final documents include plats, design information, and calculations. All final documents must bear the seal and signature of the registrant under whose supervision and control they were prepared.

(2) Documents that are not final documents must be marked as “preliminary”, “not for construction”, “review copy”, “draft copy, subject to change”, or with some similar wording to indicate that the documents are not intended to represent the final work product of the registrant.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: BEELS 3-2006(Temp), f. & cert. ef. 12-5-06 thru 6-3-07; BEELS 2-2007, f. & cert. ef. 4-5-07; BEELS 2-2012, f. & cert. ef. 5-10-12; BEELS 6-2013, f. & cert. ef. 9-11-13; BEELS 7-2013(Temp), f. & cert. ef. 11-12-13 thru 5-9-14; BEELS 10-2013(Temp), f. & cert. ef. 12-5-13 thru 3-14-14

Board of Massage Therapists Chapter 334

Rule Caption: Implement SB 387 Facility Permits, adopt new rule; clarify examination and continuing education rule

Adm. Order No.: BMT 2-2013

Filed with Sec. of State: 11-26-2013

Certified to be Effective: 1-1-14

Notice Publication Date: 9-1-2013

Rules Adopted: 334-010-0006

Rules Amended: 334-010-0005, 334-010-0010, 334-010-0033, 334-010-0050, 334-020-0005, 334-040-0010

Subject: Adopt one new rule and amend rules to implement Senate Bill 387. Clarifies examination rule requests for fees forward; clarifies continuing education rule contact hours.

Rules Coordinator: Ekaette Udosenata—(503) 365-8657

334-010-0005

Applications

(1) All applications for examinations, licensure, inactive status, renewal, temporary permit, or a facility permit must be made on forms provided by the Board. Only applications that are completed and on Board approved forms, without alterations, must be accepted for filing and review by the Board.

(2) All applications made to the Board must be accompanied by the required fee.

(3) Applicants for examination must submit the following with their application:

(a) A copy of a valid government issued photo identification. This identification could be a valid driver’s license, a current U.S. passport, immigration/naturalization papers, or a valid state identification card;

(b) An official certificate or transcript from the administering institutions, instructors, or programs showing successful completion of study and practice in the required subject matter and hours required by the Board.

(A) Official copies of transcripts or certificates presented to the Board in an envelope sealed by the program or institution and verified as sealed may be accepted directly from the applicant.

(B) If a program or institution granting credit is no longer in business, the Board must accept for review a copy of a certificate of completion, transcript or diploma in the required subject matter and hours. The Board may require additional information to verify the authenticity of such documents.

(i) Transcripts or certificates directly received from other states massage licensing boards will be accepted.

(c) A current photograph of the applicant.

(4) Transcripts must include a minimum of 500 hours of certified classes. The 500 hours must include the knowledge and skills identified in OAR 334-010-0047 competencies and must be comprised of:

(a) A minimum of 200 hours of Anatomy & Physiology, Pathology, and Kinesiology; and

(b) A minimum of 300 hours of Massage Theory and Practical Application, Clinical Practice, Business Development, Communication and Ethics, and Sanitation. Hydrotherapy may be included as part of the 300 hours.

(c) Hours can be calculated in clock hours or equivalent credit hours from an institution that substantially complies with the definition of credit hours in 34 CFR 600.2.

(5) If for any reason an applicant does not appear to be qualified for admission to take the examination, the applicant must be so notified and invited to submit additional evidence that he/she is entitled to have his/her case considered or to be admitted to examination.

(a) Applicants who are or have legally practiced massage and/or bodywork outside of the State of Oregon may be eligible to apply for the Credentialing Review Process.

(6) All application documents for examination and licensure submitted in a language other than English must be accompanied by:

(a) An accurate translation of those documents into English;

(b) A notarized affidavit certifying that the translator is competent in both the language of the document and the English language; and

(c) A notarized affidavit certifying that the translation is a true and complete translation of the foreign language original.

(7) Any costs of translation of all documents required by the Board must be at the expense of the applicant.

(8) If the applicant discontinues the application process or fails to cooperate with the criminal history check process, then the application is considered incomplete.

(9) Applicants for Facility Permit must submit the following with their application:

(a) if a natural person a copy of a valid government issued photo identification. This identification could be a valid driver’s license, a current U.S. passport, immigration/naturalization papers, or a valid state identification card;

(b) if not a natural person:

(A) Copy of the Oregon Secretary of State Business registration, listing all owners and/or shareholders and

(B) Articles of Incorporation or shareholder agreements showing all percentages of ownership with appropriate owners identification including name and address.

Stat. Auth.: ORS 183, 687.121 & 182.456 - 182.472

Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121
Hist.: HB 88, f. 3-16-56; Renumbered from 333-035-0002; MTB 1-1979, f. & ef. 5-22-79; MTB 2-1985, f. & ef. 1-23-85; MB 3-1985(Temp), f. & ef. 9-20-85; MTB 1-1986, f. & ef. 1-29-86; MTB 1-1990, f. & cert. ef. 4-20-90; MTB 1-1992, f. & cert. ef. 7-28-92, Section 7(d) Renumbered from 334-010-0036; BMT 2-1998, f. & cert. ef. 7-22-98; BMT 2-2002, f. & cert. ef. 5-8-02; BMT 1-2003, f. & cert. ef. 1-24-03; BMT 1-2004, f. & cert. ef. 2-23-04; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 3-2009, f. & cert. ef. 7-2-09; BMT 3-2011(Temp), f. & cert. ef. 8-10-11 thru 2-6-12; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12; BMT 1-2013, f. 5-31-13, cert. ef. 7-1-13; BMT 2-2013, f. 11-26-13, cert. ef. 1-1-14

334-010-0006

Facility Permits

Applicants for facility permits may be denied for reasons listed in ORS 687.081. Applicants may also be denied for a permit due to prior discipline by the Board for the unlicensed practice of massage. The Board should consider the circumstances of the violations, the duration of the conduct, if the applicant is currently in compliance with the law and orders of the Board and whether the conduct demonstrably related to the Applicants holding a facility license.

Stat. Auth.: ORS 687.121

Stats. Implemented: SB 387

Hist.: BMT 2-2013, f. 11-26-13, cert. ef. 1-1-14

334-010-0010

Examination

(1) The LMT examination must be held at least twice annually.

(2) The applicant will be notified by electronic mail and/or U.S. mail at least two weeks before the scheduled exam, unless otherwise waived by the applicant, of the time and place.

(3) Applicants who have a documented and verifiable emergency may request to have their exam fee apply to a subsequent examination:

(a) Applicant has 14 days to submit written documentation of the emergency;

(b) applicant must sit for the examination within one year of the original date of examination; and

(c) only one request will be allowed.

(4) Refund of the examination fee may be granted upon written request should the applicant not qualify for the examination. Refunds may also be made for individuals who have a documented and verifiable emergency and are unable to sit for the exam provided the written request and

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associated documentation are received by the board at least 7 days prior to the exam.

(5) Applicants are required to take and pass a Board approved written exam and the Oregon practical examination, which includes a written test on Oregon statutes and administrative rules.

(6) Failure to Pass: An applicant must pass the practical examination within 24 months of the initial date of application. The Board may require an applicant with 3 or more examination failures to undertake and satisfactorily complete a Board approved remediation plan prior to reapplying for the examination.

(7) Examinee Conduct: An examinee, whose conduct interferes with the testing process or whose behavior violates ethical practices or jeopardizes the safety of another may be dismissed and disqualified from examination. Such conduct includes but is not limited to the following behaviors:

- (a) Giving or receiving examination data, either directly or indirectly,
- (b) Failure to follow written or oral instructions relative to conducting the examination, including termination times and procedures;
- (c) Endangering the life or health of others present
- (d) Introducing unauthorized materials during any portion of the examination;
- (e) Attempting to remove examination materials or notations from the testing site; or
- (f) Violating the credentialing process such as falsifying or misrepresenting educational credentials or other information required for admission to the examination, impersonating an examinee, or having an impersonator take the licensing examination on one's behalf.

(8) Test questions, scoring keys, and other examination data used to administer the qualifying examination are exempt from disclosure under ORS 192.410 to 192.505 as amended.

(9) The Board may release statistical information regarding examination pass/fail rates by group, type of examination, school, year, and subject area to any interested party.

(10) All examinations are given in the English language.

(11) Applicants with Special Needs: An applicant is presumed to possess sufficient sensory, visual, hearing and psychomotor capabilities to independently perform massage and bodywork skills. An applicant with special needs may apply to the Board for the provision of special conditions to complete the examination:

(a) The Board may require proof, provided by a qualified professional on letterhead, of the nature of the special need and type of special conditions recommended to complete the exam.

(b) A request for special conditions must be made to the Board in writing at the time of application.

Stat. Auth.: ORS 183, 687.121 & 182.456 - 182.472

Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121
Hist.: HB 88, f. 3-16-56; Renumbered from 333-035-0004; MTB 1-1979, f. & cert. ef. 5-22-79; MTB 2-1982, f. & cert. ef. 7-21-82; MTB 2-1985, f. & cert. ef. 1-23-85; MTB 1-1992, f. & cert. ef. 7-28-92; BMT 2-1998, f. & cert. ef. 7-22-98, Renumbered from 334-010-0021 [Hist.: MTB 1-1990, f. & cert. ef. 4-20-90; MTB 1-1992, f. & cert. ef. 7-28-92, Sections (6) - (20)(h) Renumbered from 334-030-0020]; BMT 1-1999(Temp), f. 6-14-99, cert. ef. 7-4-99 thru 12-31-99; BMT 1-2000, f. & cert. ef. 1-12-00; BMT 2-2000, f. & cert. ef. 8-3-00; BMT 1-2002(Temp), f. & cert. ef. 1-9-02 thru 7-5-02; BMT 2-2002, f. & cert. ef. 5-8-02; BMT 1-2003, f. & cert. ef. 1-24-03; BMT 1-2004, f. & cert. ef. 2-23-04; BMT 4-2005(Temp), f. & cert. ef. 9-19-05 thru 3-12-06; BMT 1-2006, f. & cert. ef. 1-5-06; BMT 2-2007, f. & cert. ef. 6-29-07; BMT 1-2007, f. & cert. ef. 6-29-07; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 3-2009, f. & cert. ef. 7-2-09; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12; BMT 2-2013, f. 11-26-13, cert. ef. 1-1-14

334-010-0033

Fees

- (1) The fees are:
 - (a) \$100 per biennial renewal for initial license;
 - (b) \$50 per biennial renewal for initial license under 12 months;
 - (c) \$150 per biennial renewal for active license;
 - (d) \$50 per biennial renewal for inactive license;
 - (e) \$25 per week, up to a maximum of \$250, for any late renewal;
 - (f) \$50 for exam/endorsement application processing;
 - (g) \$150 for each practical examination;
 - (h) \$100 for mailing list;
 - (i) \$10 for license reprint;
 - (j) \$10 for license verification;
 - (k) \$250 Credentialing Review;
 - (l) Current Oregon State Police Criminal Background Check Fee;
 - (m) \$50 initial facility permit;
 - (n) \$250 facility permit transfer;
 - (o) \$10 facility permit reprint and
 - (p) Other administrative fees as allowed by law.
- (2) Application and licensure fees are not refundable

(3) Examination fees are refunded only when requested in writing and either:

- (a) The applicant is unqualified by Oregon statutes, or
- (b) Applicant requests refund postmarked at least 7 days prior to the exam.

Stat. Auth.: ORS 183, 687.121 & 182.456 - 182.472

Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121
Hist.: MTB 1-1986, f. & cert. ef. 1-29-86; MTB 1-1989(Temp), f. & cert. ef. 7-27-89; MTB 1-1990, f. & cert. ef. 4-20-90; MTB 1-1992, f. & cert. ef. 7-28-92 (and corrected 8-6-92); BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2000, f. & cert. ef. 1-12-00; BMT 2-2002, f. & cert. ef. 5-8-02; BMT 1-2003, f. & cert. ef. 1-24-03; BMT 4-2004, f. 10-22-04, cert. ef. 1-1-05; BMT 1-2006, f. & cert. ef. 1-5-06; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; 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 4-2011, f. 12-1-11, cert. ef. 1-1-12; BMT 1-2012, f. 6-19-12, cert. ef. 7-1-12; BMT 2-2013, f. 11-26-13, cert. ef. 1-1-14

334-010-0050

Continuing Education

The intent of Continuing Education is to protect the public by maintaining and enhancing competencies as defined in OAR 334-010-0047.

(1) Each licensee must complete 25 hours of continuing education in the competencies each renewal period. At renewal time, each licensee must sign and submit a Board supplied CE form indicating they have completed 25 hours of continuing education. The Board may require proof of CE hours.

(a) At least 12 contact hours of continuing education training or Board approved activities (Board or Committee meeting/Peer Supervisor/Examiner of Practical Exam/Board Investigator).

(b) The remaining 13 hours may be contact hours or in areas as defined on the Board supplied CE form.

(2) The continuing education requirement does not apply to a licensee's first license renewal.

(3) Continuing education must be completed within the renewal period. Contact hours taken and submitted during renewal in excess of the total number required may only be carried over to the next subsequent renewal period.

(a) First renewal CE are not required to be submitted at the time of renewal, CE taken during the first renewal time period, maybe submitted with the second renewal.

(4) Continuing education records must be maintained by each licensee for a minimum of five years.

(5) If the Board finds indications of fraud or falsification of records, investigative action must be instituted. Findings may result in disciplinary action up to and including revocation of the licensee's license.

(6) Failure to complete continuing education hours by the time of renewal may result in revocation, suspension and/or denial of a license. Licensee has 30 days from date of notification of non-compliance to come into compliance. Failure to be in compliance may result in discipline of the license to practice massage.

(7) Continuing education must be in areas related to the practice of massage or bodywork including theory, research, technique or business development.

Stat. Auth.: ORS 687.081, 687.121 & 687.122

Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121
Hist.: BMT 1-1998(Temp), f. & cert. ef. 2-3-98 thru 7-31-98; BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2003, f. & cert. ef. 1-24-03; BMT 1-2004, f. & cert. ef. 2-23-04; BMT 2-2004(Temp), f. & cert. ef. 3-16-04 thru 9-7-04; Administrative correction, 9-28-04; BMT 3-2004(Temp), f. & cert. ef. 10-22-04 thru 4-19-05; BMT 1-2005, f. & cert. ef. 2-23-05; BMT 1-2006, f. & cert. ef. 1-5-06; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 3-2009, f. & cert. ef. 7-2-09; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12; BMT 2-2013, f. 11-26-13, cert. ef. 1-1-14

334-020-0005

Facilities and Sanitation

(1) Permanent and Mobile structures:

(a) All permanent structures and mobile facilities where a LMT routinely conducts massage and bodywork must:

(A) Be established and maintained in accordance with all local, state and federal laws, rules and regulations;

(B) Obtain a facility permit to operate;

(i) notify the Board office in writing, within 30 days of relocating the facility;

(ii) keep posted and visible to the public, the facility permit with the correct location address;

(C) Facilities exempted from the permit process:

(i) clinic or facility owned or operated by a person authorized to practice a profession by a health professional regulatory board, as defined in ORS 676.160;

(ii) a career school licensed under ORS 345.010 to 345.450; and

(iii) clinics of a board approved massage therapy program.

ADMINISTRATIVE RULES

- (D) Provide a finished lavatory that
 - (i) Is well maintained,
 - (ii) Provides a system for sanitary disposal of waste products,
 - (iii) Is capable of being fully closed and locked from the inside,
 - (iv) Supplies hot and cold running water,
 - (v) Is supplied with liquid soap and single use towels,
 - (vi) Is supplied with toilet paper at each toilet, and
 - (vii) Has a sign prominently displayed encouraging hand washing;
 - (E) Dispose of refuse sewage in a manner described by local and state law; and
 - (F) Follow applicable laws pertaining to public spas, pools, baths and showers.
 - (b) All treatment spaces must:
 - (A) Provide for client privacy, both in-house and on-site;
 - (B) Be designated as used only for massage at the time of services;
 - (C) Provide for sufficient heating, cooling and ventilation for client comfort; and
 - (D) Provide illumination during cleaning.
 - (c) The facility and treatment space must be:
 - (A) Cleaned regularly and kept free of clutter, garbage or rubbish;
 - (B) Maintained in a sanitary manner; and
 - (C) Maintained free from flies, insects, rodents and all other types of pests.
 - (2) Outcall/On-site
 - (a) Any temporary location where the LMT conducts massage and bodywork, the LMT must provide and utilize:
 - (A) Safe, sanitized and well-maintained equipment, tools and preparations;
 - (B) Sanitary linen practices; and
 - (C) Client privacy practices.
- Stat. Auth.: ORS 687.121
Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121
Hist.: HB 88, f. 3-16-56; Renumbered from 333-035-0012; MTB 2-1985, f. & ef. 1-23-85; MTB 1-1986, f. & ef. 1-29-86; Renumbered from 334-010-0030; MTB 1-1992, f. & cert. ef. 7-28-92; BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 2-2013, f. 11-26-13, cert. ef. 1-1-14

334-040-0010

Discipline

The Board may deny, conditionally grant, restrict, suspend or revoke a license or permit, impose probation, reprimand, censure, impose remedial education or corrective actions, and/or impose a civil penalty for any of the following reasons:

- (1) Practicing massage or representing one's self as a massage therapist without a current active license issued by the Board;
- (2) Knowingly or recklessly making any false statement to the Board;
- (3) Has been the subject of disciplinary action as a licensed healthcare professional by this or any other state or territory of the United States or by a foreign country and the Board determines that the cause of the disciplinary action would be a violation under ORS 687.011 to 687.250, 687.895 and 687.991 or OAR Chapter 334;
- (4) Suspension or revocation of a license to practice massage in another jurisdiction based upon acts by the licensee similar to acts described in this section;
- (5) Knowingly or recklessly falsifying an application or continuing education statement or documentation;
- (6) Conviction of a crime in any state or jurisdiction;
- (7) The use of false, deceptive, or misleading advertising, which includes but is not limited to, advertising massage using the term "massage" or any other term that implies a massage technique or method in any private or public communication or publication by a person licensed or not licensed by the Board as a massage therapist;
- (8) Allowing the use of a license by an unlicensed person;
- (9) Presenting as one's own license, the license of another;
- (10) Practicing massage under a false or assumed name without notification to the Board;
- (11) Impersonating another massage therapist;
- (12) Assisting, employing, or permitting an unlicensed person to practice massage;
- (13) Practicing or purporting to practice massage when the license has been revoked or suspended, lapsed or inactive;
- (14) Practicing or offering to practice massage beyond the scope permitted by law;
- (15) The use of intoxicants, drugs, controlled substances, or mind altering substances to such an extent as to impair or potentially impair the licensee's abilities to perform professional duties in a safe manner;

(16) Practicing massage with a physical or mental impairment that renders the therapist unable or potentially unable to safely conduct the practice of massage;

(17) Failing to keep the equipment and premises of the massage establishment in a clean and sanitary condition as required by rules of the Board;

(18) Refusing to permit the Board or its representatives to inspect the business premises of the licensee during regular business hours;

(19) Failing to cooperate with the Board in any licensing action or disciplinary proceeding, including but not limited to:

(a) Failure to furnish any requested papers or documents,
(b) Failure to provide in writing a full and complete explanation covering the matter contained in the complaint filed with the Board,

(c) Failure to respond to subpoenas issued by the Board whether or not the recipient is accused in the proceeding;

(20) Failing to comply with an order issued by the Board;

(21) Failure to obtain the required permits for facilities or in violation of OAR 334-010-0010.

(22) Failure to report to the Board information that a licensee has engaged in prohibited or unprofessional conduct as required in ORS 676.150.

(23) Unprofessional or dishonorable conduct which includes but is not limited to:

(a) Any conduct involving inappropriate physical contact or sexual misconduct which includes:

(A) Sexual abuse which is conduct which constitutes a violation of any provision of ORS 163.305 through 163.465;

(B) Sexual violation which is sex between the LMT and the client, whether initiated by the client or not, engaging in any conduct with a client that is sexual, or may be reasonably interpreted as sexual, including, but not limited to:

(i) Sexual intercourse;

(ii) Genital to genital contact;

(iii) Oral to genital contact; oral to anal contact;

(iv) Oral to oral contact except cardiopulmonary resuscitation; touching breasts or genitals or any sexualized body part for any purpose other than appropriate examination or treatment or where the client has refused or withdrawn consent; or

(v) Encouraging the client to masturbate in the presence of the LMT or masturbation by the LMT while the client is present.

(C) Sexual impropriety which is any behavior, gestures, or expressions that are seductive or sexually demeaning to a client; inappropriate procedures, including, but not limited to,

(i) Disrobing or draping practices that reflect a lack of respect for the client's privacy, deliberately watching a client dress or undress instead of providing privacy for disrobing;

(ii) Subjecting a client to an examination in the presence of students, assistants, or other parties without the explicit consent of the client or when consent has been withdrawn;

(iii) An examination or touching of genitals;

(iv) Inappropriate comments about or to the client, including but not limited to, making sexual comments about a client's body or clothing, making sexualized or sexually-demeaning comments to a client, comments on the client's or LMT's sexual orientation and making a request to date;

(v) Initiation by the LMT of conversation regarding the sexual problems, preferences or fantasies of the LMT; or

(vi) Kissing.

(b) Violating the client's rights of privacy, and confidentiality.

(c) Failure to disclose or release information about a client if required by law or on written consent of client.

(d) Intentionally harassing, abusing, or intimidating a client either physically or verbally.

(e) Any conduct or practice which could endanger the health or safety of a client or the public.

(f) Any conduct or practice which impairs the massage therapist's ability to safely and skillfully practice massage.

(g) Exercising undue influence on a client, including promotion or sale of services, goods, or appliances in such a manner as to exploit the client for the financial gain or self-gratification of the massage therapist.

(h) Routinely practicing in an incompetent manner.

(i) Conduct which would also constitute a violation of the Oregon Unlawful Trade Practices Act.

(j) Practicing a modality or technique without adequate training or licensure.

Stat. Auth.: ORS 687.081 & 687.121

Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121

ADMINISTRATIVE RULES

Hist.: MTB 1-1990, f. & cert. ef. 4-20-90; MTB 1-1992, f. & cert. ef. 7-28-92; Sections (6) - (20)(h) Renumbered from 334-030-0020; BMT 2-1998, f. & cert. ef. 7-22-98; Renumbered from 334-030-0025 by BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12; BMT 2-2012, f. 12-4-12, cert. ef. 1-1-13; BMT 1-2013, f. 5-31-13, cert. ef. 7-1-13; BMT 2-2013, f. 11-26-13, cert. ef. 1-1-14

Board of Nursing
Chapter 851

Rule Caption: Removal of NLNAC acronym and minor edits
Adm. Order No.: BN 9-2013

Filed with Sec. of State: 12-3-2013

Certified to be Effective: 1-1-14

Notice Publication Date: 11-1-2013

Rules Amended: 851-021-0005, 851-021-0010, 851-021-0025, 851-021-0050, 851-021-0120

Subject: Name change by a national nursing accreditation agency specifically referenced in rule required removal of this name from the definitions and some rule sections. While making this needed change, minor edits were made to other sections including changes in position titles, rule reference numbers, and a line missing from one section since the last revision. No changes are considered substantive. Accreditation agencies are now referred to using a more generic term to prevent the need for rule changes when organizations make name changes.

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

851-021-0005

Definitions

As used in these rules:

(1) "Accreditation" is a voluntary, non-governmental peer review process by the higher education community. For the purpose of these rules, institutional accreditation applies to the entire institution, whereas nursing program accreditation applies to program accreditation by a national nursing accreditation organization recognized by the United States Department of Education.

(2) "Accrediting agency" means a regional accrediting association or national accrediting agency approved by the U.S. Department of Education (US DOE) and/or the Council on Higher Education Accreditation (CHEA).

(3) "Approval" is synonymous with accreditation as authorized in ORS 678.150(3), and means the process by which the Board evaluates and grants official recognition and status to nursing education programs that meet Board established uniform and reasonable standards. The status assigned may be Developmental Approval, Initial Approval or Approval.

(4) "Approval by the office of Degree Authorization" means the approval, under ORS 348.606, to provide any part of a program leading to the award of college credit or to an academic degree.

(5) "Articulation" refers to the process of comparing or matching the coursework completed in one educational institution with the courses or requirements of another institution. For the purpose of these rules, articulation specifically relates to courses completed or required within a nursing education program.

(6) "Basic Master's Program" — A graduate program in nursing leading to initial licensure.

(7) "Board" refers to the Oregon State Board of Nursing.

(8) "Clinical Lab Teaching Assistant" refers to a member of the nursing faculty whose primary responsibility is to assist with the clinical lab teaching under the direction of the nurse educator.

(9) "Clinical Teaching Associate" refers to a nurse who has undergone specific education/training to serve as a role model, resource and coach for nursing students. The clinical teaching associate functions under the direction of the nurse educator or nurse educator associate.

(10) "Community-based nursing" is nursing practice that takes place in the context of family and the community.

(11) "Competencies" mean the knowledge, values, attitudes, and interpersonal, clinical reasoning, and psychomotor skills expected for safe and effective nursing practice.

(12) "Controlling Body" is an accredited educational agency planning to conduct or conducting a program in nursing. For purposes of these rules, "institution," "Educational institution," or "governing institution" is synonymous with "controlling body."

(13) "Developmental approval" means approval of an application for establishing a new program and authorization to proceed with its development.

(14) "Distance nursing education" means the provision of nursing course(s) to students in settings physically separate from the faculty and the campus-based setting. Distance nursing education includes on-line and web-based portals, video-streaming, interactive television, and use of other electronic course delivery methods.

(15) "Extended campus site" means any location of an institution, other than the main campus, at which the institution offers at least 50 percent of a nursing education curriculum.

(16) "Faculty" means the nursing faculty as a whole, functioning as a collective body.

(17) "Faculty member" means an individual nurse educator, nurse educator associate, or clinical lab teaching assistant.

(18) "Home Board" means the approval or accrediting authority by which a particular nursing program is approved and to which it is accountable.

(19) "Initial Approval" means authorization by the Board to accept students for admission in a new nursing program, or in an extended campus site, when the Board deems the extended campus site to be the equivalent of a new program. Initial approval status continues until the first class has graduated and the Board has taken final action on the application for approval.

(20) "Major curriculum change" means a change that results in a re-focus of purpose and objectives, a substantive change in program structure or method of instructional delivery, or a change that modifies 10% or more of the credit hours in the curriculum.

(21) "May" indicates permission.

(22) "National accreditation" means accreditation granted by a national nursing accreditation organization recognized by the United States Department of Education.

(23) "Nurse Administrator" refers to the registered nurse who is responsible and accountable for the nursing educational department, division or program, regardless of the official title assigned by any specific institution.

(24) "Nurse Educator" refers to a registered nurse who, as a member of the nursing faculty, is responsible for the development and/or implementation of the nursing program including curriculum, policies, student advising, and evaluation, mentoring and collaborating with nurse educator associates and clinical teaching associates. For the purpose of these rules, the term "nurse educator" includes all nurse faculty members regardless of rank who have responsibility for development and implementation of the program.

(25) "Nurse Educator Associate" refers to a registered nurse who may contribute to classroom and clinical instruction in collaboration with and under the direction of the nurse educator.

(26) "Nursing experience" means practice as a registered nurse. Specified years of nursing experience mean full time equivalence (FTE).

(27) "Organizing framework" means the mission, philosophy, and/or underlying assumptions upon which the curriculum is based.

(28) "Outcomes" are statements of the expected knowledge, skills, attitudes, values and abilities to be gained by students through completion of the nursing education program or a segment thereof.

(29) "Out-of-State Nursing Program" means a program in the United States that is approved or accredited by the licensing board for nurses in the particular state or U.S. territory, or the appropriate accrediting agency for that state or U.S. territory.

(30) "Population-focused nursing" is nursing practice that merges the body of knowledge from the public health sciences with nursing theories for the purpose of safeguarding and improving the health of populations.

(31) "Post-master's certificate" means a certificate from an accredited graduate nursing education program that prepares licensed nurses who hold a master's degree for an advanced nursing role.

(32) "Practice Site" is a location or situation in which nursing experience with actual patient/client individuals or groups is obtained.

(33) "Practicum" is a course or session in which a student obtains experience in nursing in either a laboratory or practice site.

(34) "Program" means a nursing education program that prepares graduates for licensure as registered or licensed practical nurses. The terms "nursing program," or "nursing education program" as used in these rules, are synonymous with "Program."

(35) "Representative of the Board" means the Board staff member or Board designee qualified to perform the necessary responsibilities.

(36) "Shall" indicates a requirement.

(37) "Significant increase" means an increase of more than 10% in the enrolled nursing students or an increase of one or more clinical cohorts, whichever is greater.

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(38) "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.

(39) "Standards for Approval" — Authoritative statements that set expectations for a program to achieve and maintain for approval status. (OAR 851-021-0040 through 0070).

(40) "Statewide Need" — Assessment and documentation of the need for the nursing program in relation to plans for total state resources and the need for entry level nurses in the state.

(41) "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.

(42) "Units or Credits" — For programs on academic quarters, one unit or credit is defined as one academic clock hour per week for ten to twelve weeks or three academic clock hours of practicum per week for ten to twelve weeks. For programs on academic semesters, one unit or credit is defined as one academic clock hour per week for fourteen to sixteen weeks or three academic clock hours of practicum per week for fourteen to sixteen weeks.

Stat. Auth.: ORS 678.150

Stats. Implemented: ORS 678.150

Hist.: NER 9, f. 8-15-62; NER 15, f. 1-4-71, ef. 1-25-71; NER 30, f. & ef. 1-27-76; NER 37, f. & ef. 7-18-77; NER 2-1985, f. & ef. 4-5-85; NB 1-1990, f. & cert. ef. 4-2-90; Renumbered from 851-020-0005; NB 2-1996, f. & cert. ef. 3-12-96; NB 4-1996, f. & cert. ef. 9-3-96; BN 7-1998, f. & cert. ef. 7-16-98; BN 1-2001, f. & cert. ef. 2-21-01; BN 3-2008, f. & cert. ef. 6-24-08; BN 17-2010, f. & cert. ef. 11-29-10; BN 9-2013, f. 12-3-13, cert. ef. 1-1-14

851-021-0010

Approval of Nursing Education Programs

(1) Letter of Intent and Preliminary Application:

(a) An institution or consortium of accredited institutions wishing to establish a new program in nursing shall submit a letter of intent and preliminary application to develop the program to the Board in advance of anticipated opening date.

(b) The letter of intent and preliminary application shall address at least the following information:

(A) Purpose, size, and type of program proposed

(B) Studies documenting the statewide need for graduates of the program. The study should also specifically address the need for the program in relation to the nursing needs of the geographical area to be served;

(C) An analysis of potential impact on other nursing programs in the state including:

(i) An analysis of current usage of potential clinical sites in area(s) proposed for student placements including impact on other programs placing students in clinical sites; and

(ii) Projected number of faculty positions and availability of qualified faculty in the area(s) proposed for clinical placements.

(D) Evidence of administrative and financial support for development of a nursing program;

(E) Anticipated student enrollment and proposed date of enrollment;

(F) For consortium applicants, any charters, contracts and other documents that show:

(i) Relationships among member institutions;

(ii) Member institution commitment to the consortium and the proposed nursing program; and

(iii) Mechanisms within the consortium for attainment and maintenance of Board standards for nursing education programs.

(G) The applicant shall respond to any Board requests for additional information;

(H) The Board, after timely review and consideration of the information contained in the letter of intent and any supplementary information, shall either grant or deny permission to begin development of a nursing program, including rationale for the decision;

(I) The Board shall provide notice to the nurse administrator and academic administrator of all Oregon-approved nursing education programs within 30 days of Board decision regarding approval to develop a nursing program;

(J) The nurse administrator and academic administrator of an Oregon-approved nursing education program shall have 30 days from notification of new program development to respond to the Board addressing potential adverse impact to their program;

(K) If the applicant is denied permission to begin development of a nursing program, the program may submit a revised letter of intent and preliminary application no sooner than six months from the previous submission;

(L) If the applicant is denied permission to begin development of a nursing program, a hearing before the Board may be requested and the provisions of the Administrative Procedures Act shall apply; and

(M) If the applicant does not submit a complete developmental approval application within twelve months after the date of the Board granting permission to proceed, the permission to begin program development shall expire.

(2) Application for Developmental Approval:

(a) An institution or consortium of accredited institutions that has received approval of their letter of intent to develop a nursing program may make application for developmental approval.

(b) The developmental approval application shall include at least the following:

(A) Evidence of accreditation of the institution, or of all member institutions in a consortium, by an appropriate regional or national accrediting association or agency; institutions seeking to establish a registered nursing program shall show evidence of;

(i) Approval as a degree-granting institution of higher education in Oregon; and

(ii) Accreditation by a regional association or national agency recognized by the Council on Higher Education Accreditation (CHEA).

(B) Letters of response from Oregon-approved nursing programs addressing specific concerns regarding adverse impact on current programs,

(C) Evidence of the appointment of a qualified nurse administrator and sufficient administrative support for program development;

(D) Administration and organizational plan delineating lines of authority and decision making impacting the nursing program;

(E) Description of proposed instructional modalities and resources to support these modalities with dates of availability;

(F) Availability of adequate practice sites for the program with supporting documentation from persons assigned to coordinate clinical placements for each facility;

(G) Availability of adequate educational facilities, services, and resources for the program;

(H) Evidence of financial resources adequate for planning, implementation and continuation of the program, including proposed operating costs;

(I) Tentative timetable for planning the program;

(J) Tentative start date for the program; and

(K) Current institution catalog(s).

(c) The applicant shall respond to the Board's request(s) for additional information.

(d) If the Board, after timely review and consideration of the information contained in the application and any supplementary information, including response statements from other programs, shall either approve or deny the application and notify the applicant, including rationale for the decision.

(e) If developmental approval is denied, the program may submit a revised developmental application no sooner than six months from the previous submission.

(f) If developmental approval is denied, the applicant may request a hearing before the Board and the provisions of the Administrative Procedures Act shall apply; and

(g) If the applicant does not submit an application for initial approval within twelve months after the date designated for initiating the program in the approved plan, the developmental approval shall expire.

(3) Initial Approval:

(a) Initial approval status may be applied for when the following conditions have been met:

(A) Application as described in OAR 851-021-0010(2) has received Board approval;

(B) Evidence of approval for the new program has been obtained from the appropriate agencies or bodies that review and approve new programs for public and private educational institutions.

(i) An institution shall provide one copy of the report that was submitted to each agency and a copy of the letter(s) indicating that approval for the program have been granted;

(ii) A consortium shall provide documentation that each member institution has approved the program, as well as documentation of agency approval as above; and

(iii) An institution licensed by the Oregon Department of Education, Private Career Schools section shall provide documentation of current licensure.

ADMINISTRATIVE RULES

(C) There are sufficient qualified nurse educators, other required educators and administrative support services to initiate the program a minimum of six months prior to the beginning of the courses;

(D) A tentative written proposed program plan, including curriculum developed in accordance with the Standards for Approval, has been submitted a minimum of three months prior to the offering of the first course to nursing students;

(E) There is evidence of readiness for admission of students in educational and clinical facilities including clinical placement sites for the maximum number of students enrolled at one time a minimum of three months prior to the offering of the first course to nursing students;

(F) Policies for admission and progression are in place a minimum of three months prior to the offering of the first course to nursing students;

(G) There is a comprehensive plan for evaluation of the nursing program that addresses key outcomes a minimum of three months prior to the offering of the first course to nursing students; and

(H) There is a signed agreement(s) for the articulation of program graduates into the next level of nursing education a minimum of three months prior to the offering of the first course to nursing students:

(i) Programs leading to a certificate or degree in practical nursing shall have an agreement with an Oregon-approved program preparing candidates for licensure as a registered nurse; and

(ii) Programs leading to an associate degree in nursing shall have an agreement with an Oregon-approved program leading to a baccalaureate or higher degree in nursing.

(b) Following Board receipt and review of the information required in OAR 851-021-0010(3)(a), the Board may grant or deny initial approval;

(c) A site visit may be conducted by a representative(s) of the Board;

(d) Initial approval must be received by a program prior to publication of the program and recruitment or acceptance of students for admission to the first class of nursing students;

(e) If initial approval is denied, the applicant may request a hearing before the Board and the provisions of the Administrative Procedures Act shall apply;

(f) Interim visits and/or progress reports may be requested by the Board at any time during the initial approval phase and/or following initial approval as deemed necessary by the Board; and

(g) If the institution or consortium does not admit a class within twelve months after the date designated for initiating the program the initial approval shall expire.

(4) Approval:

(a) Eligibility for approval occurs after the graduation of the first class of students;

(b) Within six months following graduation of the first class, the program shall submit a self study report addressing compliance with the Standards for Approval (OAR 851-021-0040 through 851-021-0070) and a survey visit shall be made for consideration of approval of the program;

(c) The decision of the Board to grant or deny approval shall be based upon review of a self study report submitted by the program addressing compliance with Board standards, of the success rate of graduates on the national licensure examination, and of a survey report by a representative(s) of the Board; and

(d) If approval is denied, the applicant may request a hearing before the Board and the provisions of the Administrative Procedures Act shall apply.

Stat. Auth.: ORS 678.150, 678.340 & 678.360

Stats. Implemented: ORS 678.150 & 678.360

Hist.: NER 30, f. & ef. 1-27-76; NER 37, f. & ef. 7-18-77; NB 3-1988, f. & cert. ef. 7-5-88; NB 1-1990, f. & cert. ef. 4-2-90; Renumbered from 851-020-0021; NB 4-1996, f. & cert. ef. 9-3-96; BN 1-2001, f. & cert. ef. 2-21-01; BN 7-2003, f. & cert. ef. 7-7-03; BN 11-2003, f. & cert. ef. 12-9-03; BN 3-2008, f. & cert. ef. 6-24-08; BN 17-2010, f. & cert. ef. 11-29-10; BN 9-2013, f. 12-3-13, cert. ef. 1-1-14

851-021-0025

Reports

(1) Program Changes Requiring Notification to the Board. The program shall notify the Board in writing within 30 days of development of the following circumstances:

(a) Change in the nurse administrator of the program;

(b) A significant increase or decrease in planned enrollment that may affect the overall faculty-student ratio or the capacity of institutional facilities or regional practice sites;

(c) Major changes in availability of adequate practice sites for the program that results in reduction in student enrollment or faculty positions;

(d) Change in accreditation status of the controlling body;

(e) Major reductions in the financial support for the program;

(f) Appointment of new faculty members.

(2) Program Changes Requiring Board of Nursing Approval:

(a) Change of Administrative Control:

(A) When control of an educational program is transferred from one institution to another, a report must be submitted to the Board by the receiving institution containing the following information:

(i) Rationale for change;

(ii) Anticipated effects on students, faculty and resources;

(iii) Administrative and organizational plans, including a sound operational budget;

(iv) Plans for the orderly transition of the program;

(v) Application for new program as delineated in OAR 851-021-0010, unless this requirement is waived by the Board of Nursing.

(B) The institution relinquishing the program shall notify the Board of Nursing in writing of the intent to transfer the program, and shall submit to the Board the information requested of programs undergoing voluntary termination (OAR 851-021-0035(1)).

(b) Major Curriculum Change:

(A) When a nursing education program anticipates a major curriculum change, such change shall be submitted to the Board for approval at least three months prior to implementation.

(B) The following materials shall be submitted with the request for curriculum changes:

(i) Rationale for proposed changes including the anticipated effect on faculty, students, resources and facilities;

(ii) Presentation of the differences between the current curriculum and the proposed curriculum;

(iii) A timetable for implementation of change;

(iv) Methods of evaluation that will be used to determine the effects of the change.

(c) Exceptions to qualified faculty members under OAR 851-021-0045(8);

(d) Addition of an extended campus site or distance nursing education option:

(A) The program shall submit a letter of intention to expand offerings to an extended campus site or using distance education technology at least six months prior to planned implementation;

(B) The letter of intent shall include at least the following information:

(i) Plan for qualified faculty for the program at the extended site or with addition of distance education technology;

(ii) Description of available and proposed education facilities and delivery modalities, services and resources with dates of availability;

(iii) Availability of adequate practice sites and provisions for faculty supervision of clinical experiences;

(iv) Tentative time schedule for planning, initiating, and evaluating the program.

(C) The Board may deem the addition of an extended campus site or distance nursing education option as the equivalent of a new program, and require application under OAR 851-021-0010. Notice to the applicant shall include the rationale for the Board decision.

(e) Proposed demonstration project(s) that significantly alter the approved curriculum, model of clinical practica or faculty-to-student ratio.

(A) The program shall submit a letter of intention to implement such a project at least three months prior to the planned implementation.

(B) The letter of intention shall include at least the following information:

(i) Description of the proposed project, including purpose;

(ii) Description of mechanisms and procedures for and student safety and learning effectiveness;

(iii) Plan for evaluation of the project and reporting findings back to the Board; and

(iv) Tentative time schedule for planning, initiating, and evaluating the program.

(3) NCLEX first attempt pass rate standards and reports.

(a) The pass rate will be calculated annually on the basis of a program's pass rate for the total number of first attempt candidates examined over a one year period and a revolving two year period of time.

(b) A program shall present a written plan, in conformance with Board policy, to evaluate and improve graduate performance on the licensing examination in the event that the program fails to maintain an average of

(A) An 85% pass rate or higher over a two year period, or

(B) A 70% pass rate or higher over a one year period.

(4) Annual Reports:

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(a) Statistical data and qualitative program information shall be required to be submitted to the Board annually on a form supplied by the Board;

(b) The annual report shall include information to enable monitoring of continued compliance with the Board's rules. Required reports may include data for aggregate and trend analysis.

(5) General Guidelines for Reports:

(a) The Board shall review reports for approval, or continued approval of nursing education programs or proposals for major curriculum change only at times when the Board is in formal session;

(b) A copy of the report(s) shall be in the Board Office at least six weeks prior to the Board meeting.

Stat. Auth.: ORS 678.150

Stats. Implemented: ORS 678.150

Hist.: NER 4-1985, f. & ef. 7-10-85; NB 1-1990, f. & cert. ef. 4-2-90; Renumbered from 851-020-0071; NB 1-1993(Temp), f. & cert. ef. 2-8-93; NB 6-1993, f. & cert. ef. 6-22-93; NB 2-1996, f. & cert. ef. 3-12-96; NB 4-1996, f. & cert. ef. 9-3-96; BN 1-2001, f. & cert. ef. 2-21-01; BN 3-2008, f. & cert. ef. 6-24-08; BN 9-2013, f. 12-3-13, cert. ef. 1-1-14

851-021-0050

Standards for Approval: Curriculum

(1) Curriculum shall:

(a) Prepare the student to achieve the nursing competencies necessary for safe practice based on current standards of care;

(b) Reflect the identified mission, goals, and learning outcomes of the nursing education program; and

(c) Be consistent with the law governing the practice of nursing.

(2) Curriculum plan shall identify:

(a) Competencies or learning outcomes at the course and program level;

(b) Learning activities to develop identified competencies. Courses, learning activities and clinical practicum shall be organized in such a manner to have sufficient proximity in time to allow the student to form necessary links of theoretical knowledge, clinical reasoning, and deliberate practice;

(A) Clinical practica shall include sufficient direct patient care hours to achieve identified competencies, course and program outcomes.

(B) All clinical practica shall be directed and supervised by a nurse educator or nurse educator associate.

(C) All programs shall include no less than six (6) contact hours of learning activities related to pain management.

(c) Requirements of the educational institution for graduation; and

(d) Total units required for graduation.

(3) Practical Nurse Programs:

(a) In practical nursing programs, the course content and clinical experience required shall be a minimum of 42 quarter units or 28 semester units including:

(A) Biological, applied, social, and behavioral sciences and humanities: minimum of 18 quarter units or 12 semester units; and

(B) Practical Nursing: minimum of 24 quarter units or 16 semester units of which no less than 12 quarter or eight semester units shall be clinical practicum.

(b) The Practical Nurse program shall provide theory and faculty-supervised clinical practice in nursing to achieve competencies within the practical nurse scope of practice, including those related to:

(A) Creating and maintaining a safe environment of care;

(B) Demonstrating professional, legal, and ethical behavior in nursing practice;

(C) Applying knowledge and problem-solving skills;

(D) Providing safe, clinically competent, culturally sensitive, and client-centered care for the promotion, restoration and maintenance of wellness or for palliation across the lifespan and settings of care;

(E) Functioning as a member of the interdisciplinary healthcare team;

(F) Applying leadership and management skills to assign, direct and supervise care provided by nursing assistive personnel;

(G) Using technology to facilitate communication, manage information, and document care; and

(H) Providing cost-effective nursing care and participating in quality improvement strategies.

(4) Registered Nurse Program:

(a) Registered nurse curricula shall meet all institutional requirements for and culminate in the award of an associate, baccalaureate, masters, or doctoral degree.

(b) In registered nurse programs, the course content and clinical experience required shall be a minimum of 84 quarter units or 56 semester units including:

(A) Physical, biological, social and behavioral sciences and humanities: minimum of 36 quarter units or 24 semester units; and

(B) Nursing: minimum of 48 quarter units or 32 semester units of which no less than 24 quarter units or 16 semester units shall be clinical practicum.

(c) The Registered Nurse program shall provide theory and faculty-supervised clinical practice in nursing to develop competencies at the registered nursing scope of practice related to:

(A) Creating and maintaining a safe environment of care;

(B) Demonstrating professional, ethical and legal behavior in nursing practice

(C) Using problem-solving skills, reflection, and clinical judgment in nursing practice;

(D) Prescribing/directing, managing, delegating and supervising nursing care for individuals, families, or groups;

(E) Providing safe, clinically competent, culturally sensitive, client-centered and evidence-based care to promote, restore and maintain wellness or for palliation across the lifespan and settings of care;

(F) Providing culturally sensitive and evidence-based teaching, counseling, and advocacy for individuals, families and groups;

(G) Participating within and providing leadership for an interdisciplinary team;

(H) Applying leadership skills to identify the need for and to promote change;

(I) Using communication and information technology effectively and appropriately;

(J) Applying and integrating principles of community health and community-based care into practice; and

(K) Integrating concepts of resource utilization, quality improvement and systems to enhance care delivery.

(L) Baccalaureate and basic masters or doctoral programs shall also include competencies related to:

(i) Applying epidemiological, social, and environmental data and principles to identify and implement health promotion goals and strategies for communities and populations;

(ii) Assuming leadership and effecting change through participation in teams and beginning application of management knowledge.

(iii) Identifying and implementing measures to improve access to healthcare for individuals and underserved groups;

(iv) Using the principles and practice of research to validate and improve nursing care for individuals, families, and groups; and

(v) Using teaching-learning principles to assist colleagues and healthcare providers to improve nursing care quality.

(5) Programs providing distance nursing education shall:

(a) Deliver the approved curriculum through learning activities designed to allow students to achieve stated learning outcomes or competencies;

(b) Provide learning activities that are sufficiently comprehensive to achieve stated program outcomes and competencies; and

(c) Support instructor-student interaction and meaningful student interaction.

(6) Programs that provide for advanced placement of students shall develop and use policies designed to assure that such students meet the equivalent of the program's current curriculum and competencies.

Stat. Auth.: ORS 678.150, 678.340 & 678.360

Stats. Implemented: ORS 678.150 & 678.360

Hist.: NER 30, f. & ef. 1-27-76; NER 37, f. & ef. 7-18-77; NER 2-1985, f. & ef. 4-5-85; NB 3-1988, f. & cert. ef. 7-5-88; NB 1-1990, f. & cert. ef. 4-2-90; Renumbered from 851-020-0056; NB 4-1996, f. & cert. ef. 9-3-96; BN 1-2001, f. & cert. ef. 2-21-01; BN 3-2008, f. & cert. ef. 6-24-08; BN 9-2013, f. 12-3-13, cert. ef. 1-1-14

851-021-0120

Nursing-Critical Shortage Area Defined for the Purpose of the Oregon Nursing Services Program

(1) For the purposes of the Oregon Nursing Services Program, a student loan repayment program administered by the Oregon Student Assistance Commission, a "nursing-critical shortage area" means:

(a) A locality or practice setting defined by the Office of Rural Health as "frontier" or "rural"; and/or

(b) A practice specialty determined to be "critical" by the Board of Nursing, in consultation with the Office of Rural Health.

(2) A complete list of practice settings and/or practice specialties considered to be "critical" will be identified annually in Board policy.

Stat. Auth.: ORS 678.031 & 678.150

Stats. Implemented: ORS 678.031

Hist.: BN 1-2002, f. & cert. ef. 3-5-02; BN 3-2003, f. & cert. ef. 4-23-03; BN 3-2008, f. & cert. ef. 6-24-08; BN 9-2013, f. 12-3-13, cert. ef. 1-1-14

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Rule Caption: Correct accreditation agency language, standardize language with Division 56

Adm. Order No.: BN 10-2013

Filed with Sec. of State: 12-3-2013

Certified to be Effective: 1-1-14

Notice Publication Date: 11-1-2013

Rules Amended: 851-050-0000, 851-050-0001, 851-050-0002

Subject: Name change by a national nursing accreditation agency specifically referenced in rule required removal of this name from the definitions and some rule sections. Accreditation agencies are now referred to using a more generic term to prevent the need for rule changes when organizations make name changes. Work on a related Division showed need to standardize some definitions and language to provide clarity.

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

851-050-0000

Definitions

(1) "Assessment" means a process of collecting information regarding a client's health status including, but not limited to, illness; response to illness; health risks of individuals, families and groups; resources; strengths and weaknesses, coping behaviors; and the environment. The skills employed during the assessment process may include, but are not limited to: obtaining client histories, conducting physical examinations, ordering, interpreting and conducting a broad range of diagnostic procedures (e.g., laboratory studies, EKGs, and x rays).

(2) "Asynchronous learning" means learning experiences, usually delivered through online technology where the interactions between the faculty and students is not constrained by time or place.

(3) "Client(s) or patient(s)" means a family, group or individual who has been assessed by and has a client/patient record established by the nurse practitioner.

(4) "Clinical Practice Experience" means the supervised provision of direct patient care in a clinical setting that complements course work and ensures acquisition of advanced practice nursing skills.

(5) "Clinical Preceptor" means health care provider qualified by education and clinical competency to provide direct supervision of the clinical practice experience of students in an Oregon nurse practitioner program.

(6) "Collaboration" means working with another health care provider to jointly provide client care.

(7) "Consultation" means discussion with another health care provider for the purpose of obtaining information or advice in order to provide client care.

(8) "Counseling" means a mutual exchange of information through which advice, recommendations, instruction, or education is provided to the client.

(9) "Delinquent Renewal" means the renewal of a nurse practitioner certificate previously held in Oregon which is expired.

(10) "Diagnosis" means identification of actual or potential health problems or need for intervention, based on analysis of the data collected.

(11) "Direct Supervision" means the clinical preceptor or faculty member physically present at the practice site who retains the responsibility for patient care while overseeing the student and if necessary, redirecting or intervening in patient care and is able to intervene if necessary.

(12) "Distance learning" means using multiple media for students to access the curriculum without the need to be physically present at the education site.

(13) "Evaluation" means the determination of the effectiveness of the intervention(s) on the client's health status.

(14) "Holistic Health Care" means an approach to diagnosis and treatment of clients, which considers the status of the whole person (physical, emotional, social, spiritual, and environmental).

(15) "Initial certification" means the first certification granted by the Board. This may follow the applicant's completion of a nurse practitioner program or be granted to an applicant in Oregon who has been recognized by and has practiced as a nurse practitioner in another state or jurisdiction.

(16) "Interprofessional educator" means a professional faculty member licensed, certified, or otherwise recognized in a field other than nursing.

(17) "Intervention" means measures to promote health, to protect against disease, to treat illness in its earliest stages, and to manage acute and chronic conditions and/or illness. Interventions may include, but are not limited to: issuance of orders, direct nursing care, prescribing or administering medications or other therapies, and consultation or referral.

(18) "Major curriculum change" means a change that results in a re-focus of purpose and objectives; or a substantive change in program structure or method of clinical or instructional delivery, or clinical hours and content.

(19) "Management" means the provision and/or coordination of the care that the client receives related to physical and psycho-social health-illness status;

(20) "National Board Certification" means current certification as an advanced Nurse Practitioner in a role and population focus through testing accredited by the National Commission on Certifying Agencies or the American Boards of Nursing Specialties, as approved by the Board.

(21) "Non-Oregon Based Graduate Program" means an academic program accredited by a nursing organization recognized by the United States Department of Education or the Council of Higher Education Accreditation that offers a graduate degree or graduate level certificate to qualified students for licensure as an advanced practice registered nurse (Clinical Nurse Specialist, Certified Registered Nurse Anesthetist, Nurse Practitioner) and does not have a physical location in Oregon.

(22) "Nurse Practitioner Educator" refers to a licensed Nurse Practitioner faculty member, who has responsibility for developing and implementing the curriculum, policies, and practices associated with student advising and evaluation, mentoring and collaborating with clinical preceptors and other health care professionals.

(23) "Nurse Practitioner Program Administrator" refers to a licensed Nurse Practitioner appointed by the Dean or Director of the Nursing school who is assigned the responsibility and accountability for the nursing educational program within an accredited academic institution, including those functions aligned with program and curricular design and resource acquisition and allocation.

(24) "Nurse Practitioner" (NP) means an advanced practice registered nurse who is certified by the Board to independently assume responsibility and accountability for the care of clients. The title nurse practitioner and population foci of practice shall not be used unless the individual is certified by the Board.

(25) "Nurse Practitioner Orders" means written or verbal instructions or directions by the nurse practitioner for interventions, diagnostic tests, evaluations, drugs, or treatment modalities. Nurse practitioners may establish protocols and standing orders.

(26) "Oregon Based Nurse Practitioner Program" means Board approved academic program meeting NP state certification criteria that is physically located in Oregon and accredited by a nursing organization recognized by the United States Department of Education or the Council of Higher Education Accreditation that offers a graduate degree or graduate level certificate to qualified students.

(27) "Practice requirement" in an expanded specialty role means independent clinical practice in the specialty role of certification providing health care or other such activities, which have a clinical focus and are at an advanced nursing level. These activities include, but are not limited to, teaching, consulting, supervision and research related to the specialty area of certification.

(28) "Provision of Care" means holistic health care, which is continuous and comprehensive. Health care includes:

- (a) Health promotion;
- (b) Prevention of disease and disability;
- (c) Health maintenance;
- (d) Rehabilitation;
- (e) Identification of health problems;
- (f) Management of health problems;
- (g) Referral.

(29) "Referral" means directing the client to other resources for the purpose of assessment or intervention.

(30) "State Certification" means certification to practice as a Nurse Practitioner authorized by the Oregon State Board of Nursing.

Stat. Auth.: ORS 678.375, 678.380, 678.385, 678.390
Stats. Implemented: ORS 678.375, 678.380, 678.385
Hist.: NB 3-1987, f. & ef. 3-12-87; NB 3-1990, f. & cert. ef. 4-2-90; NB 7-1996, f. & cert. ef. 10-29-96; BN 5-2000, f. & cert. ef. 4-24-00; BN 6-2001, f. & cert. ef. 4-24-01; BN 10-2003, f. & cert. ef. 10-2-03; BN 8-2004, f. 5-4-04, cert. ef. 5-12-04; BN 13-2006, f. & cert. ef. 10-5-06; BN 9-2009, f. 12-17-09, cert. ef. 1-1-10; BN 14-2012(Temp), f. & cert. ef. 11-15-12 thru 5-1-13; BN 3-2013, f. 2-28-13, cert. ef. 4-1-13; BN 10-2013, f. 12-3-13, cert. ef. 1-1-14

851-050-0001

Standards for Nurse Practitioner Programs

The Board's standards for all nurse practitioner programs for initial applicants are as follows:

(1) The nurse practitioner program shall be a minimum of one academic year in length; however, programs completed before January 1, 1986

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and post-Masters programs completed for the purpose of changing category of nurse practitioner certification may be less than one academic year in length if the program otherwise meets all requirements.

(2) Faculty who teach within the nurse practitioner program shall be educationally and clinically prepared in the same specialty area(s) as the theory and clinical areas they teach and shall include advanced practice nurses.

(3) The curriculum content shall contain theory and clinical experience in the nurse practitioner population focus specified in OAR 851-050-0005(6) for which application is being made, preparing the graduate to meet all competencies within the scope including physical assessment, pharmacology, pathophysiology, differential diagnosis and clinical management.

(4) The number of contact hours of clinical experience shall be equal to or greater than the number of contact hours of nurse practitioner theory. The clinical experience must consist of full scope preparation in the population focus for which application is being made.

(5) Post-graduate Nurse Practitioner programs which prepare an individual for dual role or population focus certification must meet all competencies designated for the Nurse Practitioner role including supervised clinical hours of no less than 500 hours for each role or population focus.

(6) Programs must provide documentation that students meet the program's curriculum requirements in effect at the time of enrollment.

(7) Written program materials shall accurately reflect the mission, philosophy, purposes, and objectives of the program.

(8) Programs shall demonstrate appropriate course sequencing and requirements for matriculation into the program, including completion of all pre-licensure nursing curriculum requirements before advancement into nurse practitioner clinical coursework.

(9) Preceptors shall meet clinical and licensure qualifications for the state in which they practice.

(10) Distance and asynchronous learning programs shall meet all standards of OAR 851-050-0001.

(11) All courses required for completion of the nurse practitioner program must be at the graduate level, if completed after January 1, 1986.

(12) Nurse practitioner programs outside of the United States must meet all standards of OAR 851-050-0001. Such programs shall be determined by Board approved or directed credentials review to be equivalent to graduate nurse practitioner programs offered in the United States which prepare the nurse practitioner for practice within the advanced nursing specialty scope. Nationally recognized nursing accreditation standards or guidelines may be applied by the Board at the Board's discretion, in accordance with the Oregon Office of Degree Authorization regulations.

(13) The Board's additional requirements for Oregon based Nurse Practitioner programs are as follows. The Dean or Director of the Nursing school which provides one or more Nurse Practitioner programs/tracks shall ensure that one or more qualified faculty are appointed and have defined position responsibility to address the administrative functions of the program/track. Administrative functions include budget and resource preparation, curricular design, oversight of program implementation and evaluation. The appointed faculty and preceptor(s) in the program shall meet the following requirements:

Nurse Practitioner Program Faculty, Administration and Preceptors

(a) Nurse Practitioner Program Administrator who has overall responsibility for one or more NP tracks shall meet the following requirements:

(A) A current active unencumbered Oregon Nurse Practitioner state certificate;

(B) National certification as a Nurse Practitioner in at least one population focus area;

(C) A doctoral degree in a health-related field;

(D) Educational preparation or experience in teaching and learning principles for adult education, including curriculum development and administration and at least two years of current clinical experience which meets Oregon's practice requirements;

(E) In a multi-track program, where only one Program Administrator is appointed by the Dean or Director of the school, there must be evidence of additional program administrators or lead Nurse Practitioner faculty to provide oversight for student supervision who are nationally certified in that specific program's population focus.

(b) The Nurse Practitioner Program Educator shall meet the following requirements:

(A) A current active unencumbered Oregon Nurse Practitioner state certificate;

(B) An earned doctoral degree in nursing; or

(C) A masters degree with a major in nursing and an appropriate advanced practice nurse credential; and

(D) Two years of clinical experience as a Nurse Practitioner; and

(E) Current knowledge, competence, and certification as a Nurse Practitioner in the population foci consistent with teaching responsibilities;

(F) Adjunct clinical faculty employed solely to supervise clinical nursing experiences of students shall meet all the faculty requirements.

(G) Inter-professional educators who teach non-clinical nursing courses shall have advanced preparation appropriate to the area of content.

(c) Clinical Preceptors in the Nurse Practitioner program shall meet the following requirements:

(A) Student preceptor ratio shall be appropriate to accomplishment of learning objectives, to provide for patient safety, and to the complexity of the clinical situation;

(B) Oregon licensure or certification appropriate to the health professional area of practice;

(C) Functions and responsibilities for the preceptor shall be clearly documented in a written agreement between the agency, the preceptor, and the clinical program

(D) Initial experiences in the clinical practicum and a majority of the clinical experiences shall be under the supervision of clinical preceptors who are licensed advanced practice registered nurses.

(d) Nurse Practitioner Educator responsibilities shall include:

(A) Making arrangements with agency personnel in advance of the clinical experience which provides and verifies student supervision, preceptor orientation, and faculty defined objectives;

(B) Monitoring student assignments, making periodic site visits to the agency, evaluating students' performance on a regular basis with input from the student and preceptor, and availability for direct supervision during students' scheduled clinical time;

(C) Providing direct supervision by a qualified faculty or experienced licensed clinical supervisor as required for patient safety and student skill attainment.

(e) Nurse Practitioner Program Administrator responsibilities shall include:

(A) Ensuring appropriate student faculty ratios to meet program goals and objectives;

(B) Provision of leadership and accountability for the administration, planning, implementation and evaluation of the program;

(C) Preparation and administration of the program budget;

(D) Facilitation of faculty recruitment, development, performance review, promotion and retention;

(E) Assurance that cooperative agreements with clinical practice sites are current.

Program Accreditation Required and Board Notification Process

(f) Currently accredited programs that prepare nurse practitioners for state certification under these rules and requirements shall submit to the Board:

(A) A copy of their most recent program self-evaluation reports;

(B) Current accreditation and survey reports from all nursing accrediting agencies; and

(C) Interim reports submitted to the national nursing accreditation agency.

(D) These documents must be submitted to the Board upon receipt to or release from the accrediting agency.

(g) Programs which prepare nurse practitioners for state certification under development or pre-accreditation review shall submit the following for review by the Board:

(A) Copies of the curricula within 30 days of sending the information to the accrediting agency;

(B) Copies of self-evaluation reports and any interim reports provided to all national nursing accreditation agencies, at the time of notification from the accrediting agency that the program has not been fully accredited;

(C) Verification of accreditation from all accrediting agencies within 30 days of receipt by the program;

(D) Annual reports which enable the monitoring of continued compliance with Board requirements.

(h) Grounds for denial of graduate nurse practitioner applicants for initial certification include failure of the Oregon based Nurse Practitioner program to:

(A) Maintain accreditation status through a US Department of Education recognized national accrediting body;

(B) Submit curricula, self-evaluation reports, interim reports or notice of accreditation reports as required by the Board;

(i) Students who graduate from a program which was accredited at the time of their completion shall be considered to have graduated from an accredited program regardless of the current program status for the purpose

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of licensure. Approval of a New Nurse Practitioner Educational Program

(j) Any university or college wishing to establish a Nurse Practitioner education program must make application to the Board on forms supplied by the Board no later than one year before proposed enrollment of students.

(k) The following information must be included with the initial application along with supporting documentation:

(A) Purpose for establishing the nursing education program;

(B) Community needs and studies made as the basis for establishing a nursing education program;

(C) Type of program including clear identification of proposed licensure role and population foci for graduates;

(D) Accreditation status, relationship of educational program to parent institution;

(E) Financial provision for the educational program;

(F) Potential student enrollment;

(G) Provision for qualified faculty;

(H) Proposed clinical facilities and other physical facilities;

(I) Proposed time schedule for initiating the program. If initial approval is denied, the applicant may request a hearing before the Board and the provisions of the Administrative Procedures Act shall apply.

Survey of Nurse Practitioner Programs, Survey Criteria

(l) Board representatives will conduct in person visits to nursing programs for the following purposes:

(A) Review of application for initial program approval;

(B) Initial and continuing full approval of an educational program;

(C) Receipt by the Board of cause for review including but not limited to:

(i) Significant curricular change which includes addition of a new state certification recognized population focus or role;

(ii) Evidence that graduates fail to meet national certification criteria;

(iii) Violation of Board standards.

(D) If approval is denied or withdrawn, the applicant may request a hearing before the Board and the provisions of the Administrative Procedures Act shall apply.

(m) Board representatives will contact nursing programs to schedule site visits:

(A) Within 60 days of receipt of an application for initial program approval;

(B) Upon receipt of national accreditation report for existing programs; one year after implementation of new programs, every 3-5 years for continuing approval;

(C) Within 30 days of receipt of a complaint.

(D) For purposes of reviewing a major curriculum change.

Stat. Auth.: ORS 678.380, 678.150

Stats. Implemented: ORS 678.380, 678.150

Hist.: NB 3-1990, f. & cert. ef. 4-2-90; NB 8-1993, f. & cert. ef. 8-23-93; BN 10-2003, f. & cert. ef. 10-2-03; BN 13-2006, f. & cert. ef. 10-5-06; BN 9-2009, f. 12-17-09, cert. ef. 1-1-10; BN 10-2013, f. 12-3-13, cert. ef. 1-1-14

851-050-0002

Application for Initial Certification as a Nurse Practitioner

(1) An applicant for initial certification in Oregon as a nurse practitioner shall:

(a) Hold a current unencumbered registered nurse license in the State of Oregon, and

(b) Meet the following educational requirements:

(A) A Master's Degree in Nursing or a Doctorate in Nursing accredited by a national nursing organization recognized by the US Department of Education or a credentials evaluation from a Board approved or directed credentials service for graduate nursing degrees obtained outside the U.S. which demonstrates educational equivalency to U.S. graduate nursing degree accredited by a national nursing organization recognized by the US Department of Education; and

(B) Satisfactory completion of a Nurse Practitioner Program that meets OAR 851-050-0001 requirements and is specific to the role and population focus for which application is made.

(C) Nurse practitioner programs completed after January 1, 2005 shall be formally affiliated within an accredited graduate level program accredited by a national nursing organization recognized by the US Department of Education at the Masters or post-masters graduate level; or an equivalent non-U.S. graduate program as specified in OAR 851-050-0001(11); and

(c) Meet the practice requirement in OAR 851-050-0004; and

(d) As of January 1, 2011 provide verification of current accredited national board certification from a Nurse Practitioner national certification examination which meets criteria in OAR 851-050-0008, congruent with a Board recognized nurse practitioner role and population focus.

(2) An applicant for initial certification in Oregon who has been certified in another state as an advanced practice nurse, and who meets all other requirements for certification, may be certified in Oregon if their program meets the standards of OAR 851-050-0001 and was completed within the following time frames:

(a) Prior to January 1, 1981, completion of a nursing educational program leading to licensure as a registered nurse and subsequent completion of a nurse practitioner program.

(b) As of January 1, 1981, a nurse obtaining Oregon certification shall have a minimum of a baccalaureate degree with a major in nursing and, in addition, satisfactory completion of an educational program in the nurse practitioner specialty area. Specialty preparation obtained within a baccalaureate nursing program does not meet this requirement.

(c) As of January 1, 1986, the minimum educational requirement for Oregon shall be a Masters degree in Nursing accredited by a national nursing organization recognized by the US Department of Education with satisfactory completion of an educational program in the nurse practitioner specialty area.

(d) Graduates of schools of nursing outside of the U.S. must submit a credentials evaluation through a Board approved or directed credentials service demonstrating educational equivalency to a U.S. accredited graduate level Masters or Doctoral Degree in Nursing. Nationally recognized nursing accreditation standards or guidelines may be applied by the Board at the Board's discretion, in accordance with Oregon Office of Degree Authorization regulations.

(3) The graduate degree requirement may be met prior to, concurrent with, or after completion of the nurse practitioner program.

(4) The following documents shall be submitted as part of the initial application process:

(a) An official transcript of the graduate program, showing degree granted and received directly from the registrar of the university or college.

(b) An official transcript, or other evidence of satisfactory completion of the nurse practitioner program showing all courses, grades, quality points, grade point average, degree granted, date of graduation, and appropriate registrar's signature received by the Board directly from the program or registrar.

(c) Evidence that the nurse practitioner program meets the Board's standards as described in OAR 851-050-0001, including documentation of credentials evaluation as indicated for graduates of programs outside of the U.S.

(5) An applicant for initial state certification in Oregon as a nurse practitioner shall meet all requirements for prescriptive authority described in Division 56 and obtain prescribing authority under the provisions of Division 56 of the Oregon Nurse Practice Act.

(6) Revocation, suspension, or any other encumbrance of a registered nurse license held in another state, territory of the United States, or any foreign jurisdiction may be grounds for denial of certification in Oregon.

(7) The applicant shall submit all fees required by the Board with the application. The fees are not refundable. An application for initial certification, which remains incomplete after one calendar year, shall be considered void.

Stat. Auth.: ORS 678.375, 678.380 & 678.390

Stats. Implemented: ORS 678.380 & 390

Hist.: NER 34, f. & ef. 10-1-76; NER 8-1985, f. & ef. 12-9-85; NB 3-1990, f. & cert. ef. 4-2-90; Renumbered from 851-020-0300; NB 12-1990, f. & cert. ef. 12-28-90; NB 3-1993(Temp), f. & cert. ef. 2-26-93; NB 8-1993, f. & cert. ef. 8-23-93; NB 7-1996, f. & cert. ef. 10-29-96; Administrative correction 3-23-98; BN 10-2003, f. & cert. ef. 10-2-03; BN 1-2005, f. & cert. ef. 2-17-05; BN 1-2007, f. & cert. ef. 3-13-07; BN 8-2009, f. 12-17-09, cert. ef. 7-1-10; BN 10-2013, f. 12-3-13, cert. ef. 1-1-14

Rule Caption: Incorporation of rules to review/approved CNS education programs based on national standards and criteria

Adm. Order No.: BN 11-2013

Filed with Sec. of State: 12-3-2013

Certified to be Effective: 1-1-14

Notice Publication Date: 11-1-2013

Rules Adopted: 851-054-0030, 851-054-0035

Rules Amended: 851-054-0010, 851-054-0020, 851-054-0021, 851-054-0040

Subject: Rules for the review/approval of clinical nursing specialist programs are defined based on national standards and criteria for such programs at the graduate level. Name change by a national nursing accreditation agency specifically referenced in rule required removal of this name from the definitions and some rule sections. Accreditation agencies are now referred to using a more generic term

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to prevent the need for rule changes when organizations make name changes. Requirements for re-entry into this area of practice for those without an adequate number of practice hours were made more explicit.

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

851-054-0010

Purposes and Definitions

- (1) Purposes of these rules:
 - (a) To implement the provisions of ORS 678.370 to 678.372 governing the state certification of Clinical Nurse Specialists (CNS) by the Oregon State Board of Nursing (the Board).
 - (b) To define the scope of practice of the CNS.
 - (c) To establish standards for safe practice for the CNS.
 - (d) To serve as a guide for the Board to evaluate CNS practice.
 - (e) To establish standards for the initial and ongoing approval of CNS education programs operating in the state of Oregon; and
 - (f) To establish educational standards for state certification of applicants completing CNS education programs operating outside of the state of Oregon.
- (2) Definitions as used in these rules:
 - (a) "Assessment" means a process of collecting information regarding a client's health status using tools, techniques, and methodologies based on nursing theory and research. The skills employed during the assessment process include collecting, analyzing and evaluating data in order to diagnose symptoms, functional problems, risk behaviors and health status, and to develop interventions and plans of care.
 - (b) "Asynchronous learning" means learning experiences usually delivered through online technology where the interactions between the faculty and students are not constrained by time or place.
 - (c) "Client" means the recipient of CNS services for whom the CNS has established a provider relationship. A provider relationship is established through assessment and planning for the recipient.
 - (d) "Clinical Nurse Specialist" (CNS) is a registered nurse who has been approved and certified by the Board to provide health care in an expanded specialty role.
 - (e) "Clinical Nurse Specialist Educator" refers to a licensed CNS faculty member approved by the Board who has responsibility for input into the ongoing development, evaluation and revision of the CNS program curriculum. CNS Educators are responsible for student advising, supervision, evaluation, mentoring and collaborating with clinical preceptors and other health care professionals.
 - (f) "Clinical Nurse Specialist Program Administrator" refers to a licensed CNS approved by the Board and appointed by the Dean or Director of the Nursing school who is assigned the responsibility and accountability for the CNS education program within an accredited academic institution, including those functions aligned with program and curricular design and resource acquisition and allocation.
 - (g) "Clinical Practice Experience" means the supervised provision of care in a clinical setting that complements CNS course work and ensures acquisition of advanced practice nursing skills.
 - (h) "Clinical Preceptor" means a licensed independent health care provider qualified by education and clinical competency to provide direct supervision of the clinical practice experience of students in a CNS program under CNS educator direction.
 - (i) "Collaboration" is a process involving the CNS and one or more members of the health care team working together to achieve common goals, each responsible for their particular area of expertise.
 - (j) "Consultation" means interaction between the CNS and the consultee for the purpose of transmitting or obtaining information or advice.
 - (k) "Continuing Education hours" are contact hours of education. One contact hour is equal to 60 minutes of instruction. Ten contact hours are equal to one Continuing Education Unit (CEU).
 - (l) "Core Competencies" means the knowledge, skills and abilities required for performance in a CNS role identified and nationally validated by the nursing profession.
 - (m) "Diagnosis" means identification of actual or potential health problems or need for intervention, based on analysis of the data collected.
 - (n) "Direct supervision" means the clinical preceptor or faculty member is physically present at the practice site; retains the responsibility for CNS practice; oversees the student; and, if necessary, redirects or intervenes in CNS practice as well as being able to intervene if necessary.
 - (o) "Distance learning" means using multiple media for students to access the curriculum without the need to be physically present at the education site.

(p) "Interprofessional educator" means a professional faculty member licensed, certified, or otherwise recognized in a field other than nursing.

(q) "Major curriculum change" means a change that results in a refocus of purpose and objectives; or a substantive change in program structure, method of clinical or instructional delivery, or clinical hours and content.

(r) "Medical equipment" means medical supplies and durable or disposable equipment ordered by the CNS which are related to or required for self-care, or the plan of care.

(s) "National Certification" means a certificate of recognition in a specialty area issued by a national nursing organization.

(t) "Non-Oregon Based Graduate Program" means an academic program accredited by a nursing organization recognized by the United States Department of Education or the Council of Higher Education Accreditation that offers a graduate degree or graduate level certificate to qualified students for licensure as an advanced practice registered nurse (Clinical Nurse Specialist, Certified Registered Nurse Anesthetist, Nurse Practitioner) and does not have a physical location in Oregon.

(u) "Order" means written or verbal directives by the CNS to other members of the health care team.

(v) "Oregon Based Clinical Nurse Specialist Program" means a Board approved academic program meeting CNS licensing criteria that is physically located in Oregon and accredited by a nursing organization recognized by the United States Department of Education or the Council of Higher Education Accreditation which offers a graduate degree or graduate level certificate to qualified students.

(w) "Organization" means a system or network that provides patient care.

(x) "Population" means the collection of individuals in a community or a group of individuals defined by age, health status, lifestyle, disease and/or geographic location.

(y) "Prescribe" means written, verbal, or electronic legal directive to procure or designate for use legend drugs or controlled substances.

(z) "State Certification" means certification to practice advanced nursing as authorized by the Oregon State Board of Nursing.

(aa) "Three spheres of influence" means domains that denote the scope or breadth of practice activities and the target outcomes associated with a particular sphere (patient/population, nursing practice or health care system).

Stat. Auth.: ORS 678.150

Stats. Implemented: ORS 678.370 & 678.372

Hist.: BN 4-2001, f. & cert. ef. 2-21-01; BN 11-2006, f. & cert. ef. 10-5-06; BN 14-2010, f. & cert. ef. 9-30-10; BN 11-2013, f. 12-3-13, cert. ef. 1-1-14

851-054-0020

Clinical Nurse Specialist Scope of Practice

The Clinical Nurse Specialist (CNS) independently provides evidence-based advanced nursing care to clients, and facilitates attainment of health goals. Within the practice of advanced nursing, the CNS provides innovation in nursing practice, based upon clinical expertise, evidence-based decision making, and leadership skills. The CNS practices within three spheres of influence. These three spheres are: individual clients and populations; nurses and other multidisciplinary team members; and organizations. Practice may target one or more spheres of influence.

(1) The CNS may practice with individual clients and populations of clients.

(a) Individual client care includes, but is not limited to:

(A) Assessing the client using tools, techniques, and methodologies based on theory and research;

(B) Diagnosing symptoms, functional problems, risk behaviors, and health status of the client;

(C) Developing a mutually derived therapeutic plan of care with the client;

(D) Designing, implementing, and evaluating nursing interventions by using data, research, and theoretical knowledge;

(E) Selecting, recommending, and ordering medical equipment, laboratory and screening or diagnostic tests for the client;

(F) Selecting, recommending and ordering prescription medications and devices as authorized per division 56 consistent with specialty and scope of practice;

(G) Establishing standing orders, protocols, algorithms, or electronic order sets related to nursing interventions and specific plans of care;

(H) Encouraging disease prevention, health promotion and health maintenance;

(I) Referring the client to other health care services or providers as indicated.

(b) Population care includes, but is not limited to:

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- (A) Planning, implementing and evaluating data collection;
 - (B) Selecting, ordering, and recommending screening and diagnostic tests for individuals within the population;
 - (C) Interpreting and analyzing population data to formulate diagnoses in the area of needs, functional problems, risks, and health issues;
 - (D) Reviewing and revising diagnoses based on subsequent data collection;
 - (E) Innovating, implementing, guiding, evaluating, and revising population-focused plans and programs;
 - (F) Encouraging disease prevention, health promotion and health maintenance;
 - (G) Establishing criteria for referral within a population;
 - (H) Establishing algorithms, standing orders, or practice guidelines related to specific populations;
 - (I) Informing the population about its health and promoting other community systems that influence health;
 - (J) Assessing need for and participating in activities to change health and social policies that affect the health of the community.
- (2) The CNS may practice with nurses and other members of the multidisciplinary care team to advance the practice of nursing and improve client care. This practice includes, but is not limited to:
- (a) Consulting and collaborating to identify and manage health care issues;
 - (b) Providing leadership in the utilization of research in practice;
 - (c) Coaching nursing staff in clinical practice development;
 - (d) Identifying knowledge deficits of target groups providing health care;
 - (e) Developing, providing and evaluating educational and other programs that enhance the practice of nursing personnel and/or other members of the health care team.
- (3) The CNS may practice with organizations to provide clinical expertise and guidance. This practice includes, but is not limited to:
- (a) Using system-wide change strategies based on an assessment of the needs and strengths of the organization;
 - (b) Initiating collaborative relationships among teams to facilitate interdisciplinary practice;
 - (c) Collaboratively developing and evaluating research-based and client-driven systems and processes;
 - (d) Creating, advising, and influencing system-level policy that affects programs of care;
 - (e) Evaluating and recommending equipment and products being used in patient care for efficacy, efficiency, cost-effectiveness, and client/consumer satisfaction.
- (4) The CNS may provide expertise that includes, but is not limited to:
- (a) Summarizing, interpreting, and applying research results;
 - (b) Teaching, coaching, and mentoring health care members in the evaluation and use of research;
 - (c) Providing leadership through practice in a CNS Program as a CNS Program Administrator, CNS Educator, or CNS Clinical Preceptor with CNS students;
 - (d) Planning, directing, and evaluating multidisciplinary programs of care for clients;
 - (e) Evaluating client outcomes and cost effectiveness of care to identify needs for practice improvement;
 - (f) Conducting and participating in research and research protocols;
 - (g) Designing and establishing standing orders related to nursing interventions.
- (5) The CNS scope of practice may include:
- (a) Prescribing, ordering, administering and dispensing medications per division 56 regulations and requirements.
 - (b) Receiving and distributing drug samples.
 - (c) Obtaining DEA registration for controlled substances in Schedule

II-V.

Stat. Auth.: ORS 678.150
Stats. Implemented: ORS 678.370, 678.372
Hist.: BN 4-2001, f. & cert. ef. 2-21-01; BN 11-2006, f. & cert. ef. 10-5-06; BN 11-2013, f. 12-3-13, cert. ef. 1-1-14

851-054-0021

Standards for Clinical Nurse Specialist Scope of Practice

The Clinical Nurse Specialist (CNS), shall meet the standards for Registered Nurse practice, and shall also meet the practice standards of advanced practice, including but not limited to:

(1) Recognizing and practicing within the limits of knowledge and experience of the individual CNS, and consulting with or referring clients to other health care providers when indicated;

(2) Providing and documenting nursing services within the scope of practice and specialty for which the individual CNS is educationally prepared, and for which competency has been established and maintained. Educational preparation includes academic coursework, workshops or seminars, or other supervised, planned learning, provided both theory and clinical experience are included.

(3) Teaching, coaching, mentoring and providing leadership using professional standards of CNS practice.

Stat. Auth.: ORS 678.370, 678.372 & 678.150

Stats. Implemented: ORS 678.370, 678.372 & 678.150

Hist.: BN 4-2001, f. & cert. ef. 2-21-01; BN 11-2013, f. 12-3-13, cert. ef. 1-1-14

851-054-0030

Standards for Clinical Nurse Specialist Programs

The Board's standards for all Clinical Nurse Specialist programs for initial applicants are as follows:

(1) The CNS program shall be a minimum of 30 semester hours or 45 quarter hours in length. Post graduate advanced practice registered nurse applicants who obtained CNS preparation in a different role or population focus may complete less than 30 semester hours or 45 quarter hours with documentation of the following:

(a) Completion of directly supervised clinical hours in the applicable CNS role;

(A) 500 minimum supervised clinical (clock) hours of clinical experience for master's and post-graduate preparation if completed after January 1, 2007; or

(B) 1,000 minimum supervised clinical (clock) hours for post-baccalaureate practice doctorate preparation.

(b) Completion of curriculum requirements in place for the CNS program at the time of matriculation with evidence of any advanced placement or credit for prior learning; and

(c) Specialty and population specific competencies as required for practice in the CNS role and three spheres of influence.

(2) CNS Educators who teach within the CNS program shall be educationally and clinically prepared in the same population focus and clinical areas they teach and shall include state certified advanced practice registered nurses.

(3) The curriculum content shall contain theory and clinical experience in the CNS population focus for which application is being made, preparing the graduate to meet all core competencies within the CNS scope including the three spheres of influence. Graduates as of June 30, 2015 need to demonstrate successful completion of discrete graduate level courses in advanced level physical assessment, pharmacology, and pathophysiology.

(4) The clinical experience must consist of full scope preparation in the CNS population focus for which application is being made as well as the three spheres of influence.

(5) In the event of program revision, programs must maintain and provide upon request documentation that students met the program's curriculum requirements at the time of enrollment and matriculation into the program. Any discrepancies must be justified.

(6) Written program materials shall accurately reflect the mission, philosophy, purposes, and objectives of the program.

(7) Programs shall demonstrate appropriate course sequencing and requirements for matriculation into the program, including completion of all pre-licensure nursing curriculum requirements before advancement into CNS clinical coursework.

(8) Clinical preceptors shall meet clinical and licensure qualifications for the state in which they practice.

(9) Distance and asynchronous learning programs shall meet all standards of OAR 851-054-0030.

(10) Clinical Nurse Specialist programs outside of the United States shall meet all standards of OAR 851-054-0030. Such programs shall be determined by Board approved or directed credentials review to be equivalent to graduate nursing programs offered in the United States that prepare the graduate for practice within the CNS scope. Nationally recognized nursing accreditation standards or guidelines may be applied by the Board at the Board's discretion, in accordance with the Oregon Office of Degree Authorization regulations.

Stat. Auth.: ORS 678.050, 678.150, 678.370, 678.372

Stats. Implemented: ORS 678.050, 678.150, 678.370, 678.372

Hist.: BN 11-2013, f. 12-3-13, cert. ef. 1-1-14

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851-054-0035

Standards for Approval of Oregon Based Programs

The Board of Nursing holds the Dean or Director of the School of Nursing accountable for identification and appointment of qualified nurse administrators, educators and preceptors. The Dean or Director shall ensure that programs which prepare CNSs in one or more programs/tracks have CNS program administrators with defined position responsibility for budget and resource preparation, curricular design and implementation, and program evaluation.

(1) CNS Program Administrators:

(a) Qualifications: A CNS program administrator who has overall responsibility for one or more CNS tracks shall meet the following requirements:

(A) An active unencumbered Oregon CNS state certificate;

(B) National certification as a CNS in at least one population focus area or specialty is preferred;

(C) A doctoral degree in an education or health-related field;

(D) Educational preparation or experience in teaching and learning principles for adult education, including curriculum development and administration and at least two years (2,080 hours) of CNS practice which meets Oregon's requirements;

(E) In a multi-track program, where only one program administrator is appointed by the Dean or Director of the school, there must be evidence of additional program administrators or lead CNS faculty to provide oversight for student supervision who are qualified in that specific program's population focus and spheres of influence.

(b) Responsibilities: The principle responsibilities of the CNS program administrator shall be:

(A) Ensuring appropriate student faculty ratios to meet program goals and objectives;

(B) Providing leadership and accountability for the administration, planning, implementation and evaluation of the program;

(C) Preparing and administering the program budget;

(D) Facilitating faculty recruitment, development, performance review, promotion and retention;

(E) Confirming that cooperative agreements with clinical practice sites are current.

(c) CNS program administrator responsibilities may include functioning as program faculty with appropriate workload assignment to fulfill administrative duties and responsibilities.

(2) CNS Educators:

(a) Qualifications: The CNS Educator shall meet the following requirements:

(A) An active unencumbered Oregon CNS state certificate; and

(B) A minimum of a masters degree in nursing with at least 2,080 hours of prior CNS practice which meets Oregon's requirements;

(C) National certification as a CNS in at least one population focus area or specialty is preferred;

(D) In a doctoral program, a majority (greater than 50%) of CNS educators must be doctorally prepared;

(E) Current knowledge and competence as a CNS in the population focus area and the spheres of influence consistent with teaching responsibilities;

(F) Adjunct clinical faculty employed solely to supervise clinical nursing experiences of students shall meet all the faculty requirements;

(G) Inter-professional educators who teach non-clinical nursing courses shall have advanced preparation appropriate to the area of content.

(b) Responsibilities: The principle responsibilities of the CNS Educator shall be to:

(A) Enable each student to meet faculty developed objectives and competencies by:

(i) Verifying and approving arrangements with a clinical agency for each student's clinical practicum consistent with their learning objectives;

(ii) Coordinating preceptor selection and orientation(s); and

(iii) Providing and verifying direct student supervision;

(B) Monitor clinical practice experiences, make periodic site visits to the clinical practice location, evaluate students' performance on a regular basis with input from the student and preceptor;

(C) Provide direct student supervision of clinical experiences as required for patient safety and student skill attainment;

(D) Assure appropriate use of preceptors for clinical instruction by verifying that:

(i) The student to preceptor ratio is appropriate to the accomplishment of learning objectives, to provide for patient safety, and to the complexity of the clinical situation;

(ii) Oregon licensure or certification is current and appropriate to the health professional's area of practice;

(iii) Functions and responsibilities for the preceptor are clearly documented in a written agreement between the agency, the preceptor, and the clinical program;

(iv) Initial experiences in the clinical practicum and a majority of the clinical experiences shall be under the supervision of clinical preceptors who are state certified CNSs.

(3) CNS Clinical Preceptors: The CNS clinical preceptor shall meet the following standards:

(a) Licensure as an independent health care provider qualified by education and clinical competency to provide direct supervision of the clinical practice experience of students in a CNS program;

(b) Clinical preceptors may be used to enhance, but not replace, faculty-directed clinical learning experiences.

(4) Program accreditation requirements and Board notification process:

(a) Currently accredited programs that prepare Clinical Nurse Specialists for state certification under these rules and requirements shall submit to the Board:

(A) A copy of their most recent program self-evaluation reports;

(B) Current accreditation and survey reports from all nursing accrediting agencies; and

(C) Interim reports submitted to the nursing accreditation agency.

(D) These documents must be submitted to the Board upon receipt to or release from the accrediting agency or no later than 90 days from enactment of these rules.

(b) Programs which prepare Clinical Nurse Specialists for state certification under development or pre-accreditation review shall submit the following for review by the Board:

(A) Copies of the curricula within 30 days of sending the information to the accrediting agency;

(B) Copies of self-evaluation reports and any interim reports provided to all national nursing accreditation agencies at the time of notification from the accrediting agency that the program has not been fully accredited;

(C) Verification of accreditation from all accrediting agencies within 30 days of receipt by the program;

(D) Annual reports which enable the monitoring of continued compliance with Board requirements.

(5) Approval of a New Oregon Based Clinical Nurse Specialist Educational Program

(a) Any university or college wishing to establish a Clinical Nurse Specialist education program must make application to the Board no later than one year before proposed enrollment of students.

(b) The following information must be included with the initial application along with supporting documentation:

(A) Purpose for establishing the nursing education program;

(B) Community needs and studies made as the basis for establishing a nursing education program;

(C) Type of program including clear identification of proposed licensure role and population foci for graduates including eligibility for national certification as indicated;

(D) Accreditation status, relationship of educational program to parent institution;

(E) Financial provision for the educational program;

(F) Potential student enrollment;

(G) Provision for qualified faculty;

(H) Proposed clinical facilities and other physical facilities;

(I) Proposed time schedule for initiating the program. If initial approval is denied, the applicant may request a hearing before the Board and the provisions of the Administrative Procedures Act shall apply.

(6) Survey of Oregon Based Clinical Nurse Specialist Educational Programs

(a) Board representatives will conduct in person visits to nursing programs for the following purposes:

(A) Review of application for initial program approval;

(B) Initial and continuing full approval of an educational program;

(C) Receipt by the Board of cause for review including but not limited to:

(i) Significant curricular change which includes addition of a new state certification recognized population focus or role;

(ii) Evidence that graduates fail to meet national certification eligibility criteria, if applicable;

(iii) Violation of Board standards.

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(D) If approval is denied or withdrawn, the applicant may request a hearing before the Board and the provisions of the Administrative Procedures Act shall apply.

(b) Board representatives will contact nursing programs to schedule site visits:

(A) Within 60 days of receipt of an application for initial program approval;

(B) Upon receipt of national accreditation report for existing programs; one year after implementation of new programs; every 3-5 years for continuing approval;

(C) Within 30 days of receipt of a complaint.

(D) For purposes of reviewing a major curriculum change.

Stat. Auth.: ORS 678.050, 678.150, 678.370, 678.372

Stats. Implemented: ORS 678.050, 678.150, 678.370, 678.372

Hist.: BN 11-2013, f. 12-3-13, cert. ef. 1-1-14

851-054-0040

Eligibility for Initial State Certification

(1) An applicant for certification as a Clinical Nurse Specialist (CNS) shall:

(a) Hold or obtain an active unencumbered registered nurse license in Oregon;

(b) Hold a graduate degree in nursing, or a post-masters certificate with evidence of CNS theory and clinical concentration. The program shall meet the following educational standards:

(A) The program shall be at least one academic year in length;

(B) There shall be faculty and/or clinical instructors who are academically and experientially qualified in nursing, and who maintain expertise within the CNS scope of practice;

(C) Accreditation of the graduate nursing degree by a national nursing organization recognized by the US Department of Education or documentation of a Board approved or directed credentials evaluation for graduates of programs outside of the U.S. which demonstrates education equivalency to a graduate degree in nursing accredited by the national nursing organization recognized by the US Department of Education.

(D) Applicants who graduate or obtain a post-masters CNS certificate on or after January 1, 2007 shall have completed 500 hours of clinical practice within the program.

(c) Meet the practice requirement through verification of:

(A) Graduation from a CNS educational program which meets the requirements of OAR 851-054-0030 within the past one year; or

(B) Practice of at least 192 hours in the two years following graduation from a CNS program; or

(C) Practice within the CNS scope of practice for at least 960 hours within the five years preceding the application. Verification of practice hours is subject to random audit.

(2) If an applicant does not meet the practice requirement in 851-054-0040(1)(c), the applicant shall:

(a) Obtain a limited license as a registered nurse in the State of Oregon; or hold an active Oregon registered nurse license;

(b) Submit for Board approval, a detailed plan for precepted practice that includes: a plan for demonstrating core, population, and specialty competencies that support the CNS role; names and qualifications of all CNS preceptor(s) at least one of whom must be an Oregon state certified CNS skilled in the population focus or specialty care; and a description of the nature of the proposed unpaid, voluntary, precepted clinical experience.

(A) If the applicant has practiced at least 960 hours within the six years prior to the date of application, the practice plan shall provide for 250 hours of preceptorship. Documented practice hours within the CNS scope for the past two years may be recognized and may reduce the required hours, except that, in no case shall the precepted practice be less than 120 hours.

(B) If the applicant has practiced at least 960 hours within the CNS scope for the ten years prior to the date of application, the practice plan shall provide for 400 hours.

(C) If the applicant has not practiced at least 960 hours within the CNS scope for the last ten years, the re-entry requirement shall be met through:

(i) Successful completion of a CNS post masters certificate program which meets the requirements of OAR 851-054-0030, or;

(ii) A comprehensive series of CNS courses within a US Department of Education recognized nationally accredited CNS program in the population or specialty sought.

(iii) The plan of study shall be submitted in advance for Board approval before enrollment. The plan of study shall cover the entire scope of the population or specialty area under which the applicant was previous-

ly state certified, and must include both clinical and didactic hours. The program of study shall include advanced pharmacology, pathophysiology, physical assessment, and theory and clinical experience in the CNS population focus for which renewal is being made, preparing the applicant to meet all core competencies within the CNS scope including the three CNS spheres of influence in order to meet the requirements of OAR 851-054-0030.

(iv) The institution shall provide documentation which demonstrates previous credits, courses, or competency testing applied to meet final completion. Proof of completion of this plan of study shall be provided to the Board in the form of official transcripts documenting completion of all required coursework.

(c) Obtain a limited CNS state certification for precepted practice. The limited state certification shall be issued only upon receipt of a completed CNS application, application for limited state certification, Board approval of the plan for supervised practice, and payment of all applicable fees. The limited state certification is valid only for precepted practice that has been approved in advance by the Board, and will be valid for one year from the date of issue. One extension of the limited state certificate may be granted upon approval and payment of fee, provided there is a current valid application for state certification on file and no disciplinary action has been taken against the applicant. This extension will be valid for one year from date of approval.

(d) Successfully complete the precepted hours of practice supervised by the CNS preceptor. Successful completion shall be verified by a final evaluation submitted by the supervising CNS to the Board to verify that the applicant is competent to practice in the CNS scope at a safe and acceptable level, and that the number of required hours of precepted practice was completed.

(e) Submit evidence of continuing education related to the CNS role to total 20 contact hours for each year out of practice with no less than 50% obtained from accredited providers of continuing nursing education (CNE), continuing medical education (CME), or continuing pharmacology education (CPE). Continuing education taken concurrent with the reentry plan may be applied towards the total continuing education requirement, provided all hours are complete by the end of the preceptorship.

(3) The applicant shall submit all fees required by the Board with the application. The fees are not refundable. An application that remains incomplete after one year shall be considered void.

(4) Clinical Nurse Specialists seeking prescriptive authority will need to meet all additional requirements in Division 56. These requirements may be obtained as part of a re-entry program plan approved by the Board.

(5) Grounds for denial of graduate Clinical Nurse Specialist applicants for initial state certification include failure of CNS program to:

(A) Maintain accreditation status through a US Department of Education recognized national nursing accrediting body;

(B) Submit curricula, self-evaluation reports, interim reports or notice of accreditation reports as required by the Board until such reports are received and reviewed by the Board;

(6) Students who graduate from a program which was accredited at the time of their completion shall be considered to have graduated from an accredited program regardless of the current program status for the purpose of licensure.

Stat. Auth.: ORS 678.050, 678.370 & 678.372

Stats. Implemented: ORS 678.050, 678.370 & 678.372

Hist.: BN 4-2001, f. & cert. ef. 2-21-01; BN 10-2001, f. & cert. ef. 7-9-01; BN 6-2006, f. & cert. ef. 5-8-06; BN 11-2006, f. & cert. ef. 10-5-06; BN 3-2007, f. & cert. ef. 3-13-07; BN 14-2010, f. & cert. ef. 9-30-10; BN 8-2013, f. 5-6-13, cert. ef. 6-1-13; BN 11-2013, f. 12-3-13, cert. ef. 1-1-14

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Rule Caption: Changes to dispensing rules based on statute changes from 2013 session

Adm. Order No.: BN 12-2013

Filed with Sec. of State: 12-3-2013

Certified to be Effective: 1-1-14

Notice Publication Date: 11-1-2013

Rules Amended: 851-056-0020, 851-056-0022

Subject: Passage of a bill directly applicable to dispensing by advanced practice nurses required changes in Division 56 Rules. Specific criteria for dispensing authority were removed as they have been removed from statute. A few minor changes were made to correct dates and/or names of publications referred to in the rule.

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

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851-056-0020

Dispensing Authority for Nurse Practitioners and Clinical Nurse Specialists

(1) An “applicant” for dispensing authority must be an unencumbered Oregon state certified nurse practitioner or clinical nurse specialist with prescriptive authority in good standing with the Oregon State Board of Nursing.

(2) Applicants shall submit an application and information as required by the Board.

(3) The applicant shall show evidence of completion of the following dispensing program:

(a) Documented review of content regarding safe dispensing listed below:

(A) Board of Nursing handbook “Nurse Practitioner and Clinical Nurse Specialist Prescriptive Authority in Oregon”;

(B) The Drug Enforcement Administration Pharmacist’s Manual (2010);

(C) OAR 851 division 56;

(D) ORS Chapter 689 and OAR Chapter 855;

(E) U.S. Consumer Product Safety Commission publication “Poison Prevention Packaging: A Guide for Healthcare Professionals” and;

(F) The Institute for Safe Medication Practices (ISMP) “List of Error-Prone Abbreviations, Symbols, and Dose Designations” (2013); and

(G) Information on available electronic or hard copy prescription drug references which provide information to professionals authorized to dispense prescription medications.

(b) Successful self-examination as provided by the Board on these materials.

(4) The staff of the Board shall provide written notice to the Oregon Board of Pharmacy upon receipt and again upon approval of such application.

(5) Applicants must provide complete and accurate information requested by the Board. Failure to complete application material as requested or failure to meet criteria in this rule shall be grounds for denial, suspension, or revocation of dispensing authority.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 678.390

Stats. Implemented: ORS 678.670, 678.675, 678.385 & 678.390

Hist.: BN 10-2006, f. & cert. ef. 10-5-06; BN 13-2009, f. 12-17-09, cert. ef. 1-1-10; BN 12-2013, f. 12-3-13, cert. ef. 1-1-14

851-056-0022

Renewal of Dispensing Authority

Dispensing authority may be renewed with each renewal of prescriptive authority upon submission of application, and documentation that the nurse practitioner or clinical nurse specialist and their patients continue to meet criteria. Failure to complete application material as requested or failure to meet criteria in this rule shall be grounds for denial, suspension, inactivation or revocation of dispensing authority.

Stat. Auth.: ORS 678.390

Stats. Implemented: ORS 678.670, 678.675, 678.385 & 678.390

Hist.: BN 10-2006, f. & cert. ef. 10-5-06; BN 7-2008, f. & cert. ef. 11-26-08; BN 12-2013, f. 12-3-13, cert. ef. 1-1-14

Rule Caption: Deletion of Department of Education exemption requirement and expanding Board options related to faculty qualifications

Adm. Order No.: BN 13-2013

Filed with Sec. of State: 12-4-2013

Certified to be Effective: 1-1-14

Notice Publication Date: 11-1-2013

Rules Amended: 851-061-0020, 851-061-0030, 851-061-0080, 851-061-0090

Subject: HB 2187A passed during the 2013 Legislative Session making the requirement for nursing assistant or medication aide training programs to apply for an exemption from the Department of Education no longer necessary. Thus this requirement is proposed to be removed from the current rules. Language is proposed to be added that gives the Board its full range of options related to approving licensed nurses for faculty positions. In addition, the program director’s responsibility related to verifying student eligibility for medication aide or CNA 2 training is clarified.

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

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 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

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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; BN 13-2013, f. 12-3-13, cert. ef. 1-1-14

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) All nursing assistant or medication aide training programs shall be Board-approved prior to being offered. Retroactive approval shall not be granted.

(3) 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:
 - (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.

(4) A site visit may be conducted by a representative(s) of the Board;

(5) 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.

(6) 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.

(7) 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.

(8) Following initial approval, level 2 training programs remain approved unless specifically withdrawn by the Board.

(9) 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; BN 13-2013, f. 12-3-13, cert. ef. 1-1-14

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. A registered nurse who has an encumbered license may be considered on an individual basis; and

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(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.

(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 prior to starting and throughout the medication aide training;

(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.

(t) For level 2 training programs, determine student eligibility by verifying that the applicant holds a current certificate to practice as a CNA 1 on the CNA Registry prior to starting and throughout the level 2 training.

(4) The primary instructor shall hold a current, unencumbered license to practice as a registered nurse in Oregon. A registered nurse who has an encumbered license may be considered on an individual basis; 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. A registered nurse who has an encumbered license may be considered on an individual basis; 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. A licensed nurse who has an encumbered license may be considered on an individual basis; 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. A licensed nurse who has an encumbered license may be considered on an individual basis;

(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; BN 13-2013, f. 12-3-13, cert. ef. 1-1-14

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:

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(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, 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.

(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, 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.

(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, 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 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

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(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; BN 13-2013, f. 12-3-13, cert. ef. 1-1-14

Rule Caption: Expanding Board options related to nursing assistant and medication aide applicants and updating references

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Rules Amended: 851-062-0010, 851-062-0050, 851-062-0080, 851-062-0130

Subject: Language is proposed to be added that gives the Board its full range of options related to approving applicants for a certified nursing assistant 1 (CNA 1), certified nursing assistant 2 (CNA 2), and certified medication aide (CMA). This proposed revision also removes the outdated reference to Senior and People with Disabilities and replaces it with the broader organizational name.

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

851-062-0010

Definitions

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

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

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

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

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

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

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

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

(9) “CNA Registry” means the listing of Oregon Certified Nursing Assistants maintained by the Board.

(10) “Competency evaluation” means the Board-approved process for determining competency.

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

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

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

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

(15) Examinations:

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

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

(16) “Full-time” means at least 32 hours of regularly scheduled work each week.

(17) “Licensed Nursing Facility” means a licensed nursing home or a Medicare or Medicaid certified long term care facility.

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

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

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

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

(22) “Reactivation” is the process of renewing certification after the certificate is expired.

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

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

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

Stat. Auth.: ORS 678.442

Stats. Implemented: ORS 678.442

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

851-062-0050

CNA Certification

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

(a) Training and Competency Examination:

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

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

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

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

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

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

(c) RN or LPN licensure:

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

(B) Provide verification of current unencumbered licensure.

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

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

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

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

- (i) An official transcript from the nursing program; or
- (ii) Written verification of completion of equivalent coursework from the nursing program director or dean.

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

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

(B) Between one and three years after graduation:

- (i) Submit an official transcript documenting graduation from an approved nursing program; and
- (ii) Pass the competency examination within two years and three attempts.

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

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

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

(B) Pass the competency examination; or

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

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

(h) Endorsement:

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

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

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

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

(B) Supply evidence of at least 400 hours of paid employment within CNA 1 authorized duties under the supervision of a nurse in another state where the individual held current certification in the two years immediately preceding application for endorsement. A CNA who has graduated from a nursing assistant training program within the previous two years has satisfied this requirement.

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

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

(2) CNA Testing Eligibility:

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

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

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

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

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

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

(a) Training and Competency Examination:

(A) Obtain CNA 1 certification;

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

(C) Pass the corresponding competency evaluation.

(b) RN or LPN licensure:

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

(B) Provide verification of current unencumbered licensure.

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

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

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

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

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

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

Stat. Auth.: ORS 678.440 & 678.442

Stats. Implemented: ORS 678.442

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

851-062-0080

Certification of Medication Aides Required

A CMA must have a current Oregon CMA certificate and be listed on the Oregon CNA Registry prior to performing medication aide duties.

Stat. Auth.: ORS 678.442

Stats. Implemented: ORS 678.442

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

851-062-0130

CNA Registry

In accordance with 42 CFR § 483.156 the Board maintains a CNA Registry. The Registry contains:

- (1) Identifying demographic information on each CNA;
- (2) Date of initial and most recent certification;
- (3) Board sanctions against a CNA certificate; and
- (4) Findings of resident abuse, neglect or misappropriation of resident property, made by the Department of Human Services against a CNA.

Stat. Auth.: ORS 678.442

Stats. Implemented: ORS 678.442

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

Board of Parole and Post-Prison Supervision Chapter 255

Rule Caption: Update rules Governing conduct of Board Hearings
Adm. Order No.: PAR 5-2013

Filed with Sec. of State: 11-27-2013

Certified to be Effective: 11-27-13

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Rules Adopted: 255-030-0046

Rules Amended: 255-030-0010, 255-030-0013, 255-030-0021, 255-030-0023, 255-030-0024, 255-030-0025, 255-030-0026, 255-030-0027, 255-030-0032, 255-030-0035, 255-030-0040, 255-030-0055

Subject: This is a re-filing due to an administrative error in the original filing.

These amendments: (1) remove outdated formatting and grammar; (2) reflect current and future technology changes that relate to holding hearings; (3) expand language to provide clear information on agency procedures for holding hearings; (4) clarify who may attend hearings and the manner in which individuals may submit information to the Board; (5) and increase opportunities for inclusion in hearings of district attorneys, victims and/or their representatives, as well as others who may have a substantial interest in the case, or who may be able to provide information to assist the Board in its deliberations.

Rules Coordinator: Shawna Harnden—(503) 945-0913

255-030-0010

Scheduling Prison Term Hearings

(1) The Board shall conduct a hearing to establish a prison term for each new inmate whose crime was committed prior to November 1, 1989, within:

(a) Six months of admission to a Department of Corrections facility for those sentenced to five years or less;

(b) Eight months of admission to a Department of Corrections facility for those sentenced to more than five years but less than fifteen years; or

(c) Twelve months of admission to a Department of Corrections facility for those sentenced to life or fifteen years or more.

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(2) The Board shall follow section 1 of this rule to schedule a prison term hearing for any additional sentence received while in custody of a Department of Corrections facility.

(3) For those prison term hearings which must be conducted within six months, the Board may defer setting a prison term for ninety days to obtain additional information.

(4) The Board may establish prison terms after a hearing or as an administrative action without a hearing, pursuant to 255-030-0024.

Stat. Auth.: ORS 144.120(1)

Stats. Implemented: ORS 144.120

Hist.: 2PB 1-1979, f. & ef. 2-1-79; 2PB 7-1985, f. & ef. 5-31-85; 2PB 4-1986(Temp), f. & ef. 12-2-86; PAR 3-1987, f. & ef. 4-28-87; PAR 6-1988, f. & ef. 5-19-88; PAR 4-1989, f. & ef. 11-1-89; PAR 8-1992, f. & cert. ef. 10-9-92; PAR 3-1997, f. 3-11-97, cert. ef. 3-14-97; PAR 6-2000, f. & cert. ef. 6-9-00; PAR 3-2012(Temp), f. & cert. ef. 9-18-12 thru 3-1-13; PAR 2-2013, f. & cert. ef. 3-1-13; PAR 5-2013, f. & cert. ef. 11-27-13

255-030-0013

Notification of Hearing

(1) The Board shall send written notice of the hearing and its purpose to the inmate. The inmate shall receive a copy of the Board Review Packet, including the notice of rights (Exhibit NOR-1), at least 14 days prior to the hearing.

(2) If the inmate did not receive 14 days notice, the Board may reschedule the hearing or the inmate may waive the notice and the Board shall conduct the hearing.

(3) The Board shall attempt to notify the victim, if the victim requests notification and furnishes the Board a current address, and the District Attorney of the committing county at least ninety (90) days before all hearings by sending written notice to the current addresses of both parties.

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

Stats. Implemented: ORS 144.120(7) & 144.130

Hist.: 2PB 4-1986(Temp), f. & ef. 12-2-86; PAR 3-1987, f. & ef. 4-28-87; PAR 6-1988, f. & ef. 5-19-88; PAR 4-1989, f. & ef. 11-1-89; PAR 1-1990(Temp), f. & cert. ef. 2-20-90; PAR 2-1990, f. & cert. ef. 4-5-90; PAR 8-1992, f. & cert. ef. 10-9-92; PAR 3-1997, f. 3-11-97, cert. ef. 3-14-97; PAR 7-2010, f. & cert. ef. 9-3-10; PAR 8-2010, f. & cert. ef. 9-29-10; PAR 2-2012(Temp), f. & cert. ef. 6-28-12 thru 12-25-12; PAR 3-2012(Temp), f. & cert. ef. 9-18-12 thru 3-1-13; PAR 4-2012, f. & cert. ef. 10-15-12; PAR 2-2013, f. & cert. ef. 3-1-13; PAR 5-2013, f. & cert. ef. 11-27-13

255-030-0021

Manner of Hearing

At the chairperson's discretion, the Board or its designated representative may conduct any hearing by teleconference call, videoconference call, or other electronic medium that ensures the inmate, the Board, and other participants the opportunity to hear and be heard.

Stat. Auth.: ORS 144.035(5)

Stats. Implemented: ORS 144.035(5)

Hist.: 2PB 7-1985, f. & ef. 5-31-85; 2PB 4-1986(Temp), f. & ef. 12-2-86; PAR 3-1987, f. & ef. 4-28-87; PAR 6-1988, f. & ef. 5-19-88; PAR 4-1989, f. & ef. 11-1-89; PAR 8-1992, f. & cert. ef. 10-9-92; PAR 3-2012(Temp), f. & cert. ef. 9-18-12 thru 3-1-13; PAR 2-2013, f. & cert. ef. 3-1-13; PAR 5-2013, f. & cert. ef. 11-27-13

255-030-0023

Inmate Appearance at Board Hearing

(1) The inmate shall be present in person, by telephone or videoconference, or by any other electronic medium that ensures the inmate, the Board, and other participants the opportunity to hear and be heard.

(2) If an inmate refuses to appear at a hearing, the refusal will be considered to be the inmate's waiver of appearance.

(3) The Board may compel an inmate's appearance when the inmate refuses to appear.

(4) The Board may choose not to compel the inmate to attend the hearing. The Board may then reschedule the hearing, or hold the hearing and make a decision in the inmate's absence.

Stat. Auth.: ORS 144.035(5) & 144.120

Stats. Implemented: ORS 144.035(5) & 144.120

Hist.: PAR 6-1988, f. & ef. 5-19-88; PAR 4-1989, f. & ef. 11-1-89; PAR 1-1990(Temp), f. & cert. ef. 2-20-90; PAR 3-1990, f. 6-29-90, cert. ef. 7-1-90; PAR 8-1992, f. & cert. ef. 10-9-92; PAR 3-1997, f. 3-11-97, cert. ef. 3-14-97; PAR 3-2012(Temp), f. & cert. ef. 9-18-12 thru 3-1-13; PAR 2-2013, f. & cert. ef. 3-1-13; PAR 5-2013, f. & cert. ef. 11-27-13

255-030-0024

Prison Term Hearing Waiver

(1) Notwithstanding OAR 255-030-0023(3), an inmate may waive his/her right to a prison term hearing based on the following criteria:

(a) Sentence of less than 15 years; and

(b) Non-person felony (The non-person felonies are designated on Exhibit A-I of these rules.); and

(c) Matrix range of up to 14–20 months; and

(d) Completed Prison Term Hearing Packet.

(2) Within the time limits provided by OAR 255-030-0010, the Board, at its discretion, may notify the inmate in writing of:

(a) His/her eligibility to waive the prison term hearing; and

(b) The proposed prison term and conditions of parole.

(3) A Department of Corrections counselor will review the waiver form with the inmate.

(4) Upon receipt of a signed waiver, the Board shall make the findings required by OAR 255-035-0013 or 255-035-0014 and shall send the final Board order to the inmate.

(5) If the Board is not satisfied that the waiver was made knowingly and intelligently or if it needs more information before making its decision, the Board may deny the waiver and order a hearing.

Stat. Auth.: ORS 144.120(1)(b)

Stats. Implemented: ORS 144.120(1)(b)

Hist.: PAR 8-1988, f. & ef. 7-1-88; PAR 9-1988(Temp), f. & ef. 7-14-88; PAR 12-1988(Temp), f. & ef. 7-20-88; PAR 13-1988(Temp), f. & ef. 8-5-88; PAR 18-1988, f. & ef. 12-6-88; PAR 4-1989, f. & ef. 11-1-89; PAR 1-1990(Temp), f. & cert. ef. 2-20-90; PAR 3-1990, f. 6-29-90, cert. ef. 7-1-90; PAR 5-1991, f. & cert. ef. 10-15-91; PAR 3-1997, f. 3-11-97, cert. ef. 3-14-97; PAR 6-2000, f. & cert. ef. 6-9-00; PAR 3-2012(Temp), f. & cert. ef. 9-18-12 thru 3-1-13; PAR 2-2013, f. & cert. ef. 3-1-13; PAR 5-2013, f. & cert. ef. 11-27-13

255-030-0025

Inmate Accompaniment to Board of Parole and Post-Prison Supervision Hearing

(1) Purpose: The purpose of these rules is to jointly establish with the Department of Corrections policies and procedures governing who may accompany an inmate in a hearing before the Board of Parole and Post-Prison Supervision.

(2) Policy: It is the joint policy of the Department of Corrections and Board of Parole and Post-Prison Supervision that inmates be permitted to have a person accompany them in hearings before the Board in accordance with ORS 144.123, as provided in these rules. The decision to approve a person's physical access to a Board hearing held within a Department of Corrections facility will be made by the functional unit manager or designee of the facility in which the inmate is confined, in accordance with the department's rules on Facility Access (OAR 291-016) and Visiting (Inmate) (OAR 291-127). A person's physical access to a Department of Corrections facility may be prohibited or restricted by the functional unit manager or designee consistent with these rules; the health, safety and security of staff, inmates, and the public; and with the safe, secure, and orderly operation and management of the facility.

Stat. Auth.: ORS 144.123 & 144.120(7)

Stats. Implemented: ORS 144.120(7), 144.123 & 192.630

Hist.: 2PB 1-1979, f. & ef. 2-1-79; 2PB 10-1981(Temp), f. & ef. 11-4-81; 2PB 1-1982, f. & ef. 5-19-82; 2PB 4-1986(Temp), f. & ef. 12-2-86; PAR 3-1987, f. & ef. 4-28-87; PAR 6-1988, f. & ef. 5-19-88; PAR 4-1989, f. & ef. 11-1-89; PAR 2-1990, f. & cert. ef. 4-5-90; PAR 8-1992, f. & cert. ef. 10-9-92; PAR 3-1997, f. 3-11-97, cert. ef. 3-14-97; PAR 6-2000, f. & cert. ef. 6-9-00; PAR 4-2004(Temp), f. & cert. ef. 5-14-04 thru 11-10-04; PAR 10-2004, f. & cert. ef. 11-2-04; PAR 3-2012(Temp), f. & cert. ef. 9-18-12 thru 3-1-13; PAR 2-2013, f. & cert. ef. 3-1-13; PAR 3-2013, f. & cert. ef. 6-10-13; PAR 5-2013, f. & cert. ef. 11-27-13

255-030-0026

Who May Appear at a Board of Parole and Post-Prison Supervision Hearing

(1) Inmate Accompaniment: When appearing before the Board of Parole and Post-Prison Supervision in a hearing, an inmate may be accompanied at the Department of Corrections facility in which the inmate is confined, subject to the prior approval of the facility functional unit manager or designee, by:

(a) A person who has been approved for privileged visiting in accordance with the Department of Corrections rule on Visiting (Inmate) (OAR 291-127);

(b) An assigned inmate legal assistant, selected in accordance with the Department of Corrections rule on Legal Affairs (Inmate) (OAR 291-139), from the Department of Corrections facility where the inmate is confined; or

(c) The inmate's attorney.

(2) In addition to those persons specified in subsection (1) of this rule, the inmate may be accompanied at the hearing via telephone or videoconference by such other person or persons as the Board of Parole and Post-Prison Supervision, in its discretion, may approve by prior arrangement. The inmate may select one person to speak on his/her behalf. The statement shall not exceed 15 minutes. The presiding Board member may grant the support person additional time upon a finding that further testimony is likely to be relevant to the Board's decision. The presiding Board member may exclude or limit irrelevant, immaterial or unduly repetitious testimony and evidence.

(3) The Department of Corrections, if requested by the inmate or the Board, will assign an approved inmate legal assistant from the Department of Corrections facility where the inmate is confined to accompany an

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inmate at a Board hearing. The selection of the inmate legal assistant shall be governed by the policies and rules of the Department of Corrections.

(4) Others Who May Attend/Appear at a Board Hearing:

(a) Victim: The victim(s), personally, or by counsel or other representative, may attend Board of Parole and Post-Prison Supervision Hearings and may submit written and oral statements, including supporting documents, expressing any views concerning the crime and the offender.

(b) District attorney: the district attorney from the committing jurisdiction or his/her representative or designee, may attend Board hearings and may submit written and oral statements, including supporting documents, expressing any views concerning the crime and the offender.

(c) Public: Members of the public may attend, but not participate in, Board of Parole and Post-Prison Supervision hearings.

(d) Media Representatives: Approved media representatives may attend, but not participate in, Board of Parole and Post-Prison Supervision hearings.

(e) Department of Corrections Employees, Volunteers, and Contractors: Department of Corrections employees, volunteers, and contractors may attend, but not participate in, Board of Parole and Post-Prison Supervision hearings, except as requested or approved by the Board in order to provide testimony in the hearing.

(f) Other: The Board retains the discretion to allow oral statements at hearings from one or more persons not otherwise identified in OAR 255-030-0026, if the Board deems the person(s) to have a substantial interest in the case, or to be able to provide information that may assist the Board in its deliberations.

(5) Means and Manner of Appearance/Attendance:

(a) Board Hearings Conducted With Inmate in Person Within a Department of Corrections Facility:

(A) If the inmate will appear before the Board of Parole and Post-Prison Supervision in person within a Department of Corrections facility, the person(s) accompanying the inmate, the victim, the district attorney, and/or their representatives, members of the public, and approved media representatives, may attend the hearing in person at the Department of Corrections facility, subject to the approval by the functional unit manager of the facility in which the hearing is being conducted, or if arranged in advance with the Board, via telephone, videoconference call, or other electronic medium that ensures the inmate, the Board, and other participants the opportunity to hear and be heard.

(B) A person who wants to attend a Board of Parole and Post-Prison Supervision hearing in a Department of Corrections facility must contact the Board at least two weeks in advance of the hearing to arrange.

(C) A person's access to a Department of Corrections facility is subject to the Department of Corrections rules on Facility Access (OAR 291-016) and Visiting (Inmate) (OAR 291-127), and may be prohibited or restricted by the functional unit manager or designee of the facility in which the hearing is being conducted consistent with the health, safety and security of staff, inmates, and the public, and with the safe, secure, and orderly operation and management of the facility.

(D) A person who attends a Board of Parole and Post-Prison Supervision hearing in a Department of Corrections facility is subject to the rules of conduct, and the terms and conditions of visiting set forth in the department's rules on Facility Access (OAR 291-016) and Visiting (Inmate) (OAR 291-127).

(b) Board Hearings Conducted With Inmate via Telephone, Videoconference, or Other Electronic Medium: If the inmate will appear before the Board of Parole and Post-Prison Supervision via telephone, videoconference, or other electronic medium, the person(s) accompanying the inmate, the victim(s), and the district attorney, and/or their representatives, members of the public, and approved media representatives, may appear/attend the hearing at the place in which the Board is conducting the hearing, or via telephone, videoconference, or other electronic medium, as arranged in advance with the Board.

(6) Conduct of Hearing: The Board of Parole and Post-Prison Supervision may eject any disruptive person from a hearing. The Board may require all persons to leave the designated hearing area during deliberations.

Stat. Auth.: ORS 144.123, 144.750, former 144.120(7) & 192.690

Stats. Implemented: ORS 144.123, 144.750 & former 144.120(7)

Hist.: PAR 10-2004, f. & cert. ef. 11-2-04; PAR 3-2012(Temp), f. & cert. ef. 9-18-12 thru 3-1-13; PAR 2-2013, f. & cert. ef. 3-1-13; PAR 3-2013, f. & cert. ef. 6-10-13; PAR 5-2013, f. & cert. ef. 11-27-13

255-030-0027

Victim, District Attorney and Inmate Statements

(1) During the hearing, the victim(s), personally, by counsel, or by representative, and the district attorney from the committing jurisdiction

may make statements not to exceed 15 minutes. The presiding Board member may grant the representative of the victim or the district attorney additional time upon a finding that further testimony is likely to be relevant to the Board's decision. The presiding Board member may exclude or limit irrelevant, immaterial, or unduly repetitious testimony and evidence. Following the statement(s) by the victim(s) and/or district attorney, the inmate may address the Board with his/her response.

(2) One person selected by the inmate may make a statement not to exceed 15 minutes. The presiding Board member may grant the witness additional time upon a finding that further testimony is likely to be relevant to the Board's decision. The presiding Board member may exclude or limit irrelevant, immaterial, or unduly repetitious testimony and evidence.

Stat. Auth.: ORS 144.750 & former 144.120(7)

Stats. Implemented: ORS 144.750 & former 144.120(7)

Hist.: 2PB 4-1986(Temp), f. & cert. ef. 12-2-86; PAR 3-1987, f. & cert. ef. 4-28-87; PAR 6-1988, f. & cert. ef. 5-19-88; PAR 1-1992, f. & cert. ef. 1-13-92; PAR 3-1997, f. 3-11-97, cert. ef. 3-14-97; PAR 6-2000, f. & cert. ef. 6-9-00; PAR 5-2010(Temp), f. 7-2-10, cert. ef. 7-6-10 thru 1-1-11; PAR 12-2010, f. & cert. ef. 12-1-10; PAR 3-2012(Temp), f. & cert. ef. 9-18-12 thru 3-1-13; PAR 2-2013, f. & cert. ef. 3-1-13; PAR 5-2013, f. & cert. ef. 11-27-13

255-030-0032

Evidence

(1) The presiding Board member at a Board hearing shall explain the issues to be decided. In the case of a prison term hearing, those issues are set forth in OAR 255-035-0013. In the case of other types of hearings, the issues are set forth in the applicable division of the Board's administrative rules.

(2) Evidence of a type that reasonably prudent persons would commonly rely upon in the conduct of their serious affairs shall be admissible in Board hearings, including:

(a) The information set forth in OAR 255-030-0035;

(b) Other relevant evidence concerning the inmate that is available.

(3) Reliable, probative, and substantial evidence shall support Board orders. Substantial evidence is found when the record, viewed as a whole, would permit a reasonable person to make a particular finding.

(4) The Board may exclude evidence if it is:

(a) Unduly repetitious;

(b) Not of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs;

(c) Provided by a person, other than a justice system official, without first hand knowledge of the circumstances of the crime that is the subject of the proceeding before the Board;

(d) Provided by a person, other than a justice system official, without first hand knowledge of the character of the inmate;

(e) Addressing only guilt or innocence; or

(f) Irrelevant or immaterial to the decision(s) to be made at that particular hearing.

(5) The Board may receive evidence to which the inmate objects. If the presiding Board member does not make rulings on its admissibility during the hearing, the Board shall make findings on the record at the time a final order is issued.

(6) Erroneous rulings on evidence shall not preclude Board action on the record unless shown to have substantially prejudiced the rights of the inmate.

Stat. Auth.: ORS 144.050 & 144.140

Stats. Implemented: ORS 144.050 & 144.140

Hist.: PAR 4-1989, f. & cert. ef. 11-1-89; PAR 5-1990, f. & cert. ef. 10-5-90; PAR 1-1992, f. & cert. ef. 1-13-92; PAR 3-1997, f. 3-11-97, cert. ef. 3-14-97; PAR 6-2000, f. & cert. ef. 6-9-00; PAR 3-2012(Temp), f. & cert. ef. 9-18-12 thru 3-1-13; PAR 2-2013, f. & cert. ef. 3-1-13; PAR 5-2013, f. & cert. ef. 11-27-13

255-030-0035

Information the Board Shall Consider at a Prison Term Hearing

(1) The Board Review Packet shall contain information relevant to the purpose of the hearing, which may include, but is not limited to:

(a) Inmate's notice of rights and notice of administrative appeal;

(b) Presentence Investigation (PSI), Postsentence Investigation Report (PSR), Parole Analyst Report (PAR), or report of similar content;

(c) Sentencing/judgment orders;

(d) Department of Corrections Inmate Face sheet;

(e) Certification of time served credits;

(f) Board Action Forms;

(g) Information pursuant to Ballot Measure 10;

(h) Material submitted by the inmate or representative relating to the calculation of the prison term, or to the subject matter of the hearing;

(i) Current psychological/psychiatric evaluations;

(j) Other relevant material selected at the Board's discretion.

ADMINISTRATIVE RULES

(2) The Board Review Packet need not include all documents in the inmate's file.

(3) At its discretion, the Board may consider additional written information and recommendations from those with a special interest in the case. If considered, the Board Review Packet shall include the information. The Board must receive any information submitted pursuant to this section at least fourteen days prior to the hearing. The Board may waive the fourteen-day requirement.

Stat. Auth.: ORS 144.185 & 144.223
Stats. Implemented: ORS 144.185, 144.125(1) & 144.223
Hist.: 2PB 1-1979, f. & ef. 2-1-79; 2PB 16-1981(Temp), f. & ef. 11-25-81; 2PB 1-1982, f. & ef. 5-19-82; 2PB 7-1985, f. & ef. 5-31-85; 2PB 4-1986(Temp), f. & ef. 12-2-86; PAR 3-1987, f. & ef. 4-28-87; PAR 6-1988, f. & ef. 5-19-88; PAR 4-1989, f. & ef. 11-1-89; PAR 1-1992, f. & cert. ef. 1-13-92; PAR 3-2012(Temp), f. & cert. ef. 9-18-12 thru 3-1-13; PAR 2-2013, f. & cert. ef. 3-1-13; PAR 5-2013, f. & cert. ef. 11-27-13

255-030-0040

Inmate's Access to Written Materials/Rebuttal and Deadlines for Receiving Materials

(1) The inmate shall have access to all the material in the Board Review Packet except that exempted by OAR 255-015-0010 (Criteria for Denial of Disclosure of Records).

(2) The inmate shall have access to all the victim and district attorney's responses pursuant to OAR 255-030-0035 except as exempted by the Board pursuant to OAR 255-015-0010. The Board shall include the responses in the Board Review Packet or shall give the responses to the inmate as soon as they are available to the Board.

(3) If the victim, his/her representative, or the district attorney wishes to rebut any of the material in the Board Review Packet, the Board must receive the response seven days prior to the hearing. The Board shall notify the victim that the Board will include the response in the Board Review Packet sent to the inmate unless the victim requests confidentiality.

(4) The inmate or representative shall submit any relevant information at least fourteen days prior to the hearing.

(5) The Board may waive deadline requirements if it finds good cause to do so.

Stat. Auth.: ORS 144.050, 144.130, 144.223, 192.502(4) or (5)
Stats. Implemented: ORS 144.130
Hist.: 2PB 1-1979, f. & ef. 2-1-79; 2PB 7-1985, f. & ef. 5-31-85; 2PB 4-1986(Temp), f. & ef. 12-2-86; PAR 3-1987, f. & ef. 4-28-87; PAR 6-1988, f. & ef. 5-19-88; PAR 4-1989, f. & ef. 11-1-89; PAR 8-1992, f. & cert. ef. 10-9-92; PAR 3-1997, f. 3-11-97, cert. ef. 3-14-97; PAR 6-2000, f. & cert. ef. 6-9-00; PAR 3-2012(Temp), f. & cert. ef. 9-18-12 thru 3-1-13; PAR 2-2013, f. & cert. ef. 3-1-13; PAR 5-2013, f. & cert. ef. 11-27-13

255-030-0046

Continuance of Hearings: Cancellation of Hearings

(1) Upon the request of any party or on its own motion, the Board may, for good cause, continue a hearing for a reasonable period of time.

(2) A request for cancellation or postponement of a hearing must be for good cause, in writing, and at least seven days before the hearing.

(3) A hearing may not be postponed or cancelled if that action would violate any statute or rule requiring the hearing to be held.

(4) If the Board cancels a hearing at an inmate's request, the inmate shall not be eligible to request another hearing for 90 days from the date of the scheduled hearing. The decision to grant a hearing is at the discretion of the Board.

Stat. Auth.: ORS 144.050
Stats. Implemented: ORS 144.185
Hist.: PAR 3-2012(Temp), f. & cert. ef. 9-18-12 thru 3-1-13; PAR 2-2013, f. & cert. ef. 3-1-13; PAR 5-2013, f. & cert. ef. 11-27-13

255-030-0055

Notice of Decision Following Prison Term Hearing

(1) Following a Board decision concerning the prison term of an inmate, the Board shall send written notice of the Board's final order to the inmate, district attorney, sheriff or arresting agency, the Department of Corrections, and upon request, the victim, the sentencing judge and the trial counsel.

(2) The Board's final order shall contain the following findings, as applicable:

- (a) The prison term commencement date;
- (b) The history/risk assessment score;
- (c) The crime category with the subcategory rationale;
- (d) The matrix range;
- (e) When there are consecutive sentences, whether the range is unsummed and the reason for unsumming;
- (f) When there is a variation from the range, the reason for the variation;

(g) Aggravation;

- (h) Mitigation;

(i) The votes on minimum sentences;

(j) The prison term set;

(k) The parole release date;

(l) Sentencing guidelines range, if applicable.

Stat. Auth.: ORS 144.120, 144.260 & 144.135

Stats. Implemented: ORS 144.120, 144.260 & 144.135

Hist.: 2PB 1-1979, f. & ef. 2-1-79; 2PB 7-1985, f. & ef. 5-31-85; 2PB 4-1986(Temp), f. & ef. 12-2-86; PAR 3-1987, f. & ef. 4-28-87; PAR 6-1988, f. & ef. 5-19-88; PAR 4-1989, f. & ef. 11-1-89; PAR 8-1992, f. & cert. ef. 10-9-92; PAR 4-1993, f. & cert. ef. 10-29-93; PAR 3-1997, f. 3-11-97, cert. ef. 3-14-97; PAR 3-2012(Temp), f. & cert. ef. 9-18-12 thru 3-1-13; PAR 2-2013, f. & cert. ef. 3-1-13; PAR 5-2013, f. & cert. ef. 11-27-13

Rule Caption: Change number of votes required to impose an extended deferral from unanimous to majority.

Adm. Order No.: PAR 6-2013

Filed with Sec. of State: 11-27-2013

Certified to be Effective: 11-27-13

Notice Publication Date: 12-1-2012

Rules Amended: 255-062-0016

Subject: This is a re-filing due to an administrative error in the original filing process.

The rule amendment would change the number of Board votes required to impose a deferral of a projected parole date, of a parole consideration date, or of a subsequent hearing eligibility date from unanimous to majority.

Rules Coordinator: Shawna Harnden—(503) 945-0913

255-062-0016

Factors to be Considered in Establishing a Deferral Period Longer Than Two Years

Following an interview and consideration of all the information presented at the hearing, the Board may find by majority vote of the members participating in the hearing, that it is not reasonable to expect that the inmate would be granted a change in the terms of confinement, or it is not reasonable to expect that the inmate would be granted a firm release date before the end of a specified deferral period, not to exceed ten years, based on one or more of the following non-exclusive factors:

(1) A determination by the Board, based on the psychological evaluation and all the information available at the hearing, that the inmate has a mental or emotional disturbance, deficiency, condition, or disorder predisposing him/her to the commission of any crime to a degree rendering the inmate a danger to the health or safety of others;

(2) Infractions of institutional rules and discipline;

(3) Commission of crimes subsequent to the crime of conviction;

(4) Inmate's failure to demonstrate understanding of the factors that led to his/her criminal offense(s);

(5) Inmate's demonstrated lack of effort to address criminal risk factors of psychological or emotional problems;

(6) Inmate's demonstrated lack of effort to address criminal risk factors of substance abuse problems;

(7) Failure to seek and maintain appropriate work or training;

(8) Inmate's failure to seek out and benefit from programming including but not limited to sex offender treatment, batterers intervention programs, anger management, cognitive therapy, and victim impact panels where available;

(9) Inmate's inability to experience or demonstrate remorse or empathy;

(10) Demonstrated poor planning and foresight;

(11) Demonstrated impulsivity; or

(12) Demonstrated lack of concern for others, including but not limited to any registered victims.

(13) Refusal to participate in Board-ordered psychological evaluation(s) and/or refusal to participate in Board hearing.

(14) The inmate is serving a concurrent sentence over which the Board does not have release authority, and which has a release date ten or more years from the projected parole release date on the Board sentence.

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

Stats. Implemented: ORS 144.125, 144.228, 144.232, 144.280, 144.185, 163.105, 163.115 & 2009 OL Ch. 660

Hist.: PAR 6-2010(Temp), f. 7-2-10, cert. ef. 7-6-10 thru 1-1-11; PAR 9-2010, f. & cert. ef. 9-29-10; PAR 1-2013, f. & cert. ef. 2-15-13; PAR 6-2013, f. & cert. ef. 11-27-13

ADMINISTRATIVE RULES

Bureau of Labor and Industries Chapter 839

Hist.: BLI 37-2008, f. 11-6-08, cert. ef. 11-10-08; BLI 8-2010, f. & cert. ef. 2-24-10; BLI 15-2011, f. 12-30-11, cert. ef. 1-1-12; BLI 2-2012, f. & cert. ef. 2-8-12; BLI 4-2013(Temp), f. 12-15-13, cert. ef. 12-16-13 thru 6-1-14

Rule Caption: Public employer requirement to reference veteran special qualifications and transferable skills in job announcements.
Adm. Order No.: BLI 4-2013(Temp)

Filed with Sec. of State: 12-15-2013

Certified to be Effective: 12-16-13 thru 6-1-14

Notice Publication Date:

Rules Amended: 839-006-0450

Subject: The amendment clarifies that public employers must include in a job recruitment announcement any special qualifications and transferable skills required or requested in addition to minimum qualifications for the position, so that veterans applying for the position know to include and address these in their application materials.

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

839-006-0450

Applying the Employment Preference

(1) A public employer shall grant a preference to a veteran or disabled veteran who applies for a vacant civil service position or who seeks promotion to a civil service position with a higher maximum salary rate and who:

(a) Successfully completes an initial application screening or an application examination for the position; or

(b) Successfully completes a civil service test the employer administers to establish eligibility for the position; and

(c) Meets the minimum qualifications and any special qualifications for the position.

(2) At each stage of the application process a public employer will grant a preference to a veteran or disabled veteran who successfully completes an initial application screening or an application examination or a civil service test the public employer administers to establish eligibility for a vacant civil service position.

(3) For an initial application screening used to develop a list of persons for interviews, the public employer will add five preference points to a veteran's score and ten preference points to a disabled veteran's score.

(4) For an application examination, given after the initial application screening, that results in a score, the public employer will add five preference points to a veteran's and ten preference points to a disabled veteran's total combined examination score without allocating the points to any single feature or part of the examination.

(5) If a public employer uses an application examination that consists of an evaluation method of ranking an applicant that does not result in a score, the public employer will devise and apply methods by which the public employer gives special consideration in the public employer's hiring decision to veterans and disabled veterans.

(6) When an interview is a component of the selection process for a civil service position or for an eligibility list for a civil service position, a public employer shall interview each veteran:

(a) Whom the public employer determines meets the minimum qualifications and special qualifications for the civil service position or eligibility list; and

(b) Who submits application materials that the public employer determines show sufficient evidence that the veteran has the transferable skills required and requested by the public employer for the civil service position or eligibility list.

(7) Public employers shall include in the job recruitment announcement any special qualifications and transferable skills required or requested for a civil service position in addition to the minimum qualifications of the position.

(8) A public employer is not required to comply with subsection (6) of this rule if the employer's practice is to generate an eligibility list without conducting interviews of possible candidates.

(9) A public employer may consult with the Oregon Military Department and the Department of Veterans' Affairs to determine whether certain military education or experience produces a transferable skill. To evaluate a veteran's transferable skills from a transcript of military training, a public employer may consult the American Council on Education's website, "A Guide to the Evaluation of Educational Experiences in the Armed Services," at <http://www.acenet.edu/news-room/Pages/Military-Guide-Online.aspx>

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 408.230, 408.235 & 408.237

**Construction Contractors Board
Chapter 812**

Rule Caption: Clarify Residential RCE Scheduled Renewal Date and Qualifications for Exemptions from RCE

Adm. Order No.: CCB 4-2013(Temp)

Filed with Sec. of State: 11-26-2013

Certified to be Effective: 11-26-13 thru 5-23-14

Notice Publication Date:

Rules Amended: 812-022-0015, 812-022-0021

Subject: 812-022-0015 is amended to clarify that it is the "scheduled renewal date" not when the actual renewal occurs, that establishes the look-back period for licensure for six years.

812-022-0021 is amended to clarify that plumbing or electrical contractor's owner or employee must complete the trade licensing continuing education to qualify the contractor for the exemption.

Rules Coordinator: Catherine Dixon—(503) 934-2185

812-022-0015

Minimum Continuing Education Requirements — Continuing Education for Residential Contractors (SB 783)

(1) Except as provided in section (3), residential contractors shall have an owner, officer, RMI or employee, or a combination of those persons, who complete a minimum of eight hours of continuing education every licensing period as described in sections (2) and (3).

(2) Residential continuing education hours consist of the following:

(a) Three hours of education on laws, regulations and business practices offered by the agency or by an approved provider under an agreement with the agency; and

(b) Five hours of Series A Courses, approved by the agency and offered by approved providers, in one or more of the following subjects:

(A) Construction business practices;

(B) Marketing;

(C) Customer service;

(D) Accounting;

(E) Business law;

(F) Bidding;

(G) Building Codes; or

(H) Safety.

(3) Residential contractors that have not been licensed as a residential contractor during any part of the six-years immediately preceding their scheduled renewal date must complete an additional eight hours of residential continuing education offered by an approved provider. The education hours may include:

(a) Series A Courses described in section (2)(b); or

(b) Series B Courses in one or more of the following subjects:

(A) Energy efficiency; or

(B) Trade specific subjects, such as roofing, excavation, or exterior shell construction, as selected by the contractor.

(4) Courses shall be a minimum of 50 minutes to qualify for one hour of residential continuing education credit. Courses shall be at least one credit hour.

(5) Credit shall not be given for an individual student repeating the same residential continuing education course during a two-year licensing period.

(6) If, during the two years immediately preceding the expiration date of the license, a residential contractor served on active duty in the United States armed forces, including but not limited to mobilization or deployment, the residential continuing education requirement is waived for that two-year licensing period. This exemption applies only if the residential contractor is a:

(a) Sole proprietor without employees;

(b) Sole owner of a corporation; or

(c) Sole member of a limited liability company.

Stat. Auth.: ORS 670.310, 701.126 & 701.235

Stats. Implemented: OL 2013, Ch.718 (SB 783)

Hist.: CCB 2-2013, f. & cert. ef. 10-24-13; CCB 4-2013(Temp), f. & cert. ef. 11-26-13 thru 5-23-14

ADMINISTRATIVE RULES

812-022-0021

Exemptions from Continuing Education — Continuing Education for Residential Contractors (SB 783)

(1) Subject to section (2) of this rule, the following persons are exempt from completing Series A Courses required under OAR 812-022-0015(2)(b) and Series B Courses required under OAR 812-022-0015(3)(b):

(a) Contractors licensed as plumbing contractors under ORS 447.010 to 447.156; and

(b) Contractors licensed as electrical contractors under ORS 479.630.

(2) A contractor that is exempt under this rule and has been licensed as a residential contractor during all of the six years immediately preceding renewal must complete sufficient course hours in trade licensing continuing education or Series A Courses to total five hours. To qualify for the exemption, an owner or employee of the contractor must complete the trade licensing continuing education.

(3) A contractor that is exempt under this rule and has not been licensed as a residential contractor during any part of the six years immediately preceding renewal must:

(a) Complete sufficient course hours in trade licensing continuing education or Series A Courses to total five hours; and

(b) Complete sufficient course hours in trade licensing education, Series A Courses, or Series B Courses to total eight hours.

(c) To qualify for the exemption, an owner or employee of the contractor must complete the trade licensing continuing education.

Stat. Auth.: ORS 670.310, 701.126 & 701.235

Stats. Implemented: OL 2013, Ch.718 (SB 783)

Hist.: CCB 2-2013, f. & cert. ef. 10-24-13; CCB 4-2013(Temp), f. & cert. ef. 11-26-13 thru 5-23-14

Rule Caption: Creates an exemption from provider application fee and bond for community colleges and SBDCs.

Adm. Order No.: CCB 5-2013(Temp)

Filed with Sec. of State: 12-12-2013

Certified to be Effective: 12-12-13 thru 4-26-14

Notice Publication Date:

Rules Amended: 812-022-0025, 812-022-0026, 812-022-0027

Subject: 812-022-0025 and 812-022-0026 are amended to permit community colleges and SBDCs to become providers without paying the \$2,000 application fee. It will also permit community colleges and SBDCs to become providers without submitting a \$20,000 surety bond.

812-022-0027 is amended to permit community colleges and SBDCs to become providers without obtaining a \$20,000 surety bond.

NOTE: In order to save postage and printing costs in these difficult times, CCB is only providing a copy of the notice. To view the language of each individual rule change, please go to our web site at http://www.oregon.gov/CCB/Laws_Rules.shtml#Administrative_Rule_Notices. If you don't have web access, contact Cathy Dixon at (503) 934-2185 for assistance in receiving a copy.

Rules Coordinator: Catherine Dixon—(503) 934-2185

812-022-0025

Provider Approval — Continuing Education for Residential Contractors (SB 783)

(1) The agency will review and approve providers offering residential continuing education.

(2) Providers will apply for approval on a form, and submit fees, prescribed by the agency.

(3) Providers seeking approval to offer residential continuing education must submit the following to the agency:

(a) Name, address and contact information of the provider;

(b) Business entity type of the provider and, if applicable, the Corporation Division business registry number;

(c) Description of the subject area(s) the provider intends to offer;

(d) Indication whether provider will offer:

(A) Series A Courses;

(B) Series B Courses; or

(C) Both Series A and Series B Courses; and

(e) Such other information or documentation as the agency may request.

(4) To qualify for approval, providers must:

(a) Employ or contract with instructors who have at least four years work experience or four years of education, or any combination of both, in the subject that they instruct;

(b) Be capable of entering and transmitting electronic data to the agency;

(c) Describe and follow a process for prompt resolution of complaints by registrants;

(d) Describe a process for cancellations and refunding registrant payments. If the provider does not permit cancellation or refunds, it must provide notice of that fact in a conspicuous manner in its advertising, solicitation and registration materials;

(e) Describe and follow attendance verification procedures;

(f) Provide an evaluation opportunity as prescribed by the agency for course attendees to complete;

(g) Be capable of submitting rating results to the agency by 12:00 noon of the business day following the day the contractor completes the course;

(h) Except as provided in OAR 812-022-0027(2), if offering agency developed courses, pursuant to an agreement under 812-022-0018, or Series A Courses, provide a surety bond, as described in 812-022-0027, in the amount of \$20,000 obligating the surety to pay the State of Oregon any fees unpaid by provider;

(i) Except as provided in OAR 812-022-0026(3), pay fees as provided under 812-022-0026; and

(j) Maintain records available for agency to inspect for at least six years.

(5) Only an approved provider may offer or provide residential continuing education to a contractor or a contractor's employees.

(6) An approved provider may not allow any person not approved by the agency as a provider to offer or provide courses of the approved provider. For purposes of this rule, "offer or provide" includes, but is not limited to, assisting the contractor or the contractor's employees in obtaining or completing the courses or acting on behalf of an approved provider in advertising or soliciting the courses.

(7) Provider approval will be valid for two (2) years from the date the provider is approved by the agency.

(8) If providers change or add course types (Series A Courses or Series B Courses), they shall notify the agency within 24 hours.

(9) If providers change or add instructors, they shall notify the agency within 24 hours.

(10) Providers must re-submit an application and fees for renewal of approval. Renewal of approval will be subject to the same requirements as initial approval.

(11) The agency may withdraw approval issued to any provider that violates Oregon Laws 2013, chapter 718, or any rule of the agency.

Stat. Auth.: ORS 670.310, 701.126 & 701.235

Stats. Implemented: OL 2013, Ch.718 (SB 783)

Hist.: CCB 2-2013, f. & cert. ef. 10-24-13; CCB 3-2013(Temp), f. & cert. ef. 10-29-13 thru 4-26-14; CCB 5-2013(Temp), f. & cert. ef. 12-12-13 thru 4-26-14

812-022-0026

Fees for Provider Approval — Continuing Education for Residential Contractors (SB 783)

(1) Providers will remit to the agency a non-refundable fee of \$2,000, together with an application for approval, or renewal of approval, to offer Series A Courses, Series B Courses, or both Series A Courses and Series B Courses.

(2) Providers will be assessed a fee of \$4 per student per hour for each Series A Course hour provided. Providers will pay agency the fees at the time provider submits each student's records. The agency will establish the manner in which the provider must remit payment. Students will receive credit for Series A Course hours only after CCB receives provider's payment.

(3) The fees established under section (1) of this rule do not apply to Oregon public community colleges or small business development centers (including BizCenter Online Learning).

Stat. Auth.: ORS 670.310, 701.126 & 701.235

Stats. Implemented: OL 2013, Ch.718 (SB 783)

Hist.: CCB 2-2013, f. & cert. ef. 10-24-13; CCB 5-2013(Temp), f. & cert. ef. 12-12-13 thru 4-26-14

812-022-0027

Surety Bond to Assure Performance of Agency Agreements

(1) Providers that provide Series A Courses as provided in OAR 812-022-0015(2)(b), will maintain a surety bond in the amount of \$20,000, issued by a surety company authorized to do business in the State of Oregon, for the benefit of the State of Oregon, Construction Contractors

ADMINISTRATIVE RULES

Board. The bond must be in the form "Series A Course Provider Surety Bond," dated October 24, 2013.

(2) Section (1) of this rule does not apply to Oregon public community colleges or small business development centers (including BizCenter Online Learning).

Stat. Auth.: ORS 670.310, 701.126 & 701.235

Stats. Implemented: OL 2013, Ch.718 (SB 783)

Hist.: CCB 2-2013, f. & cert. ef. 10-24-13; CCB 3-2013(Temp), f. & cert. ef. 10-29-13 thru 4-26-14; CCB 5-2013(Temp), f. & cert. ef. 12-12-13 thru 4-26-14

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Department of Consumer and Business Services, Insurance Division Chapter 836

Rule Caption: Requiring Medigap be Available on Guaranteed Issue Basis for Individuals Losing Individual Health Benefit Plans
Adm. Order No.: ID 6-2013(Temp)

Filed with Sec. of State: 12-5-2013

Certified to be Effective: 12-5-13 thru 5-20-14

Notice Publication Date:

Rules Amended: 836-052-0142

Subject: Some insurers will terminate non-grandfathered health benefit plans for individuals on December 31, 2013 as originally required by the Oregon Insurance Division. (Bulletin 2013-01). Although the Division did allow insurers to elect to continue plans, consumers in programs that will not continue are subject to possible hardship. The Division recently learned that one result of this required termination is to end individual health plan(IHP)coverage for persons who relied on this coverage as a substitute for Medigap. OAR 836-052-0142 requires guaranteed issue of Medigap coverage when someone loses employer-sponsored coverage, but is silent about the loss of an individual health benefit plan beyond a person's control. Only a limited number of Medicare beneficiaries rely on IHP coverage to supplement Medicare and the Division did not anticipate this problem for some consumers resulting from terminating IHPs. An emergency rule to require guaranteed issue of Medigap coverage for individuals who had no control over the impending termination of the IHP due to implementation of state and federal health reform laws in Oregon seems consistent with the principle of protecting persons who lose coverage for other involuntary reasons .

Rules Coordinator: Victor Garcia—(503) 947-7260

836-052-0142

Guaranteed Issue for Eligible Persons

(1) Guaranteed issue:

(a) Eligible persons are those individuals described in section (2) of this rule who seek to enroll under the policy during the period specified in section (3) of this rule and who submit evidence of the date of termination, disenrollment or Medicare Part D enrollment with the application for a Medicare supplement policy.

(b) With respect to eligible persons, an issuer shall not deny or condition the issuance or effectiveness of a Medicare supplement policy described in section (5) of this rule that is offered and is available for issuance to new enrollees by the issuer, shall not discriminate in the pricing of such a Medicare supplement policy because of health status, claims experience, receipt of health care or medical condition, and shall not impose an exclusion of benefits based on a preexisting condition under such a Medicare supplement policy.

(2) Eligible persons. An eligible person is an individual described in any of the following paragraphs:

(a) The individual is enrolled under an employee welfare benefit plan an individual, conversion, or portability health benefit plan, or a state Medicaid plan as described in Title XIX of the Social Security Act that provides health benefits that supplement the benefits under Medicare, and the plan terminates or the plan ceases to provide all such supplemental health benefits to the individual; or the individual is enrolled under an employee welfare benefit plan that is primary to Medicare and the plan terminates or the plan ceases to provide all health benefits to the individual.

(b) The individual is enrolled with a Medicare Advantage organization under a Medicare Advantage plan under part C of Medicare, and any of the following circumstances apply, or the individual is 65 years of age or older and is enrolled with a Program of All Inclusive Care for the Elderly (PACE) provider under section 1894 of the Social Security Act, and there are circumstances similar to those described in this subsection that would

permit discontinuance of the individual's enrollment with the provider if the individual were enrolled in a Medicare Advantage plan:

(A) The certification of the organization or plan has been terminated;

(B) The organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides;

(C) The individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the Secretary, but not including termination of the individual's enrollment on the basis described in section 1851(g)(3)(B) of the federal Social Security Act (where the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under section 1856), or the plan is terminated for all individuals within a residence area;

(D) The individual demonstrates, in accordance with guidelines established by the Secretary, that:

(i) The organization offering the plan substantially violated a material provision of the organization's contract under this part in relation to the individual, including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide such covered care in accordance with applicable quality standards; or

(ii) The organization, or agent or other entity acting on the organization's behalf, materially misrepresented the plan's provisions in marketing the plan to the individual; or

(E) The individual meets such other exceptional conditions as the Secretary may provide.

(c)(A) The individual is enrolled with:

(i) An eligible organization under a contract under Section 1876 of the Social Security Act (Medicare cost);

(ii) A similar organization operating under demonstration project authority, effective for periods before April 1, 1999;

(iii) An organization under an agreement under Section 1833(a)(1)(A) of the Social Security Act (health care prepayment plan); or

(iv) An organization under a Medicare Select policy; and

(B) The enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under section (2)(b) of this rule.

(d) The individual is enrolled under a Medicare supplement policy and the enrollment ceases because:

(A)(i) Of the insolvency of the issuer or bankruptcy of the nonissuer organization; or

(ii) Of other involuntary termination of coverage or enrollment under the policy.

(B) The issuer of the policy substantially violated a material provision of the policy; or

(C) The issuer, or an agent or other entity acting on the issuer's behalf, materially misrepresented the policy's provisions in marketing the policy to the individual.

(e)(A) The individual was enrolled under a Medicare supplement policy and terminates enrollment and subsequently enrolls, for the first time, with any Medicare Advantage organization under a Medicare Advantage plan under part C of Medicare, any eligible organization under a contract under Section 1876 of the Social Security Act (Medicare cost), any similar organization operating under demonstration project authority, any PACE provider under Section 1894 of the Social Security Act or a Medicare Select policy; and

(B) The subsequent enrollment under paragraph (A) of this subsection is terminated by the enrollee during any period within the first 12 months of such subsequent enrollment (during which the enrollee is permitted to terminate such subsequent enrollment under section 1851 (e) of the federal Social Security Act); or

(f) The individual, upon first becoming enrolled for benefits under Medicare part A, enrolls in a Medicare Advantage plan under part C of Medicare, or with a PACE provider under Section 1894 of the Social Security Act, and disenrolls from the plan or program by not later than 12 months after the effective date of enrollment.

(g) The individual enrolls in a Medicare Part D plan during the initial enrollment period and, at the time of enrollment in Part D, was enrolled under a Medicare supplement policy that covers outpatient prescription drugs and the individual terminates enrollment in the Medicare supplement policy and submits evidence of enrollment in Medicare Part D along with the application for a policy described in section (5)(d) of this rule.

(3) Guaranteed Issue Time Periods.

(a) In the case of an individual described in section (2)(a) of this rule, the guaranteed issue period begins on the later of:

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(A) The date the individual receives a notice of termination or cessation of all supplemental health benefits (or, if a notice is not received, notice that a claim has been denied because of a termination or cessation); or

(B) The date that the applicable coverage terminates or ceases; and ends 63 days thereafter.

(b) In the case of an individual described in section (2)(b), (c), (e) or (f) of this rule whose enrollment is terminated involuntarily, the guaranteed issue period begins on the date that the individual receives a notice of termination and ends 63 days after the date the applicable coverage is terminated;

(c) In the case of an individual described in section (2)(d)(A), the guaranteed issue period begins on the earlier of:

(A) The date that the individual receives a notice of termination, a notice of the issuer's bankruptcy or insolvency, or other such similar notice if any; and

(B) The date that the applicable coverage is terminated, and ends on the date that is 63 days after the date the coverage is terminated.

(d) In the case of an individual described in section (2)(b), (d)(B), (d)(C), (e) or (f) of this rule, who disenrolls voluntarily, the guaranteed issue period begins on the date that is 60 days before the effective date of the disenrollment and ends on the date that is 63 days after the effective date; and

(e) In the case of an individual described in section (2)(g) of this rule, the guaranteed issue period begins on the date the individual receives notice pursuant to Section 1882(v)(2)(B) of the Social Security Act from the Medicare supplement issuer during the 60-day period immediately preceding the initial Part D enrollment period and ends on the date that is 63 days after the effective date of the individual's coverage under Medicare Part D; and

(f) In the case of an individual described in section (2) of this rule but not described in the preceding provisions of this subsection, the guaranteed issue period begins on the effective date of disenrollment and ends on the date that is 63 days after the effective date.

(4) Extended Medigap access for interrupted trial periods.

(a) In the case of an individual described in section (2)(e) of this rule (or deemed to be so described, pursuant to this paragraph) whose enrollment with an organization or provider described in section (2)(e)(A) is involuntarily terminated within the first 12 months of enrollment, and who, without an intervening enrollment enrolls with another such organization or provider, the subsequent enrollment shall be deemed to be an initial enrollment described in section (2)(e) of this rule.

(b) In the case of an individual described in section (2)(f) of this section (or deemed to be so described, pursuant to this paragraph) whose enrollment with a plan or in a program described in section (2)(f) of this rule is involuntarily terminated within the first 12 months of enrollment, and who, without an intervening enrollment, enrolls in another such plan or program, the subsequent enrollment shall be deemed to be an initial enrollment described in section (2)(f) of this rule; and

(c) For purposes of sections (2)(e) and (f) of this rule, no enrollment of an individual with an organization or provider described in section (2)(e)(A) of this rule, or with a plan or in a program described in section (2)(f) of this rule, may be deemed to be an initial enrollment under this paragraph after the two year period beginning on the date on which the individual first enrolled with such an organization provider, plan or program.

(5) Products to which eligible persons are entitled. The Medicare supplement policy to which eligible persons are entitled under:

(a) Section (2)(a), (b), (c) (except for coverage described in (c)(A)(iv) and (d) of this rule is a Medicare supplement policy that has a benefit package classified as Plan A, B, C, F (including F with a high deductible), K or L offered by any issuer;

(b) Section (2)(c)(A)(iv) and (f) of this rule is any Medicare supplement policy described in OAR 836-052-0136 offered by any issuer;

(c)(A) Subject to paragraph (B) of this subsection, section (2)(e) of this rule is the same Medicare supplement policy in which the individual was most recently previously enrolled, if available from the same issuer, or, if not so available, a policy described in subsection (a) of this section.

(B) After December 31, 2005, if the individual was most recently enrolled in a Medicare supplement policy with an outpatient prescription drug benefit, a Medicare supplement policy described in this paragraph is:

(i) The policy available from the same issuer but modified to remove prescription drug coverage; or

(ii) At the election of the policyholder, an A, B, C, F (including F with a high deductible), K or L policy that is offered by any issuer.

(d) Section (2)(g) of this rule is a Medicare supplement policy that has a benefit package classified as Plan A, B, C, F (including F with a high deductible), K, or L, and that is offered and is available for issuance to new enrollees by the same issuer that issued the individual's Medicare supplement policy with outpatient prescription drug coverage.

(6) Notification provisions:

(a) At the time of an event described in section (2) of this rule because of which an individual loses coverage or benefits due to the termination of a contract or agreement, policy or plan, the organization that terminates the contract or agreement, the issuer terminating the policy, or the administrator of the plan being terminated, respectively, shall notify the individual of the individual's rights under this rule, and of the obligations of issuers of Medicare supplement policies under section (1) of this rule. Such notice shall be communicated contemporaneously with the notification of termination.

(b) At the time of an event described in section (2) of this rule because of which an individual ceases enrollment under a contract or agreement, policy or plan, the organization that offers the contract or agreement, regardless of the basis for the cessation of enrollment, the issuer offering the policy, or the administrator of the plan, respectively, shall notify the individual of the individual's rights under this rule, and of the obligations of issuers of Medicare supplement policies under section (1) of this rule. Such notice shall be communicated within ten working days of the issuer's receiving notification of disenrollment.

Stat. Auth.: ORS 743.684

Stats. Implemented: ORS 743.010 & 743.684

Hist.: ID 21-1998(Temp), f. 12-8-98, cert. ef. 1-1-99 thru 6-25-99; ID 4-1999, f. & cert. ef. 4-29-99; ID 6-2001, f. & cert. ef. 5-22-01; ID 24-2002, f. & cert. ef. 12-13-02; ID 10-2005, f. & cert. ef. 7-26-05; ID 3-2009, f. 6-30-09, cert. ef. 7-1-09; ID 6-2013(Temp), f. & cert. ef. 12-5-13 thru 5-20-14

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

Rule Caption: Adopt federal OSHA amendments to Consensus Standards for Signage in general industry and construction.

Adm. Order No.: OSHA 7-2013

Filed with Sec. of State: 12-12-2013

Certified to be Effective: 12-12-13

Notice Publication Date: 11-1-2013

Rules Amended: 437-002-0005, 437-002-0080, 437-002-0140, 437-002-0312, 437-003-0001

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

Oregon OSHA amends standards in Division 2, general industry, and Division 3, construction, to reflect federal OSHA updates published in the June 13, 2013 Federal Register. Federal OSHA updated its general industry and construction signage rules by adding references to the latest version of the American National Standards Institute ("ANSI") standards on accident prevention signs and tags, ANSI Z535.1-2006 (R2011), Z535.2-2011 and Z535.5-2011. OSHA retained references to the earlier ANSI signage standards, ANSI Z53.1-1967, Z35.1-1968 and Z35.2-1968. This rulemaking provides employers the option to comply with either the earlier or updated standards. Also included in this rulemaking are minor corrections from federal OSHA of the June 13, 2013 Federal Register with the November 6, 2013 Federal Register. Corrections are to addresses and reference clarification for graphics.

Oregon-initiated rules will also be amended to reflect the newer ANSI references.

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

Rules Coordinator: Sue C. Joye—(503) 947-7449

437-002-0005

Adoption by Reference

In addition to, and not in lieu of, any other safety and health codes contained in OAR Chapter 437, the Department adopts by reference the following federal regulations printed as part of the Code of Federal Regulations, 29 CFR 1910, in the Federal Register:

(1) 29 CFR 1910.1, Purpose and scope; published 6/27/74, Federal Register, vol. 39, no. 125, p. 23503.

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(2) 29 CFR 1910.2, Definitions; published 6/27/74, Federal Register, vol. 39, no. 125, p. 23503.

(3) 29 CFR 1910.3, Petitions for the issuance, amendment, or repeal of a standard; published 6/27/74, Federal Register, vol. 39, no. 125, p. 23503.

(4) 29 CFR 1910.4, Amendments to this part; published 6/27/74, Federal Register, vol. 39, no. 125, p. 23503.

(5) 29 CFR 1910.5, Applicability of standards; published 6/30/93, FR vol. 58, no. 124, p. 35308.

(6) 29 CFR 1910.6, Incorporation by reference; published 6/13/13, FR vol. 78, no. 114, p. 35559; 11/6/13, FR vol. 78, no. 215, p. 66641.

(7) 29 CFR 1910.7, Definition and requirements for a Nationally Recognized Testing Laboratory; published 5/11/88, FR vol. 53, no. 91, p. 16838.

(8) 29 CFR 1910.9, Compliance duties owed to each employee; published 12/12/08, Federal Register, vol. 73, no. 240, pp. 75568-75589.

These standards are on file at the Oregon Occupational Safety and Health Division, Oregon Department of Consumer and Business Services, and the United States Government Printing Office.

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

Stat. Implemented: ORS 654.001 - 654.295

Hist.: APD 17-1988, f. & ef. 11-10-88; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 8-1999, f. & cert. ef. 8-6-99; OSHA 4-2005, f. & cert. ef. 12-14-05; OSHA 4-2007, f. & cert. ef. 8-15-07; OSHA 7-2008, f. & cert. ef. 5-30-08; OSHA 5-2009, f. & cert. ef. 5-29-09; OSHA 1-2010, f. & cert. ef. 2-19-10; OSHA 2-2010, f. & cert. ef. 2-25-10; OSHA 4-2011, f. & cert. ef. 12-8-11; OSHA 5-2012, f. & cert. ef. 9-25-12; OSHA 7-2012, f. & cert. ef. 12-14-12; OSHA 7-2013, f. & cert. ef. 12-12-13

437-002-0080

Adoption by Reference

In addition to, and not in lieu of, any other safety and health codes contained in OAR Chapter 437, the Department adopts by reference the following federal regulations printed as part of the Code of Federal Regulations, 29 CFR 1910, in the Federal Register:

(1) 29 CFR 1910.94 Ventilation, published 9/9/09, FR vol. 74, no. 173, pp. 46350-46361; amended with OR-OSHA Admin. Order 1-2012, f. and ef. 4/10/12.

(2) 29 CFR 1910.95 Occupational Noise Exposure, published 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.

NOTE: 29 CFR 1910.96 Ionizing radiation, has been redesignated to 29 CFR 1910.1096.

(3) 29 CFR 1910.97 Nonionizing radiation, published 6/13/13, FR vol. 78, no. 114, p. 35559.

(4) 29 CFR 1910.98 Effective dates, published 6/27/74, Federal Register, vol. 39, p. 23502.

(5) 29 CFR 1910.99 Sources of standards, published 3/7/96, FR vol. 61, no. 46, p. 9236.

(6) 29 CFR 1910.100 Standards organization, published 3/7/96, FR vol. 61, no. 46, p. 9236.

These standards are on file with the Occupational Safety and Health Division, Oregon Department of Consumer and Business Services, and the United States Government Printing Office.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 2-1992, f. 2-6-92, cert. ef. 5-1-92; OSHA 4-1993, f. 4-1-93, cert. ef. 5-1-93; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 3-1998, f. & cert. ef. 7-7-98; OSHA 8-1999, f. & cert. ef. 8-6-99; OSHA 3-2003, f. & cert. ef. 4-21-03; OSHA 4-2006, f. & cert. ef. 7-24-06; OSHA 7-2008, f. & cert. ef. 5-30-08; OSHA 5-2009, f. & cert. ef. 5-29-09; OSHA 2-2010, f. & cert. ef. 2-25-10; OSHA 1-2012, f. & cert. ef. 4-10-12; OSHA 7-2013, f. & cert. ef. 12-12-13

437-002-0140

Adoption by Reference

In addition to and not in lieu of, any other safety and health codes contained in OAR Chapter 437, the Department adopts by reference the following federal regulations printed as part of the Code of Federal Regulations, 29 CFR 1910, in the Federal Register:

(1) 29 CFR 1910.141 Sanitation, published 6/8/11, Federal Register, vol. 76, no. 110, p. 33590.

(2) Reserved for 29 CFR 1910.142 Temporary labor camps.

(3) 29 CFR 1910.143 Nonwater carriage disposal systems (Reserved).

(4) 29 CFR 1910.144 Safety color code for marking physical hazards, published 12/14/07, FR vol. 72, no. 240, p. 71061.

(5) 29 CFR 1910.145 Specifications for accident prevention signs and tags, published 6/13/13, FR vol. 78, no. 114, p. 35559.

(6) 29 CFR 1910.146 Permit-required confined spaces. Repealed with Oregon OSHA AO 6-2012, f. 9/28/12, ef. 4/1/13. In Oregon, OAR 437-002-0146 applies.

(7) 29 CFR 1910.147 The control of hazardous energy, (lockout/tagout); published 5/2/11, Federal Register vol. 76, no. 84, p. 24576; 7/25/11, FR vol. 76, no. 142, p. 44265.

(8) 29 CFR 1910.148 Removed. Published 3/7/96, Federal Register, vol. 61, no. 46, p. 9239.

(9) 29 CFR 1910.149 Removed. Published 3/7/96, Federal Register, vol. 61, no. 46, p. 9239.

(10) 29 CFR 1910.150 Removed. Published 3/7/96, Federal Register, vol. 61, no. 46, p. 9239.

These federal standards are on file with the Oregon Occupational Safety and Health Division, Department of Consumer and Business Services and the United States Government Printing Office.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 2-1990, f. 1-19-90, cert. ef. 3-1-90; OSHA 4-1991, f. 2-25-91, cert. ef. 3-15-91; OSHA 13-1992, f. 12-7-92, cert. ef. 2-1-93; OSHA 8-1993, f. & cert. ef. 7-1-93; OSHA 5-1994, f. & cert. ef. 9-30-94; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 2-1999, f. & cert. ef. 4-30-99; OSHA 5-1999, f. & cert. ef. 5-26-99; OSHA 12-2001, f. & cert. ef. 10-26-01; OSHA 7-2008, f. & cert. ef. 5-30-08; OSHA 3-2011, f. & cert. ef. 11-1-11; OSHA 4-2011, f. & cert. ef. 12-8-11; OSHA 6-2012, f. 9-28-12, cert. ef. 4-1-13; OSHA 7-2013, f. & cert. ef. 12-12-13

437-002-0312

Oregon Rules for Pulp, Paper and Paperboard Mills

(1) General Requirements.

(a) Application. This section applies to establishments where pulp, paper, and paperboard are manufactured or converted. This section does not apply to logging and the transportation of logs to pulp, paper, and paperboard mills.

(b) Standards incorporated by reference. Standards covering issues of occupational safety and health which have general application without regard to any specific industry are incorporated by reference in sections (2) through (14) of this rule and in subsections (c) and (d) of this rule and made applicable under this rule. Such standards shall be construed according to the rules set forth in §1910.5, Applicability of Standards, in Subdivision A.

(c) General incorporation of standards. Establishments subject to this section shall comply with the following standards of the American National Standards Institute:

(A) Safety Requirements for Floor and Wall Openings, Railings, and Toeboards, A10.18-1983.

(B) Scheme for the Identification of Piping Systems, A13.1-1981 (R1993).

(C) Safety Code for Portable Wood Ladders, A14.1-1990.

(D) Safety Code for Portable Metal Ladders, A14.2-1990.

(E) Safety Code for Fixed Ladders, A14.3-1990.

(F) Safety Code for Cranes, Derricks, and Hoists, B30.2-1990.

(G) Overhead and Gantry Cranes, B30.17-1992.

(H) Crawler, Locomotive, and Truck Cranes, B30.8-1993.

(I) Safety Code for Woodworking Machinery, ANSI O1.1-1992.

(J) Method of Measurement of Real-Ear Protection of Hearing Protectors — Physical Attenuation of Ear Muffs, ANSI S3.19-1974 (R1990).

(K) Practice for Occupational and Educational Eye and Face Protection, ANSI Z87.1-1989.

(L) Requirements for Sanitation in Places of Employment, ANSI Z4.1-1986.

(M) Fundamentals Governing the Design and Operation of Local Exhaust Systems, Z9.2-1979 (R 1991).

(N) Practices for Respiratory Protection, ANSI Z88.2-1992.

(O) Safety Requirements for Industrial Head Protection, ANSI Z89.1-1986.

(P) Safety Color Code, ANSI Z535.1-1991.

(Q) Practice for the Inspection of Elevators (Inspector's Manual), ANSI/ASME A17.2-1988.

(R) Safety Code for Elevators, Dumbwaiters, and Moving Walks, ANSI/ASME A17.1-1990.

(S) Safety Code for Mechanical Power-Transmission Apparatus, ANSI/ASME B15.1-1992.

(T) Safety Code for Conveyors, Cableways, and Related Equipment, ANSI/ASME B20.1-1993.

(U) Power Piping, ANSI/ASME B31.1-1992.

(V) Safety Code for Powered Industrial Trucks, ANSI/ASME B56.1.

(W) Practice for Industrial Lighting, ANSI/IES RP-990.

(X) Installation of Blower and Exhaust Systems for Dust, Stock, and Vapor Removal or Conveying, ANSI/NFPA 91-1992.

(Y) Fire Department Self-Contained Breathing Apparatus Program, ANSI/NFPA 1404-1989.

(Z) Safety Code for Ventilation and Operation of Open-Surface Tanks, ANSI/UL 641-1985.

(d) Other standards. The following standards shall be considered standards under this section:

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(A) ASME Boiler and Pressure Vessel Code, Section VIII, Unfired Pressure Vessels 1992, including addenda.

(B) Building Exits Code for Life Safety from Fire, NFPA 101-1991.

(C) NFPA Code for Prevention of Sulfur Fires and Explosions, NFPA 655-1993.

(D) Safety in the Transportation, Storage, Handling and Use of Explosives, IME Pamphlet No. 17, March 1987, Institute of Makers of Explosives.

(2) Employee Training.

(a) Employees shall not be permitted to operate any machine or equipment until they have received proper training and are familiar with safe operating procedures.

(b) Employees shall be trained in proper lifting or moving techniques and methods. Mechanical devices should be used or employees should ask for assistance in lifting or moving heavy objects.

(c) In each area where hazardous substances may be encountered, personnel shall be trained to cope with emergencies arising from breaks, ruptures, or spills which would create a hazardous condition.

(d) Any faulty equipment or hazardous condition shall be promptly reported to the person in charge.

(e) When an employee is assigned to work alone in a remote or isolated area, a system shall be instituted whereby such employee reports to someone or a designated person shall check on his or her safety. The procedure shall designate the method of contact and the frequency. All persons will be trained on the procedures.

(3) Safe Practices.

(a) Guards. All driving mechanisms, power transmission apparatus, and prime movers shall be constructed, guarded, and used in conformity with Subdivision O, Machinery and Machine Guarding.

(b) Inspection of controls and safety devices. Brakes, back stops, antirunaway devices, overload releases, and other safety devices shall be inspected and tested frequently to insure that all are operative and maintained in good repair.

(c) Personal protective clothing and equipment. Personal protective clothing and equipment shall be provided and worn in accordance with Subdivision I, Personal Protective Equipment. Respiratory protection must conform to the requirements of §1910.134 of Subdivision I.

(d) Floors and platforms. Floors, platforms, and work surfaces shall be guarded and maintained in accordance with §1910.23, in Subdivision D, Walking-Working Surfaces.

(e) Lockouts. Lockout/tagout shall be in accordance with the requirements of §1910.147, in Subdivision J, with the exception that:

(A) There will be no tagouts allowed in lieu of lockout for that which can be locked out. Tags are provided for identification and information purposes only.

(B) Persons engaged in repair, inspection, maintenance, or clean-up shall lockout the affected equipment, retain possession of the keys to the locks, and personally remove the lock and tag upon completion of the work.

(C) Group lockout. (See Appendices A and B.)

(i) When servicing and/or maintenance is performed by a crew, craft, department or other group, they shall utilize a procedure which affords the employees a level of protection equivalent to that provided by the implementation of a personal lockout device.

(ii) Group lockout devices shall be used in accordance with the procedures required by §1910.147(c)(4) including, but not necessarily limited to, the following specific requirements.

(I) Primary responsibility is vested in an authorized employee for a set number of employees working under the protection of a group lockout device (such as an operations lock);

(II) Provision for the authorized employee to ascertain the exposure status of individual group members with regard to the lockout of the machine or equipment; and

(III) When more than one crew, craft, department, etc. is involved, assignment or overall job-associated lockout control responsibility to an authorized employee designated to coordinate affected work forces and ensure continuity of protection; and

(IV) Each authorized employee shall affix a personal lockout device to the group lock-out device, group lockbox, or comparable mechanism when he or she begins work, and shall remove those devices when he or she stops working on the machine or equipment being serviced or maintained; and

(V) Any person involved in the lockout process shall have the right to place their own lock at each lockout location where group lockout procedures have been allowed.

(f) Confined space entry. Confined space entry shall be in accordance with 437-002-0146 Confined Spaces, in Subdivision J.

(g) Industrial power trucks.

(A) All industrial power trucks and operations shall conform to §1910.178, Powered Industrial Trucks, Subdivision N, Material Handling and Storage. All forklift trucks shall be provided with overhead guards. Design requirements shall provide protection for the liquid petroleum gas tank. All guards shall be designed in compliance with §1910.178, Powered Industrial Trucks, in Subdivision N.

(B) Mirrors or other methods to ensure visibility shall be installed at blind corners or intersections which will allow operators to observe oncoming traffic.

(C) Every power truck operated from an end platform or standing position shall be equipped with a platform extending beyond the operator's position, strong enough to withstand a compression load equal to the weight of the loaded vehicle applied along the longitudinal axis of the truck with the outermost projection of the platform against the flat vertical surface.

(D) Pushing of vehicles or rail cars with the forks or clamps of a lift truck is prohibited.

(h) Emergency lighting.

(A) Emergency lighting shall be provided wherever it is necessary for employees to remain at their machines or stations to shut down equipment in case of power failure. Emergency lighting shall be provided at stairways and passageways or aiseways used by employees for emergency exit in case of power failure. Emergency lighting shall be provided in all plant first aid and medical facilities.

(B) Emergency lighting shall be maintained in accordance with the manufacturer or engineering specifications, and shall be checked at least every 30 days for defects.

(i) Electrical equipment. All electrical installations and electrical utilization equipment shall comply with the National Electrical Code requirements and the provisions of Subdivision S, Electrical.

(4) Handling and Storage of Pulpwood and Pulp Chips.

(a) Handling pulpwood with forklift trucks. Where large forklift trucks, or lift trucks with clam-jaws, are used in the yard, the operator's enclosed cab shall be provided with an escape hatch, whenever the hydraulic arm blocks escape through the side doors.

(b) Handling pulpwood with cranes or stackers.

(A) Where locomotive cranes are used for loading or unloading pulpwood, the pulpwood shall be piled so as to allow a clearance of not less than 24 inches between the pile and the end of the cab of any locomotive crane in use, when the cab is turned in any working position.

(B) The minimum distance of the pulpwood pile from the centerline of a standard-gage track shall be maintained at not less than 8-1/2 feet.

(C) Logs shall be piled in an orderly and stable manner, with no projection into walkways or roadways.

(D) Rail cars shall not be spotted on tracks adjacent to the locomotive cranes unless a 24 inch clearance is maintained, as required in section (4)(b)(A) of this rule.

(E) The handling and storage of other materials shall conform to sections (4)(b)(A) and (B) of this rule with respect to clearance.

(F) Equipment and practices shall conform to American National Standards B30.2-1990 and B30.2.0-1967.

(G) Personal protective equipment for such uses as foot, head, and eye protection shall be required for workers on a job basis.

(H) No person shall be permitted to walk beneath a suspended load, bucket, or hook.

(c) Pulpwood storage and handling.

(A) Unauthorized vehicles and unauthorized foot traffic shall not be allowed in any active sorting, storing, loading, or unloading areas.

(B) Unloading lines shall be so arranged that it is not necessary for the workers to attach them on the pond or dump side of the load.

(C) Jackets or vests of fluorescent or other high visibility material shall be worn by persons working on dry land log storage.

(D) Wire rope doglines used for towing or rafting shall not be used when:

(i) They acquire jaggars to the extent that they present a hazard to the workers handling them; or

(ii) When they are weakened to the extent that they are hazardous.

(E) Boom sticks shall be capable of safely supporting the weight imposed upon them.

(F) Stiff booms shall be made by fastening not less than two boom sticks together. The width of the stiff boom shall be not less than 36 inches measured from outside to outside of the outer logs. The boom sticks shall

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be fastened together with not less than 4-inch by 6-inch cross ties or cable lashing properly recessed into notches in the boom sticks and secured.

(G) Pike poles shall be kept in good repair. Conductive pike poles shall not be used where it is possible that they may come in contact with electrical conductors.

(H) All log dumps shall be periodically cleared of bark and other debris.

(I) When cutting bands on bundled logs, workers shall position themselves in a safe location. Double-bitted axes shall not be used for cutting bands. Caution shall be used to prevent being struck by ends of bands being cut and, if needed, personal protective equipment shall be worn.

(J) Storing or sorting on water, or any boom work other than boom boat operations, shall require a minimum of two persons.

(d) Handling pulpwood from ships.

(A) Ladders and gangplanks with railings to boat docks shall meet the requirements of American National Standards A10.18-1983, A14.1-1990, A14.2-1990, and A14.3-1990, and shall be securely fastened in place.

(B) The hatch tender shall be required to signal the hoisting engineer to move the load only after the employees working in the hold are in the clear.

(C) The air in the ship's hold, tanks, or closed vessels shall be tested for oxygen deficiency and for toxic, explosive and combustible gases and vapors.

(e) Handling pulpwood from flatcars and all other rail cars.

(A) Railroad flatcars for the conveyance of pulpwood loaded parallel to the length of the car shall be equipped with safety-stake pockets.

(B) Where pulpwood is loaded crosswise on a flatcar sufficient stakes of sizes not smaller than 4 by 4 inches shall be used to prevent the load from shifting.

(C) When it is necessary to cut stakes, those on the unloading side should be partially cut through first, and then the binder wires cut on the opposite side. Wire cutters equipped with long extension handles shall be used. No person shall be permitted along the dumping side of the car after the stakes have been cut.

(D) When steel straps without stakes are used, the steel straps shall be cut from a safe area to prevent employees from being struck by the falling logs.

(E) Flatcars and all other cars shall be chocked during unloading. Where equipment is not provided with hand brakes, rail clamping chocks shall be used.

(F) A derail shall be used to prevent movement of other rail equipment into cars where persons are working.

(f) Handling pulpwood from trucks.

(A) Cutting of stakes and binder wires shall be done in accordance with section (4)(e)(C) of this rule.

(B) Where binder chain and steel stakes are used, the binder chains shall be released and the stakes tripped from the opposite side of the load spillage.

(C) Where binder chains and crane slings are used, the crane slings shall be attached and taut before the binder chains are released. The hooker shall see that the helper is clear before signaling for the movement of the load.

(D) The truck driver shall leave the truck cab and be in the clear, in a designated area, and shall be in clear view of the unloading equipment operator while the unloader is approaching the loaded truck.

(E) The truck driver shall remain outside the cab and clear of the load while logs are being unloaded except that, after a complete load is lifted as a unit and held stationary, the driver may enter the cab and drive forward from under the suspended load.

(F) Log unloaders shall not be moved about the premises with loads raised higher than absolutely necessary.

(g) Handling pulp chips from rail cars.

(A) All cars shall be securely fastened in place and all employees in the clear before dumping is started.

(B) Personal protective equipment for such uses as foot, head, and eye protection shall be provided, and employees shall wear the equipment when working in the woodyard. Ear protection shall be provided when the noise level may be harmful.

(C) When a rollover-type unloading device is used for removing chips from cars, the cars shall be properly secured in place, and all employees shall be in the clear before dumping operation is started.

(h) Handling pulp chips and hog fuel from trucks and trailers.

(A) All trucks and trailers shall be secure and all employees in the clear before dumping is started.

(B) Personal protective equipment necessary to protect workers from hazards shall be provided and worn.

(C) Elevating platform-type or cable-lift type unloading devices shall have adequate back bumper stops.

(D) Side rails or other positive means to prevent the truck and/or trailer from falling shall be used while unloading the single trailer units.

(E) All persons shall be clear of all hoisting or elevating mechanisms before dumping commences.

(F) No person shall remain in any truck while the truck is being elevated.

(G) A safe area and suitable device shall be provided for the chip tester to use while taking chip samples.

(H) Rolled chip nets shall not be positioned where they cover the ladders on rail cars or trucks.

(I) Chip and hog fuel storage.

(i) When mobile equipment is used on top of hog fuel or chip piles, a roll-over protection system shall be installed on the equipment. If the cab is of the enclosed type, windshield wipers shall be installed.

(ii) Hog fuel bins shall be provided with standard railed platform or walkways near the top or other equally effective means shall be provided for use by employees engaged in dislodging hog fuel.

(iii) Extreme care shall be taken to prevent chips or hog fuel from creating an overhang or bridging.

(iv) Employees shall be prohibited from working under overhangs or bridges.

(J) Chip and sawdust bins. Steam or compressed-air lances, or other facilities, shall be used for breaking down the arches caused by jamming in chip lofts. No worker shall be permitted to enter a bin unless done in accordance with 437-002-0146 Confined Spaces, in Subdivision J.

(i) Crane operations.

(A) Crane boom and load capacities as specified by the manufacturer shall be posted in the cab of the crane in accordance with §1910.180, Crawler, Locomotive and Truck Cranes, in Subdivision N, Material Handling and Storage.

(B) A safety device such as a heavy chain or cable at least equal in strength to the lifting cables shall be fastened to the boom and to the frame of the boom crane (if it is other than locomotive) at the base. Alternatively, a telescoping safety device shall be fastened to the boom and to the cab frame, so as to prevent the boom from snapping back over the cab in the event of lifting cable breakage.

(C) A crane shall not be operated where any part thereof may come within 10 feet of overhead powerlines (or other overhead obstructions) unless the powerlines have been de-energized, or clearances are maintained as specified in §1910.303, General Requirements, in Subdivision S, Electrical.

(D) Standard signals for the operation of cranes shall be established for all movements of the crane, in accordance with American National Standards B30.2-1990 and B30.8-1988.

(E) Only one member of the crew shall be authorized to give signals to the crane operator.

(F) All cranes shall be equipped with a suitable warning device such as a horn or whistle.

(G) A sheave guard shall be provided beneath the head sheave of the boom.

(H) Grapples, tongs, and buckets shall not be left suspended when not in use.

(j) Traffic warning signs or signals.

(A) A flagger shall direct the movement of cranes or locomotives being moved across railroad tracks or roads, and at any points where the vision of the operator is restricted. The flagger must always remain in sight of the operator when the crane or locomotive is in motion. The blue flag policy shall be used to mark stationary cars day and night. This policy shall include marking the track in advance of the spotted cars (flag for daytime, light for darkness).

(B) After cars are spotted for loading or unloading, warning flags or signs shall be placed in the center of the track at least 50 feet away from the cars and a derail set to protect workers in or on the car.

(k) Rail car operations and railroad warning devices.

(A) On a dead end spur, a blue signal may be displayed adjacent to the switch opening while cars are being loaded or unloaded. When such warning devices are displayed, the equipment shall not be coupled to or moved.

(B) Equipment which would obscure the blue signal shall not be placed on the track.

(C) Each maintenance crew shall display and remove its own set of blue signals.

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(D) A flashing warning light or other device shall be installed near any opening which leads to a passageway crossing railroad tracks adjacent to the building. Such light or device shall be activated prior to any switching or movement of railroad equipment to warn workers of the dangerous condition in the area.

(E) Workers shall not crawl under or pass between coupled rail cars to cross tracks.

(F) An audible whistle, horn, or bell shall be sounded by the locomotive engineer to give adequate warning prior to switching across any road crossing.

(G) When switching railroad equipment in congested areas or across roadways or walkways, "flying switches" shall be prohibited.

(H) All freight car doors shall be inspected before workers open or close them. A safe method shall be used to open or close the door.

(I) Illumination. Artificial illumination shall be provided when loading or unloading is performed after dark, in accordance with American National Standard ANSI/IES-RP-1990, Practice for Industrial Lighting.

(m) Bridge or dock plates.

(A) The construction and use of bridge or dock plates shall conform to requirements of §1910.30(a), Walking-Working Surfaces, in Subdivision D.

(B) The sides of bridge or dock plates shall have an upturn or lip of at least 4 inches covering the area between the edge of the loading dock and edge of car or truck floor whenever the distance exceeds 18 inches to prevent wheeled equipment from running off the sides.

(C) Bridge or dock plates shall have at least 6 inches bearing surface on the loading dock.

(D) Bridge or dock plates intended to be moved by mechanized equipment shall be designed for this purpose or attachments for safe handling shall be used.

(n) Hand tools. Handles of wood hooks shall be locked to the shank to prevent them from rotating.

(o) Removal of pulpwood.

(A) The ends of a woodpile shall be properly sloped and cross-tied into the pile. Upright poles shall not be used at the ends of woodpiles. To knock down wood from the woodpile, mechanical equipment shall be used to permit employees to keep in the clear of loosened wood.

(B) If dynamite is used to loosen the pile, only authorized personnel shall be permitted to handle and discharge the explosive. An electric detonator is preferable for firing; if a fuse is used, it shall be an approved safety fuse with a burning rate of not less than 120 seconds per yard and a minimum length of 3 feet, in accordance with "Safety in the Transportation, Storage, Handling and Use of Explosives", IME Pamphlet No. 17, March 1987.

(p) Log hauls, slips and carriages.

(A) Controls shall be arranged to operate from a position where the operator will at all times be in the clear of logs, machinery, lines, and rigging.

(B) Controls shall be marked to indicate their function.

(C) An effective method of disengaging the head rig saws from the power unit shall be installed on all head rigs where the power unit is not directly controlled by the sawyer. The saws shall be disengaged from the source of power which shall be locked out before repairs or changes are made.

(D) When needed for protection of personnel, an automatic stop or interlocking device shall be installed on log hauls or slips.

(E) A barricade or other positive stop of adequate strength shall be provided to protect the sawyer from rolling logs.

(F) A guard shall be provided to prevent logs from rolling off the log deck into the well.

(G) The sawyer shall be safeguarded either by his or her location or by use of substantial screens or approved safety glass.

(H) A substantial stop or bumper shall be installed at each end of the carriage run.

(I) Canting gear or other equipment shall not be allowed to hang over the log deck in such a manner as to endanger employees.

(J) Canting gear controls shall be marked to indicate their function.

(K) The sawyer shall be primarily responsible for the safety of the carriage crew and off-bearers. He or she shall exercise due care in the operation of the carriage and log turning devices.

(L) A control device shall be provided so that the sawyer may stop the head rig section of the mill without leaving his or her stand.

(M) The feed control lever of friction or belt-driven carriage feed works shall be designed to operate away from the saws or carriage track.

(N) Feed works and log turning control levers shall be so arranged that they may be secured when not in use and shall be adequately guarded against accidental activation.

(O) Carriages upon which persons are required to work shall be solidly decked over and the employees properly protected.

(P) Substantial sweeps shall be installed in front of each carriage wheel. Such sweeps shall extend to within 1/4 inch of the rails.

(Q) Where power-operated log turners are used, carriage knees shall be provided with goosenecks or other substantial means of protecting the carriage crew.

(q) Belt conveyors.

(A) The sides of the conveyor shall be constructed so that the pulpwood will not fall off.

(B) Where conveyors cross passageways or roadways, a horizontal platform shall be provided under the conveyor extending out from the sides of the conveyor a distance equal to 1 1/2 times the length of the wood handled. The platform shall extend the width of the road plus 2 feet on each side and shall be kept free of wood and rubbish. The edges of the platform shall be provided with toeboards or other protection to prevent wood from falling, in accordance with American National Standard A10.18-1983.

(C) All conveyors for pulpwood shall have the in-running nips between chain and sprockets guarded; also, turning drums shall be guarded.

(D) Every belt conveyor shall have an emergency stop cable extending the length of the conveyor so that it may be stopped from any location along the line, or conveniently located stop buttons within 10 feet of each work station, in accordance with American National Standard ANSI/ASME B20.1-1993.

(r) Signs. Where conveyors cross walkways or roadways in the yards, signs reading "Danger — Overhead Conveyor" or an equivalent warning shall be erected, in accordance with American National Standard for Safety Color Code, ANSI Z535.1-1991 or ANSI Z535.2-2011.

(5) Handling and Storage of Raw Materials Other Than Pulpwood or Pulp Chips.

(a) Personal protective equipment.

(A) Whenever possible, all dust, fumes, and gases incident to handling materials shall be controlled at the source, in accordance with OAR 437-002-0382, Oregon Rules for Air Contaminants, in Subdivision Z. Where control at the source is not possible, respirators with goggles or protective masks shall be provided, and employees shall wear them when handling alum, clay, soda ash, lime, bleach powder, sulfur, chlorine, and similar materials, and when opening rag bales.

(B) When handling liquid acid or alkali, workers shall be provided with approved eye and face protection and protective clothing, in accordance with Subdivision I, Personal Protective Equipment.

(b) Clearance.

(A) When materials are being piled inside a building and upon platforms, an aisle clearance at least 3 feet greater than the widest truck in use shall be provided.

(B) Baled paper and rags stored inside a building shall not be piled closer than 18 inches to walls, partitions, or sprinkler heads.

(c) Piling and unpling pulp.

(A) Piles of wet lap pulp (unless palletized) shall be stepped back one-half the width of the sheet for each 8 feet of pile height. Sheets of pulp shall be interlapped to make the pile secure. Pulp shall not be piled over pipelines to jeopardize pipes, or so as to cause overloading of floors, or to within 18 inches below sprinkler heads.

(B) Piles of pulp shall not be undermined when being unplied.

(C) Floor capacities shall be clearly marked on all floors.

(d) Chocking rolls.

(A) Where rolls are pyramided two or more high, chocks shall be installed between each roll on the floor and at every row. Where pulp and paper rolls are stored on smooth floors in processing areas, rubber chocks with wooden core shall be used.

(B) When rolls are decked two or more high, the bottom rolls shall be chocked on each side to prevent shifting in either direction.

(6) Preparing Pulpwood.

(a) Gang and slasher saws. A guard shall be provided in front of all gang and slasher saws to protect workers from wood thrown by saws. A guard shall be placed over tail sprockets.

(b) Slasher tables. Saws shall be stopped and power switches shall be locked out and tagged whenever it is necessary for any person to be on the slasher table.

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(c) Slasher drive belts, pulleys, and shafts. All belts, pulleys, and shafts shall be guarded in accordance with American National Standard ANSI/ASME B15.1-1992.

(d) Runway to the jack ladder. The runway from the pond or unloading dock to the table shall be protected with standard handrails and toeboards. Inclined portions shall have cleats or equivalent nonslip surfacing, in accordance with Subdivision D, Walking-Working Surfaces. Protective equipment shall be provided for persons working over water.

(e) Guards below table. Where not protected by the frame of the machine, the underside of the slasher saws shall be enclosed with guards.

(f) Conveyors. The requirements of section (4)(q) of this rule shall apply.

(g) Circular saws (not slasher saws). Saws shall be provided with standard guards, in accordance with American National Standard ANSI O1.1-1992.

(h) Fixed chain saws, circular cut-off saws, drag and swing saws.

(A) Saws shall be so arranged that they will not project into any passageway when in an idle or working position. When existing conditions do not leave clear passage the saws shall be fenced off in order to make it impossible for anyone to walk into them.

(B) Drag saws and fixed chain saws shall be equipped with a device that will safely lock them in an "UP" position.

(C) All persons shall be in the clear before starting operations of a drag, chain, or swing saw.

(D) Log decks shall be equipped with a device to hold the material stable while being cut.

(i) Barker feed. Each barker shall be equipped with a feed and turnover device which will make it unnecessary for the operator to hold a bolt or log by hand during the barking operation. Eye, ear, and head protection shall be provided for the operator, in accordance with section (3)(c) of this rule.

(j) Guards. A guard shall be installed around barkers to confine flying particles, in accordance with ANSI/ASME B15.1-1992.

(k) Stops. All control devices shall be locked out and tagged when knives are being changed.

(l) Speed governor. Water wheels, when directly connected to barker disks or grinders, shall be provided with speed governors, if operated with gate wide open.

(m) Continuous barking drums.

(A) When platforms or floors allow access to the sides of the drums, a standard railing shall be constructed around the drums. When two or more drums are arranged side by side, proper walkways with standard handrails shall be provided between each set, in accordance with section (3)(d) of this rule.

(B) Sprockets and chains, gears, and trunnions shall have standard guards, in accordance with section (3)(a) of this rule.

(C) Whenever it becomes necessary for a worker to go within a drum, the driving mechanism shall be locked and tagged, at the main disconnect switch, in accordance with section (3)(e) of this rule.

(D) This subsection (m) also applies to barking drums employed in the yard.

(n) Intermittent barking drums. In addition to motor switch, clutch, belt shifter, or other power disconnecting device, intermittent barking drums shall be equipped with a device which may be locked to prevent the drum from moving while it is being emptied or filled.

(o) Hydraulic barkers.

(A) Hydraulic barkers shall be enclosed with strong baffles at the inlet and the outlet. The operator shall be protected by at least five-ply laminated glass.

(B) The high pressure hoses of hydraulic barkers shall be secured in such a manner that the hose connection ends will be restrained if a hose connection fails.

(p) Splitter block. The block upon or against which the wood is rested shall have a corrugated surface or other means provided that the wood will not slip. Wood to be split, and also the splitting block, shall be free of ice, snow, or chips. The operator shall be provided with eye and foot protection. A clear and unobstructed view shall be maintained between equipment and workers around the block and the workers' help area.

(q) Power control. Power for the operation of the splitter shall be controlled by a clutch or equivalent device.

(r) Knot cleaners. The operators of knot cleaners of the woodpecker type shall wear eye protection equipment.

(s) Chipper spout. The feed system to the chipper spout shall be arranged in such a way that the operator does not stand in a direct line with the chipper spout. All chipper spouts shall be enclosed to a height of at least

42 inches from the floor or operator's platform. When other protection is not sufficient, the operator shall be protected from falling into the chipper by the use of a safety belt and lanyard. Ear protection equipment shall be worn by the operator and others in the immediate area if there is any possibility that the noise level may be harmful (see §1910.95, Occupational Noise Exposure, in Subdivision G).

(t) Feeding material/clearing jams in machines. Appropriate safety belts and lanyards and face protection shall be used by employees who manually feed material or clear jams in machines unless other provisions are made which will protect the employees.

(u) Carriers for knives. Carriers shall be provided and used for transportation of knives.

(7) Rag and Old Paper Preparation.

(a) Ripping and trimming tools.

(A) Hand knives and scissors shall have blunt points, shall be fastened to the table with chain or thong, and shall not be carried on the person but placed safely in racks or sheaths when not in use.

(B) Hand knives and sharpening steels shall be provided with guards at the junction of the handle and the blade. Utility knives with blade exposure of 2-1/2 inches or less are exempted from this requirement.

(b) Shredders, cutters, and dusters.

(A) Rotating heads or cylinders shall be completely enclosed except for an opening at the feed side sufficient to permit only the entry of stock. The enclosure shall extend over the top of the feed rolls. It shall be constructed either of solid material or with mesh or openings not exceeding 1/2-inch and substantial enough to contain flying particles and prevent accidental contact with moving parts. The enclosure shall be bolted or locked into place.

(B) A smooth-pivoted idler roll resting on the stock or feed table shall be provided in front of feed rolls except when arrangements prevent the operator from standing closer than 36 inches to any part of the feed rolls.

(C) Any manually fed cutter, shredder, or duster shall be provided with an idler roll as per section (7)(b)(B) of this rule or the operator shall use special hand-feeding tools.

(D) Hoods of cutters, shredders, and dusters shall have exhaust ventilation, in accordance with §1910.94, Ventilation, in Subdivision G.

(c) Blowers.

(A) Blowers used for transporting rags shall be provided with feed hoppers having outer edges located not less than 48 inches from the fan.

(B) The arrangement of the blower discharge outlets and work areas shall be such as to prevent material from falling on workers.

(d) Conveyors. Conveyors and conveyor drive belts and pulleys shall be fully enclosed or, if open and within 7 feet of the floor, shall be constructed and guarded in accordance with section (4)(q) of this rule, and Subdivision N, Material Handling and Storage.

(e) Guarding requirements.

(A) Traveling sections of conveyors and other equipment with wheels which run on rails or guides shall be guarded by sweep guards, installed in front of the traveling wheels in all areas where workers may be exposed to contact. Sweep guards shall have not greater than 1/4 inch clearance above the rail or guide.

(B) When using mechanical equipment to elevate the front end of the chip containers for dumping into a hopper, the shear area between the floor and the elevated section shall be safeguarded.

(f) Dust. Measures for the control of dust shall be provided, in accordance with American National Standard ANSI/NFPA 91-1992 and Subdivision I, Personal Protective Equipment.

(g) Rag cookers.

(A) When cleaning, inspection, or other work requires that persons enter rag cookers, all steam and water valves, or other control devices, shall be locked and tagged in the closed or "off" position. Blank flanging of pipelines is acceptable in place of closed and locked valves.

(B) When cleaning, inspection, or other work requires that persons must enter the cooker, one person shall be stationed outside in a position to observe and assist in case of emergency, in accordance with section (3)(f) of this rule.

(C) Rag cookers shall be provided with safety valves in accordance with the ASME Boiler and Pressure Vessel Code, Section VIII, Unfired Pressure Vessels - 1992.

(8) Chemical Processes of Making Pulp.

(a) Industrial kiln guns and ammunition. Management shall develop written instructions, including safety procedures, for storing and operating industrial kiln guns and ammunition. All persons working with this equipment shall be instructed in these procedures and shall follow them.

(b) Sulfur burners.

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(A) Sulfur-burner houses shall be safely and adequately ventilated, and every precaution shall be taken to guard against dust explosion hazards and fires, in accordance with American National Standard Z9.2-1979 (R1991), and NFPA 655-1993.

(B) Nonsparking tools and equipment shall be used in handling dry sulfur.

(C) Sulfur storage bins shall be kept free of sulfur dust accumulation, in accordance with American National Standard ANSI Z9.2-1979 (R1991).

(D) Electric equipment shall be of the explosion-proof type, in accordance with the requirements of Subdivision S, Electrical.

(E) Sulfur-melting equipment shall not be located in the burner room.

(c) Protection for employees (acid plants).

(A) Gas masks, fitted with canisters containing absorbents for the particular acids, gases, or mists involved, shall be provided for employees of the acid department.

(B) Supplied air respirators shall be strategically located for emergency and rescue use.

(C) During inspection, repairs, or maintenance of acid towers, the worker shall be provided with eye protection, a supplied air respirator, a safety belt, and an attached lifeline. The line shall be extended to an attendant stationed outside the tower opening.

(d) Acid tower structure. Outside elevators shall be inspected daily during winter months when ice materially affects safety. Elevators, runways, stairs, etc., for the acid tower shall be inspected monthly for defects that may occur because of exposure to acid or corrosive gases.

(e) Tanks (acid). Entering acid tanks shall be in accordance with 437-002-0146 Confined Spaces, in Subdivision J.

(f) Clothing. Where lime slaking takes place, employees shall be provided with rubber boots, rubber gloves, protective aprons, and eye protection. A deluge shower and eye fountain shall be provided to flush the skin and eyes to counteract lime or acid burns.

(g) Lead burning. When lead burning is being done within tanks, fresh air shall be forced into the tanks so that fresh air will reach the face of the worker first and the direction of the current will never be from the source of the fumes toward the face of the workers. Supplied air respirators (constant-flow type) shall be provided.

NOTE: (For specifics refer to Subdivision Q, Welding, Cutting and Brazing; and §1910.1025, Lead, in Subdivision Z.)

(h) Hoops for acid storage tanks. Hoops of tanks shall be made of rods rather than flat strips and shall be safely maintained by scheduled inspections.

(i) Quicklime stoppages. Water shall not be used to unplug quicklime stops or plugs in pipes or confined spaces.

(j) Digester building exits. At least one unobstructed exit at each end of the room shall be provided on each floor of a digester building.

(k) Digester building escape respirators. Escape respirators shall be available for escape purposes only. These respirators shall meet the requirements of §1910.134 in Subdivision I, including the requirement to be inspected at frequent intervals, not to exceed one month.

(l) Elevators.

(A) Elevators shall be constructed in accordance with American National Standard A17.1-1990.

(B) Elevators shall be equipped with escape respirators for the maximum number of passengers.

(C) Elevators shall be equipped with an alarm system to advise of failure.

(m) Blowoff valves and piping.

(A) The blowoff valve of a digester shall be arranged so as to be operated from another room, remote from safety valves.

(B) All fasteners used to secure digester piping shall conform to ANSI/ASME B31.1-1992.

(C) Digester blow valves shall be pinned or locked in closed position throughout the entire cooking period. This rule applies only to manually operated valves in batch digesters.

(n) Blow lines.

(A) When blow lines from more than one digester lead into one pipe, the cock or valve of the blow line from the tank being inspected or repaired shall be locked and tagged out, or the line shall be disconnected and blocked off.

(B) Test holes in piping systems. Test holes in blow lines of piping systems shall not be covered with insulation or other materials.

(o) Inspection and repair of tanks. All piping leading to tanks shall be blanked off or valved and locked in accordance with §1910.147, Lockout/Tagout, in Subdivision J.

(p) Blow pits and blow tanks.

(A) Blow-pit openings shall be preferably on the side of the pit instead of on top. When located on top, openings shall be as small as possible and shall be provided with railings, in accordance with Subdivision D, Walking-Working Surfaces.

(B) Entrance into blow pits must be done in accordance with 437-002-0146, Subdivision J.

(C) A signaling device shall be installed in the digester and blow-pit rooms and chip bins to be operated as a warning before and while digesters are being blown.

(D) Blow-pit hoops shall be maintained in a safe condition.

(q) Blowing batch digester.

(A) Blowoff valves shall be opened slowly.

(B) After the digester has started to be blown, the blowoff valve shall be left open, and the hand plate shall not be removed until the digester cook signals the blowpit person that the blow is completed. Whenever it becomes necessary to remove the hand plate to clear stock, operators shall wear eye protection equipment and protective clothing to guard against burns from hot stock.

(C) Means shall be provided whereby the digester cook shall signal the person in the chip bin before starting to load the digester.

(r) Inspecting and repairing digester.

(A) Valves controlling lines leading into a digester shall be locked out and tagged in accordance with §1910.147, Lockout/Tagout, in Subdivision J.

(B) Sources of energy associated with a digester shall be isolated in accordance with §1910.147, Lockout/Tagout, in Subdivision J.

(C) Entry into the digester shall be in accordance with 437-002-0146 Confined Spaces, in Subdivision J.

(D) The concentration of lead in the air shall not exceed the limits specified in §1910.1025, Lead, Subdivision Z.

(E) All employees entering digesters for inspection or repair work shall be provided with protective headgear.

(F) Eye protection and dust respirators shall be provided to workers while the old brick lining is being removed, in accordance with Subdivision I, Personal Protective Equipment.

(G) Sanitary facilities shall be provided as specified in §1910.141, Sanitation, in Subdivision J.

(s) Pressure tanks-accumulators (acid).

(A) Safety regulations governing inspection and repairing of pressure tanks-accumulators (acid) shall be the same as those specified in section (8)(t) of this rule.

(B) The pressure tanks-accumulators shall be inspected twice annually and more frequently if required by the manufacturer or engineer's recommendations. (Refer to Boiler and Pressure Vessel Safety Laws of the State Building Codes Division, Department of Consumer and Business Services.)

(t) Pressure vessels (safety devices).

(A) Each unfired pressure vessel shall have a pressure relieving device or devices installed and operated in accordance with ASME Boiler and Pressure Vessel Code, Section VIII (Unfired Pressure Vessels – 1992). In the case of batch digesters with safety pressure relieving devices installed directly to the pressure vessel, means shall be devised to verify regularly that the safety devices have not become plugged or corroded to the point of being inoperative.

(B) All safety devices shall conform to Paragraph U-2 in the ASME Boiler and Pressure Vessel Code, Section VIII, Unfired Pressure Vessels – 1992.

(u) Miscellaneous. Insofar as the processes of the sulfate and soda operations are similar to those of the sulfite processes, sections (8)(a) through (t) of this rule shall apply.

(A) Quick operating showers, bubblers, etc., shall be available for emergency use in case of caustic soda burns.

(B) Rotary tenders, smelter operators, and those cleaning smelt spouts shall be provided with eye protection equipment (fitted with lenses that filter out the harmful rays emanating from the light source) when actively engaged in their duties, in accordance with §1910.132, in Subdivision I.

(C) Piping, valves and fittings between the digester, blowpit, and blow tanks shall be in accordance with ANSI/ASME B31.1-1992. These shall be inspected at least semi-annually to determine the degree of deterioration and repaired or replaced when necessary, in accordance with American National Standards ANSI/ASME B31.1-1992.

(v) Welding. Welding on blow tanks, accumulator tanks, or any other vessels where turpentine vapor or other combustible vapor could gather shall be done only after the vessel has been completely purged of fumes. Fresh air shall be supplied workers inside of vessels.

NOTE: See Subdivision Q, Welding, Cutting and Brazing, for additional welding requirements.

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(w) Turpentine systems and storage tanks. Nonsparking tools and ground hose shall be used when pumping out the tank. The tank shall be surrounded by a berm or moat.

(x) Recovery furnace area.

(A) An audible warning system shall be installed in kraft and soda base sulfite recovery furnace areas and shall be activated whenever an emergency exists.

(B) All personnel working in recovery furnace areas shall be instructed on procedures to be followed when emergency warning systems are activated.

(C) Emergency warning systems in the recovery furnace areas shall be kept in proper working condition and shall be tested or checked weekly.

(D) Workers shall stand to the side while opening a furnace or boiler firebox door.

(E) Smelt-dissolving tanks shall be covered and the cover kept closed, except when samples are being taken.

(F) Smelt tanks shall be provided with vent stacks and explosion doors, in accordance with American National Standard ANSI/UL 641-1985.

(G) An emergency shutdown procedure as currently recommended by the boiler manufacturer shall be implemented and used when an emergency shutdown is required. Both normal and emergency shutdown procedures shall be posted.

(H) Recovery furnaces and power boilers are to be constructed, maintained, and serviced as required by the State Building Codes Division of the Department of Consumer and Business Services.

(I) Open pipes shall not be used as punch bars if the use would create a hazard.

(J) Furnace room. Exhaust ventilation shall be provided where niter cake is fed into a rotary furnace and shall be so designed and maintained as to keep the concentration of hydrogen sulfide gas below the limits listed in OAR 437-002-0382, Oregon Rules for Air Contaminants, in Subdivision Z.

(9) Bleaching.

(a) Bleaching containers. Bleaching containers, such as cells, towers (bleaching engines), etc., except the Bellmer type, shall be completely covered on the top, with the exception of one small opening large enough to allow filling but too small to admit a person. Platforms leading from one engine to another shall have standard guardrails, in accordance with Subdivision D, Walking-Working Surfaces.

(b) Bleach plant alarm system. An audible alarm system shall be installed and it shall be activated whenever a serious leak or break develops in the bleach plant area which creates a health or fire hazard.

(c) Bleach mixing rooms.

(A) Areas where dry bleach powder is mixed shall be provided with adequate exhaust ventilation, located at the floor level, in accordance with ANSI/UL 641-1985.

(B) Respiratory protection shall be provided for emergency use, in accordance with American National Standards ANSI/NFPA 1404-1989, and Z88.2-1980. Respiratory protection must conform to the requirements of §1910.134 of Subdivision I.

(C) For emergency and rescue work, self-contained air masks or supplied air equipment shall be provided in accordance with American National Standards Z88.2-1980. Respiratory protection must conform to the requirements of §1910.134 of Subdivision I.

(d) Liquid chlorine.

(A) Tanks of liquid chlorine shall be stored in an adequately ventilated unoccupied room, where their possible leakage cannot affect workers.

(B) Gas masks capable of absorbing chlorine shall be supplied, conveniently placed, and regularly inspected, and workers who may be exposed to chlorine gas shall be instructed in their use.

(C) For emergency and rescue work, independent self-contained breathing apparatus or supplied air equipment shall be provided.

(D) At least two exits, remote from each other, shall be provided for all rooms in which chlorine is stored.

(E) Spur tracks upon which tank cars containing chlorine and caustic are spotted and connected to pipelines shall be protected by means of a derail in front of the cars.

(F) All chlorine, caustic, and acid lines shall be marked for positive identification, in accordance with American National Standard A13.1-1981 (R 1985).

(e) Handling chlorine dioxide.

(A) Chlorine dioxide generating and storage facilities shall be placed in areas which are adequately ventilated and are easily kept clean of wood, paper, pulp, etc., to avoid contamination which might cause a reaction. This

can be accomplished by placing these facilities in a separate room or in a designated outside space.

(B) Safety showers and/or jump tanks and eyewash fountains shall be provided for persons working around sodium chlorate and the other hazardous chemicals involved in this process.

(C) Water hoses for flushing spills shall be adequate in size and located where needed.

(D) The generating area shall have signs in accordance with Subdivision J, General Environmental Controls, warning of the hazard and restricting entrance to authorized personnel only.

(E) Facilities handling sodium chlorate and chlorine dioxide shall be declared "No Smoking" areas and shall have signs posted accordingly.

(F) All equipment involved in the chlorine dioxide process where pressure may be generated shall be provided with adequate pressure relief devices.

(G) Respiratory protective equipment approved for use in exposures to chlorine and chlorine dioxide gases shall be provided.

(H) Management shall be responsible for developing written instructions including safety procedures for operating and maintaining the generator and associated equipment. All personnel working on this equipment shall be thoroughly trained in these procedures and shall follow them.

(I) Only authorized personnel shall be allowed in close proximity to the chlorine dioxide generating equipment.

(J) When reasonably possible, the sample station should be located on the outside of the generating room. Goggles must be worn when taking samples.

(K) Welding or burning shall not be performed on the generator system while it is operating. Immediately before maintenance can be performed on the inside of any of this equipment, it shall be thoroughly flushed with water and purged of hazardous gases.

(L) Chlorine and chlorine dioxide gas shall be carried away from the work place and breathing area by an exhaust system. The gas shall be rendered neutral or harmless before being discharged into the atmosphere. The requirements of American National Standard Z9.2-1979 (R1991) shall apply to this subdivision.

(f) Handling sodium chlorate.

(A) Workers handling and working with sodium chlorate shall be thoroughly trained in precautions to be used in handling and special work habits.

(B) Workers exposed to direct contact with sodium chlorate shall wear appropriate personal protective equipment.

(C) Facilities for storage and handling of sodium chlorate shall be constructed so as to eliminate possible contact of dry or evaporated sodium chlorate with wood or other material which could cause a fire or explosion.

(D) Chlorine gas shall be carried away from the work place and breathing area by an exhaust system. The gas shall be rendered neutral or harmless before being discharged into the atmosphere. The requirements of American National Standard Z9.2-1979 (R1991) shall apply to this subdivision.

(E) Sodium chlorate facilities shall be constructed with a minimum of packing glands, stuffing boxes, etc.

(g) Bagged or drummed chemicals. Bagged or drummed chemicals require efficient handling to prevent damage and spillage. Certain oxidizing chemicals used in bleaching pulp and also in some sanitizing work require added precautions for safety in storage and handling. In storage, these chemicals shall be isolated from combustible materials and other chemicals with which they will react such as acids. They shall also be kept dry, clean and uncontaminated.

(10) Mechanical Pulp Process.

(a) Pulp grinders.

(A) Water wheels directly connected to pulp grinders shall be provided with speed governors limiting the peripheral speed of the grinder to that recommended by the manufacturer.

(B) Doors of pocket grinders shall be arranged so as to keep them from closing accidentally.

(b) Butting saws. Hood guards shall be provided on butting saws, in accordance with American National Standard ANSI O1.1-1992.

(c) Floors and platforms. The requirements of section (3)(d) of this rule shall apply.

(d) Personal protection. Persons exposed to falling material shall wear eye, head, foot, and shin protection equipment, in accordance with Subdivision I, Personal Protective Equipment.

(11) Stock Preparation.

(a) Pulp shredders.

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(A) Cutting heads shall be completely enclosed except for an opening at the feed side sufficient to permit only entry of stock. The enclosure shall be bolted or locked in place. The enclosure shall be of solid material or with mesh or other openings not exceeding 1/2-inch.

(B) Either a slanting feed table with its outer edge not less than 36 inches from the cutting head or an automatic feeding device shall be provided.

(C) Repairs for cleaning of blockage shall be done only when the shredder is shutdown and control devices locked.

(D) All power-driven mechanisms shall be guarded in accordance with section (3)(a) of this rule.

(b) Pulp conveyors. Pulp conveyors and conveyor drive belts and pulleys shall be fully enclosed, or if open and within 7 feet of the floor, shall be constructed and guarded in accordance with Subdivision N, Material Handling and Storage, and Subdivision O, Machinery and Machine Guarding.

(c) Floors, steps, and platforms. The requirements of section (3)(d) of this rule shall apply.

(d) Beaters.

(A) Beater rolls shall be provided with covers.

(B) Guardrails 42 inches high shall be provided around beaters where tub tops are less than 42 inches from the floor, in accordance with section (3)(d) of this rule and Subdivision D, Walking-Working Surfaces.

(C) When cleaning, inspecting, or other work requires that persons enter the beaters, all control devices shall be locked and tagged out, in accordance with §1910.147, Lockout, in Subdivision J.

(D) When beaters are fed from the floor above, the chute opening, if less than 42 inches from the floor, shall be provided with a complete rail or other enclosure. Openings for manual feeding shall be sufficient only for entry of stock and shall be provided with at least two permanently secured crossrails, in accordance with Subdivision D, Walking-Working Surfaces.

(E) Floors around beaters shall be provided with sufficient drainage to remove wastes.

(e) Pulpers.

(A) All pulpers having the top or any other opening of the vessel less than 42 inches from the floor or work platform shall have such openings guarded by railed or other enclosures. For manual charging, openings shall be sufficient only to permit the entry of stock and shall be provided with at least two permanently secured crossrails, in accordance with §1910.23, Guarding Floor and Wall Openings and Holes, in Subdivision D.

(B) When cleaning, inspecting or other work requires persons to enter the pulpers it shall be in accordance with 437-002-0146 Confined Spaces, in Subdivision J. All power mechanisms shall be guarded as required in Subdivision O, Machinery and Machine Guarding.

(C) Cleaning or inspecting pulpers or other work, including work above the pulper in a dangerous position, shall be in accordance with §1910.147, Lockout, in Subdivision J.

(D) All power mechanisms shall be guarded in accordance with Subdivision O, Machinery and Machine Guarding.

(f) Pulping devices. Emergency stop controls shall be provided at the feed point when pulping devices are fed manually from the floor above.

(g) Guillotine-type roll splitters. Rolls shall be centered and in a horizontal position directly below the guillotine-type blade while being split. No part of the body shall be under the guillotine-type blade.

(h) Stock chests and tanks.

(A) All control devices shall be locked when persons enter stock chests, in accordance with §1910.147, Lockout/Tagout, in Subdivision J.

(B) All power mechanisms shall be guarded in accordance with Subdivision O, Machinery and Machine Guarding.

(C) When cleaning, inspecting, or other work requires that persons enter stock chests, they shall be provided with a low-voltage extension light.

(12) Machine Room.

(a) Controls and safety devices.

(A) Electrically or manually operated power disconnecting devices for all power-operated equipment shall be provided within easy reach of the operator while in his or her normal operating position. If necessary for safety of the operation, the machine shall be so equipped that retarding or braking action can be applied at the time of or after the source of power is deactivated.

(B) Pulp and paper machines shall be equipped with stopping devices. The devices shall be located where they can be used readily to stop the machines or sections of the machine. Power disconnect devices and retarding or braking controls provided for in section (12)(a)(A) of this rule are required for the safe operation of a pulp and paper machine.

(C) Brakes, back stops, antirunaway devices, overload releases, and other safety devices shall be inspected and tested frequently to insure that all are operative and maintained in good repair.

(D) An audible alarm shall be sounded prior to starting up any section of a pulp or paper machine. Sufficient time shall be allowed between activation of the alarm system and start-up of the equipment to allow any persons to clear the hazardous area.

(E) In starting up a dryer section, dryers shall be preheated and steam for heating the drums shall be introduced slowly, while the drums are revolving.

(F) Employees shall not attempt to remove a broken carrier rope from a dryer while the section is running at operating speed.

(G) Employees shall not feed a stack with any hand-held device which is capable of going through the nip.

(H) Employees shall stop dryer to remove a wrap except in cases where it can be safely removed by using air or other safe means.

(I) Special protective gloves shall be provided and shall be worn by employees when filing or handling sharp-edged doctor blades.

(J) Employees shall not place their hands between the sharp edge of an unloaded doctor blade and the roll while cleaning the doctor blade.

(K) The crane operator shall ascertain that reels are properly seated at winder stand or at reel arms before he or she disengages the hooks.

(L) Shaftless winders shall be provided with a barrier guard of sufficient strength and size to confine the rolls in the event they become dislodged while running.

(M) Employees shall keep clear of hazardous areas around the lowerator, especially all lowerator openings in a floor and where roll is being discharged.

(N) If a powered roll ejector is used it should be interlocked to prevent accidental actuation until the receiving platform or roll lowering table is in position to receive the roll.

(O) Provision shall be made to hold the rider roll when in a raised position unless counter-balancing eliminates the hazard.

(b) Drives.

(A) All drives, pulleys, couplings, and shafts on equipment requiring service while operating shall have standard guards in accordance with section (3)(a) of this rule.

(B) All drives shall be provided with lockout devices at the power switch which interrupts the flow of current to the unit.

(C) All ends of rotating shafts including dryer drum shafts shall be completely guarded.

(D) All accessible disengaged doctor blades should be covered.

(E) All exposed shafts shall be guarded. Crossovers shall be provided.

(F) Oil cups and grease fittings shall be placed in a safe area remote from nip and heat hazards.

(c) Protective equipment. Face shields, aprons and rubber gloves shall be provided for workers handling acids in accordance with sections (3)(c) and (5)(a) of this rule.

(d) Walkways. Steps and footwalks along the fourdrinier and press section shall have nonslip surfacing and be complete with standard handrails, when practical, in accordance with §1910.23, in Subdivision D, Walking-Working Surfaces.

(e) Steps. Steps of uniform rise and tread with nonslip surfaces shall be provided at each press in accordance with Subdivision D, Walking-Working Surfaces.

(f) Plank walkways. A removable plank shall be provided along each press, with standard guardrails installed. The planks shall have nonslip surfaces in accordance with Subdivision D, Walking-Working Surfaces.

(g) Dryer lubrication. If a gear bearing must be oiled while the machine is in operation, an automatic oiling device to protect the oiler shall be provided, or oil cups and grease fittings shall be placed along the walkways out of reach of hot pipes and dryer gears.

(h) Levers. All levers carrying weights shall be constructed so that weights will not slip or fall off.

(i) First dryer. Either a permanent guardrail or apron guard or both shall be installed in front of the first dryer in each section in accordance with Subdivision O, Machinery and Machine Guarding.

(j) Steam and hot-water pipes. All exposed steam and hot-water pipes within 7 feet of the floor or working platform or within 15 inches measured horizontally from stairways, ramps, or fixed ladders shall be covered with an insulating material, or guarded in such manner as to prevent contact.

(k) Dryer gears. Dryer gears shall be guarded except where the oilers' walkway is removed out of reach of the gears' nips and spokes and hot

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pipes in accordance with Subdivision O, Machinery and Machine Guarding.

(l) Broke hole.

(A) A guardrail shall be provided at broke holes in accordance with Subdivision D, Walking-Working Surfaces.

(B) Where pulpers are located directly below the broke hole on a paper machine and where the broke hole opening is large enough to permit a worker to fall through, any employee pushing broke down the hole shall wear a safety belt and lanyard. The lanyard shall be fastened in such a manner that it is impossible for the person to fall into the pulper.

(C) An alarm bell or a flashing light shall be actuated before dropping material through the broke hole.

(m) Feeder belt. A feeder belt or other effective device shall be provided for starting paper through the calender stack.

(n) Steps. Steps or ladders of uniform rise and tread with nonslip surfaces shall be provided at each calender stack. Handrails and hand grips shall be provided at each calender stack in accordance with Subdivision D, Walking-Working Surfaces.

(o) Grounding. All calender stacks and spreader bars shall be grounded in accordance with Subdivision S, Electrical, as protection against shock induced by static electricity.

(p) Sole plates. All exposed sole plates between dryers, calenders, reels, and rewinders shall have a nonskid surface.

(q) Nip points. The hazard of the nip points on all calender rolls shall be eliminated or minimized by means of an effective barrier device, or by feeding the paper into the rolls by means of a rope carrier, air jets, or hand feeding devices.

(r) Scrapers. Alloy steel scrapers with pullthrough blades approximately 3 by 5 inches in size shall be used to remove "scabs" from calender rolls.

(s) Illumination. Permanent lighting shall be installed in all areas where employees are required to make machine adjustments and sheet transfers in accordance with American National Standard ANSI/IES RP-1990.

(t) Control panels. All control panel handles and buttons shall be protected from accidental contact.

(u) Lifting reels.

(A) The reels shall stop rotating before being lifted from bearings.

(B) All lifting equipment (clamps, cables, and slings) shall be maintained in a safe condition and inspected regularly.

(C) Reel shafts with square block ends shall be guarded.

(v) Feeder belts. Feeder belts, carrier ropes, air carriage, or other equally effective means shall be provided for starting paper into the nip or drum-type reels.

(w) In-running nip.

(A) Where the nipping points of all drum winders and rewinders is on the operator's side, it shall be guarded by barrier guards interlocked with the drive mechanism.

(B) A zero speed switch or locking device shall be installed to prevent the guard from being raised, lowered, or removed while the roll is turning.

(x) Core collars. Set screws for securing core collars to winding and unwinding shafts shall not protrude above the face of the collar. All edges of the collar with which an operator's hand comes in contact shall be beveled to remove all sharp corners.

(y) Slitter knives. Slitter knives shall be guarded so as to prevent accidental contact. Carriers shall be provided and used for transportation of slitter knives.

(z) Winder shaft. The winder shall have a guide rail to align the shaft for easy entrance into the opened rewind shaft bearing housings.

(aa) Handling rolls, winders and core shafts. Mechanical handling equipment shall be provided for handling rolls, winder shafts, and core shafts that are too heavy for safe manual handling based on the NIOSH Work Practice Guide for Manual Lifting – 1981.

(bb) Winder area. A nonskid surface shall be provided in front of the winder to prevent accidental slipping.

(cc) Radiation. Special standards regarding the use of radiation equipment shall be posted and followed as required by §1910.1096, Ionizing Radiation, in Subdivision Z.

(13) Finishing Room.

(a) Cleaning rolls. Rolls shall be cleaned only on the outrunning side.

(b) Emergency stops. Electrically or manually operated quick power disconnecting devices, interlocked with braking action, shall be provided on all operating sides of the machine within easy reach of all employees. These devices shall be tested by making use of them when stopping the machine.

(c) Core collars. The requirements of section (12)(x) of this rule, and the requirements in Subdivision O, Machinery and Machine Guarding, shall apply.

(d) Elevators. These shall be in accordance with American National Standard ANSI/ASME A17.1-1990.

(e) Control panels. The requirements of section (12)(t) of this rule shall apply.

(f) Guillotine-type cutters.

(A) Each guillotine-type cutter shall be equipped with a control which requires the operator and helper, if any, to use both hands to engage the clutch when operated from within reach of blade.

(B) Each guillotine-type cutter shall be equipped with a nonrepeat device.

(C) Carriers shall be provided and used for transportation of guillotine-type cutter knives.

(g) Rotary cutter.

(A) On single-knife machines a guard shall be provided at a point of contact to the knife.

(B) On duplex cutters the protection required for single-knife machines shall be provided for the first knife, and a hood shall be provided for the second knife.

(C) Safe access shall be provided to the knives of a rotary cutter by means of catwalks with nonslip surfaces, railings, and toeboards in accordance with Subdivision D, Walking-Working Surfaces.

(D) A guard shall be provided for the spreader or squeeze roll at the nip side on sheet cutters.

(E) Electrically or manually operated quick power disconnecting devices with adequate braking action shall be provided on all operating sides of the machine within easy reach of all operators.

(F) The outside slitters shall be guarded.

(h) Platers.

(A) A guard shall be arranged across the face of the rolls to serve as a warning that the operator's hand is approaching the danger zone.

(B) A quick power disconnecting device shall be installed on each machine within easy reach of the operator.

(i) Finishing room rewinders.

(A) The nipping points of all drum winders and rewinders located on the operator's side shall be guarded by either automatic or manually operated barrier guards of sufficient height to protect fully anyone working around them. The barrier guard shall be interlocked with the drive mechanism to prevent operating above jog speed without the guard in place. A zero speed switch should be installed to prevent the guard from being raised while the roll is turning.

(B) A nonskid surface shall be provided in front of the rewriter to prevent an employee from slipping in accordance with section (3)(d) of this rule.

(C) Mechanical lifting devices shall be provided for placing and removing rolls from the machine.

(j) Control panels. The requirements of section (12)(t) of this rule shall apply.

(k) Roll-type embosser. The nipping point located on the operator's side shall be guarded by either automatic or manually operated barrier guards interlocked with the drive.

(l) Converting machines.

(A) When using a crane or hoist to place rolls into a backstand and the operator cannot see both ends of the backstand, appropriate means will be implemented to eliminate hazards involved. The operator shall ascertain that rolls are properly seated at winder stand or at roll arms before he or she disengages the hooks.

(B) All power closing sections shall be equipped with an audible warning system which will be activated when closing the sections.

(C) Slitters, slotters, and scorers not in use shall be properly stored so as not to create a hazard.

(D) Mechanical handling equipment shall be provided for handling rolls or devices that are too heavy for safe manual handling based on the NIOSH Work Practice Guide for Manual Lifting – 1981.

(E) Shear and pinch points. Shear and pinch points at the feed mechanism shall be color-coded orange and/or identified by signs in accordance with Subdivision J, General Environmental Controls.

(m) Sorting and counting tables.

(A) Tables shall be smooth and free from splinters, with edges and corners rounded.

(B) Paddles shall be smooth and free from splinters.

(n) Roll splitters. The nip point and cutter knife shall be guarded by either automatic or manually operated barrier guards.

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(o) Corrugators.

(A) Rails of rail-mounted devices such as roll stands shall be flush with the adjacent floor, and so installed to provide a minimum of 18 inches clearance between the equipment and walls or other fixed objects.

(B) All corrugating and pressure rolls shall be equipped with appropriately designed and installed threading guides so as to prevent contact with the infeed nip of the various rolls by the operator.

(C) Lower elevating conveyor belt rolls on the single facer bridge shall have a minimum nip clearance of 4 inches.

(D) Web shears at the discharge end of the double facer shall be equipped with barrier-type guards.

(E) Slitter stations not in use shall be disconnected from the power source by positive means.

(F) The adhesive system shall be so designed and installed as to keep fumes and airborne dust within limits in accordance with OAR 437-002-0382, Oregon Rules for Air Contaminants, in Subdivision Z.

(14) Materials Handling.

(a) Hand trucks. No person shall be permitted to ride on a powered hand truck unless it is so designed by the manufacturer. A limit switch shall be on operating handle – 30° each way from a 45° angle up and down.

(b) Power trucks. Power trucks shall comply with Subdivision N, Material Handling and Storage. Adequate ventilation shall be provided and the trucks properly maintained, so that dangerous concentrations of carbon monoxide cannot be generated, especially in warehouses or other isolated areas of a plant.

(c) Carton-stitching machine. The carton-stitching machine shall be guarded to prevent the operator from coming in contact with the stitching head.

(d) Banding of skids, cartons, cases, etc. Banders and helpers shall wear eye protection equipment in accordance with section (3)(c) of this rule.

(e) Unloading cars or trucks.

(A) Loading and unloading materials. Platforms with ladders or stairways shall be installed or alternative methods made available when needed so that workers may safely gain access to and perform work on the top of rail cars or trucks when ladders are not installed on such equipment.

(B) Where steel bands or wires are used in boxcars or trucks, all loaders and helpers shall wear eye protection in accordance with Subdivision I, Personal Protective Equipment.

(C) The construction and use of bridge or dock plates shall conform to the requirements of American National Standard B56.1-1988.

(D) Flag signals, derails, or other protective devices shall be used to protect workers during switching operations. The blue flag policy shall be invoked according to section (4)(j) of this rule.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 7-1994, f. & cert. ef. 11-4-94; OSHA 3-1998, f. & cert. ef. 7-7-98; OSHA 2-2001, f. & cert. ef. 2-5-01; OSHA 1-2012, f. & cert. ef. 4-10-12; OSHA 6-2012, f. 9-28-12, cert. ef. 4-1-13; OSHA 7-2013, f. & cert. ef. 12-12-13

437-003-0001

Adoption by Reference

In addition to, and not in lieu of, any other safety and health codes contained in OAR Chapter 437, the Department adopts by reference the following federal regulations printed as part of the Code of Federal Regulations, in the Federal Register:

(1) Subdivision A – GENERAL:

(a) 29 CFR 1926.1 Purpose and Scope, published 4/6/79, FR vol. 44, p. 20940.

(b) 29 CFR 1926.2 Variances from safety and health standards, published 4/6/79, FR vol. 44, p. 20940.

(c) 29 CFR 1926.3 Inspections – right of entry, published 4/6/79, FR vol. 44, p. 20940.

(d) 29 CFR 1926.4 Rules of practice for administrative adjudications for enforcement of safety and health standards, published 4/6/79, FR vol. 44, p. 20940.

(e) 29 CFR 1926.6 Incorporation by reference, published 6/13/13, FR vol. 78, no. 114, p. 35559; 11/6/13, FR vol. 78, no. 215, p. 66641.

(2) Subdivision B – GENERAL INTERPRETATIONS:

(a) 29 CFR 1926.10 Scope of subpart, published 4/6/79, FR vol. 44, p. 20940.

(b) 29 CFR 1926.11 Coverage under section 103 of the act distinguished, published 4/6/79, FR vol. 44, p. 20940.

(c) 29 CFR 1926.12 Reorganization plan No. 14 of 1950, published 4/6/79, FR vol. 44, p. 20940.

(d) 29 CFR 1926.13 Interpretation of statutory terms, published 4/6/79, FR vol. 44, p. 20940.

(e) 29 CFR 1926.14 Federal contracts for 'mixed' types of performance, published 4/6/79, FR vol. 44, p. 20940.

(f) 29 CFR 1926.15 Relationship to the service contract act; Walsh-Healey Public Contracts Act, published 4/6/79, FR vol. 44, p. 20940.

(g) 29 CFR 1926.16 Rules of construction, published 4/6/79, FR vol. 44, p. 20940.

(3) Subdivision C – GENERAL SAFETY AND HEALTH PROVISIONS:

(a) 29 CFR 1926.20 General safety and health provisions, published 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.

(b) 29 CFR 1926.21 Safety training and education, published 4/6/79, FR vol. 44, p. 20940; amended with Oregon OSHA AO 6-2012, repealed (b)(6), f. 9/28/12, ef. 4/1/13.

(c) 29 CFR 1926.22 Recording and reporting of injuries (Reserved).

(d) 29 CFR 1926.23 First aid and medical attention, published 4/6/79, FR vol. 44, p. 20940.

(e) 29 CFR 1926.24 Fire protection and prevention, published 4/6/79, FR vol. 44, p. 20940.

(f) 29 CFR 1926.25 Housekeeping, published 4/6/79, FR vol. 44, p. 20940.

(g) 29 CFR 1926.26 Illumination, published 4/6/79, FR vol. 44, p. 20940.

(h) 29 CFR 1926.27 Sanitation, published 4/6/79, FR vol. 44, p. 20940.

(i) 29 CFR 1926.28 Personal protective equipment. REPEALED with Oregon OSHA Admin. Order 2-2013, filed 2/15/13, effective 4/1/13. In Oregon, OAR 437-003-0134 applies.

(j) 29 CFR 1926.29 Acceptable certifications, published 4/6/79, FR vol. 44, p. 20940.

(k) 29 CFR 1926.30 Shipbuilding and ship repairing, published 3/7/96, FR vol. 61, no. 46, p. 9249.

(l) 29 CFR 1926.31 (Reserved).

(m) 29 CFR 1926.32 Definitions, published 6/30/93, FR vol. 58, no. 124, p. 35078.

(n) 29 CFR 1926.33 Access to employee exposure and medical records, published 6/20/96, FR vol. 61, no. 46, p. 31427.

(o) 29 CFR 1926.34 Means of egress, published 6/30/93, Federal Register, vol. 58, no. 124, p. 35083.

(4) Subdivision D – OCCUPATIONAL HEALTH AND ENVIRONMENTAL CONTROLS:

(a) 29 CFR 1926.50 Medical services and first aid, published 6/18/98, FR vol. 63, no. 117, p. 33469.

(b) 29 CFR 1926.51 Sanitation, published 6/30/93, FR vol. 58, no. 124, p. 35084.

(c) 29 CFR 1926.52 Occupational noise exposure, published 4/6/79, FR vol. 44, p. 20940.

(d) 29 CFR 1926.53 Ionizing radiation, published 4/6/79, FR vol. 44, p. 20940.

(e) 29 CFR 1926.54 Nonionizing radiation, published 4/6/79, FR vol. 44, p. 20940.

(f) 29 CFR 1926.55 Gases, vapors, fumes, dusts, and mists, published 1/10/97, FR vol. 62, no. 7, p. 1619.

(g) 29 CFR 1926.56 Illumination, published 4/6/79, FR vol. 44, p. 20940.

(h) 29 CFR 1926.57 Ventilation, published 1/8/98, FR vol. 63, no. 5, p. 1295.

(i) 29 CFR 1926.58 Reserved, §1926.58, Asbestos, tremolite, anthophyllite and actinolite is redesignated as §1926.1101, Asbestos, and §1926.58 is reserved (8/10/94, FR vol. 59, no. 153, pp. 41131-62).

(j) 29 CFR 1926.59 Hazard Communication, published 6/20/96, FR vol. 61, p. 31427.

(k) 29 CFR 1926.60 Methylenedianiline (MDA), published 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.

(l) 29 CFR 1926.61 Retention of DOT markings, placards and labels, published 6/20/96, FR vol. 61, p. 31427.

(m) 29 CFR 1926.62 Lead, published 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.

NOTE: Cadmium has been redesignated as §1926.1127.

(n) 29 CFR 1926.65 Hazardous Waste Operations and Emergency Response

NOTE: Division 2/H, 1910.120, Hazardous Waste Operations and Emergency Response, applies to Construction.

(5) Subdivision E – PERSONAL PROTECTIVE AND LIFE SAVING EQUIPMENT:

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- (a) 29 CFR 1926.95 Criteria for personal protective equipment. REPEALED with Oregon OSHA Admin. Order 2-2013, filed 2/15/13, effective 4/1/13. In Oregon, OAR 437-003-0134 applies.
- (b) 29 CFR 1926.100 Head protection. REPEALED with Oregon OSHA Admin. Order 2-2013, filed 2/15/13, effective 4/1/13. In Oregon, OAR 437-003-0134 applies.
- (c) 29 CFR 1926.101 Hearing protection. REPEALED with Oregon OSHA Admin. Order 2-2013, filed 2/15/13, effective 4/1/13. In Oregon, OAR 437-003-0134 applies.
- (d) 29 CFR 1926.102 Eye and face protection. REPEALED with Oregon OSHA Admin. Order 2-2013, filed 2/15/13, effective 4/1/13. In Oregon, OAR 437-003-0134 applies.
- (e) 29 CFR 1926.103 Respiratory protection, published 1/8/98, FR vol. 63, no. 5, p. 1297.
- NOTE: 29 CFR 1926.104 Removed, 8/9/94, FR vol. 59, no. 152, p. 40729.
- (f) 29 CFR 1926.105 Reserved, 8/9/94, FR vol. 59, no. 152, p. 40729.
- (g) 29 CFR 1926.106 Working over or near water, published 4/6/79, FR vol. 44, p. 20940.
- (h) 29 CFR 1926.107 Definitions applicable to this subpart, published 8/9/94, FR vol. 59, no. 152, p. 40729.
- (6) Subdivision F – FIRE PROTECTION AND PREVENTION:
- (a) 29 CFR 1926.150 Fire protection, published 4/6/79, FR vol. 44, p. 20940.
- (b) 29 CFR 1926.151 Fire prevention, published 7/11/86, FR vol. 51, p. 25318.
- (c) 29 CFR 1926.152 Flammable and combustible liquids, published 6/30/93, FR vol. 58, no. 124, p. 35162.
- (d) 29 CFR 1926.153 Liquefied petroleum gas (LP-Gas), published 6/30/93, FR vol. 58, no. 124, p. 35170.
- (e) 29 CFR 1926.154 Temporary heating devices, published 4/6/79, FR vol. 44, p. 20940.
- (f) 29 CFR 1926.155 Definitions applicable to this subpart, published 4/6/79, FR vol. 44, p. 20940.
- (7) Subdivision G – SIGNS, SIGNALS, AND BARRICADES:
- (a) 29 CFR 1926.200 Accident prevention signs and tags, published 6/13/13, FR vol. 78, no. 114, p. 35559; 11/6/13, FR vol. 78, no. 215, p. 66641.
- (b) 29 CFR 1926.201 Signaling, REPEALED with OR-OSHA Admin. Order 2-2003, f. 1/30/03, ef. 1/30/03.
- (c) 29 CFR 1926.202 Barricades, REPEALED with OR-OSHA Admin. Order 2-2003, f. 1/30/03, ef. 1/30/03.
- (d) 29 CFR 1926.203 Definitions applicable to this subpart, published 4/6/79, FR vol. 44, p. 20940; amended with OR-OSHA Admin. Order 2-2003, f. 1/30/03, ef. 1/30/03.
- (8) Subdivision H – MATERIALS HANDLING, STORAGE, USE AND DISPOSAL:
- (a) 29 CFR 1926.250 General requirements for storage, published 6/30/93, FR vol. 58, no. 124, p. 35173.
- (b) 29 CFR 1926.251 Rigging equipment for material handling, published 6/30/93, FR vol. 58, no. 124, p. 35173.
- (c) 29 CFR 1926.252 Disposal of waste materials, published 4/6/79, FR vol. 44, p. 20940.
- (9) Subdivision I – TOOLS – HAND AND POWER:
- (a) 29 CFR 1926.300 General requirements, published 3/7/96, FR vol. 61, no. 46, p. 9250.
- (b) 29 CFR 1926.301 Hand tools, published 4/6/79, FR vol. 44, p. 20940.
- (c) 29 CFR 1926.302 Power operated hand tools, published 6/30/93, FR vol. 58, no. 124, p. 35175.
- (d) 29 CFR 1926.303 Abrasive wheels and tools, published 6/30/93, FR vol. 58, no. 124, p. 35175.
- (e) 29 CFR 1926.304 Woodworking tools, published 3/7/96, FR vol. 61, no. 46, p. 9251.
- (f) 29 CFR 1926.305 Jacks - lever and ratchet, screw, and hydraulic, published Federal Register vol. 58, no. 124, p. 35176.
- (10) Subdivision J – WELDING AND CUTTING:
- (a) 29 CFR 1926.350 Gas welding and cutting, published 6/30/93, FR vol. 58, no. 124, p. 35179.
- (b) 29 CFR 1926.351 Arc welding and cutting, published 7/11/86, FR vol. 51, p. 25318.
- (c) 29 CFR 1926.352 Fire prevention, published 4/6/79, FR vol. 44, p. 20940.
- (d) 29 CFR 1926.353 Ventilation and protection in welding, cutting, and heating, published 6/30/93, FR vol. 58, no. 124, p. 35179.
- (e) 29 CFR 1926.354 Welding, cutting, and heating in way of preservative coatings, published 4/6/79, FR vol. 44, p. 20940.
- (11) Subdivision K – ELECTRICAL:
- (a) 29 CFR 1926.400 Introduction, published 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.
- (b) 29 CFR 1926.401 (Reserved)
- (c) 29 CFR 1926.402 Applicability, published 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.
- (d) 29 CFR 1926.403 General requirements, published 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.
- (e) 29 CFR 1926.404 Wiring design and protection, published 7/11/86, FR vol. 51, no. 133, pp. 25294-25335; amended with AO 5-2002, repeal (b)(1), f. 6/28/02, ef. 10/1/03.
- (f) 29 CFR 1926.405 Wiring methods, components, and equipment for general use, published 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.
- (g) 29 CFR 1926.406 Specific purpose equipment and installations, published 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.
- (h) 29 CFR 1926.407 Hazardous (classified) locations, published 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.
- (i) 29 CFR 1926.408 Special systems, published 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.
- (j) 29 CFR 1926.409 (Reserved).
- (k) 29 CFR 1926.415 (Reserved).
- (l) 29 CFR 1926.416 General requirements, published 8/12/96, FR vol. 61, no. 156, p. 41738.
- (m) 29 CFR 1926.417 Lockout and tagging of circuits, published 8/12/96, FR vol. 61, no. 156, p. 41739.
- (n) 29 CFR 1926.418 (Reserved).
- (o) 29 CFR 1926.430 (Reserved).
- (p) 29 CFR 1926.431 Maintenance of equipment, published 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.
- (q) 29 CFR 1926.432 Environmental deterioration of equipment, published 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.
- (r) 29 CFR 1926.433 - 29 CFR 1926.440 (Reserved).
- (s) 29 CFR 1926.441 Battery locations and battery charging, published 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.
- (t) 29 CFR 1926.442 - 29 CFR 1926.448 (Reserved).
- (u) 29 CFR 1926.449 Definitions applicable to this subpart, published 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.
- (12) Subdivision L – SCAFFOLDING:
- (a) 29 CFR 1926.450 Scope, application and definitions applicable to this subpart, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (b) 29 CFR 1926.451 General requirements, published 11/25/96, FR vol. 61, no. 228, p. 59831.
- (c) 29 CFR 1926.452 Additional requirements applicable to specific types of scaffolds, published 8/30/96, FR vol. 61, no. 170, p. 46113.
- (d) 29 CFR 1926.453 Aerial lifts, published 11/25/96, FR vol. 61, no. 228, p. 59832.
- (e) 29 CFR 1926.454 Training, published 8/30/96, FR vol. 61, no. 170, p. 46117.
- (f) Appendix A to Subpart L Scaffold Specifications, published 8/30/96, FR vol. 61, no. 170, p. 46117.
- (g) Appendix B to Subpart L Criteria for determining the feasibility of providing safe access and fall protection for scaffold erectors and dismantlers (Reserved), published 8/30/96, FR vol. 61, no. 170, p. 46122.
- (h) Appendix C to Subpart L List of National Consensus Standards, published 8/30/96, FR vol. 61, no. 170, p. 46122.
- (i) Appendix D to Subpart L List of training topics for scaffold erectors and dismantlers, published 8/30/96, FR vol. 61, no. 170, p. 46122.
- (j) Appendix E to Subpart L Drawing and illustrations, published 11/25/96, FR vol. 61, no. 228, p. 59832.
- (13) Subdivision M – FALL PROTECTION:
- (a) 29 CFR 1926.500 Scope, application, and definitions applicable to this subpart, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (b) 29 CFR 1926.501 Duty to have fall protection, published 8/9/94, FR vol. 59, no. 152, p. 40732-40733; amended with AO 6-2002, f. and ef. 7/19/02.
- (c) 29 CFR 1926.502 Fall protection systems criteria and practices, published 8/9/94, FR vol. 59, no. 152, p. 40733-40738; amended with AO 6-2002, f. and ef. 7/19/02.
- (d) 29 CFR 1926.503 Training requirements. REPEALED with AO 6-2002, f. and ef. 7/19/02, replaced with OI.
- (e) Appendix A to Subpart M Determining Roof Widths, published 8/9/94, FR vol. 59, no. 152, p. 40738-40742.

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- (f) Appendix B to Subpart M Guardrail Systems, published 8/9/94, FR vol. 59, no. 152, p. 40743.
- (g) Appendix C to Subpart M Personal Fall Arrest Systems, published 8/9/94, FR vol. 59, no. 152, p. 40743-40746.
- (h) Appendix D to Subpart M Positioning Device Systems, published 8/9/94, FR vol. 59, no. 152, p. 40746.
- (14) Subdivision N – HELICOPTERS, HOISTS, ELEVATORS, AND CONVEYORS:
- (a) 29 CFR 1926.550 (Reserved).
- (b) 29 CFR 1926.551 Helicopters, published 4/6/79, FR vol. 44, p. 20940.
- (c) 29 CFR 1926.552 Material hoists, personnel hoists, and elevators, published 4/6/79, FR vol. 44, p. 20940.
- (d) 29 CFR 1926.553 Base-mounted drum hoist, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (e) 29 CFR 1926.554 Overhead hoists, published 4/6/79, FR vol. 44, p. 20940.
- (f) 29 CFR 1926.555 Conveyors, published 4/6/79, FR vol. 44, p. 20940.
- (15) Subdivision O – MOTOR VEHICLES, MECHANIZED EQUIPMENT, AND MARINE OPERATIONS:
- (a) 29 CFR 1926.600 Equipment, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (b) 29 CFR 1926.601 Motor vehicles, REPEALED by OR-OSHA Admin. Order 6-2007, f. 9/26/07, ef. 9/26/07.
- (c) 29 CFR 1926.602 Material handling equipment, published 12/1/98, FR vol. 63, no. 230, p. 66274; amended by AO 7-2003, f. 12/5/03, ef. 12/5/03.
- (d) 29 CFR 1926.603 Pile driving equipment, published 4/6/79, FR vol. 44, p. 20940.
- (e) 29 CFR 1926.604 Site clearing, published 7/22/77, FR vol. 42, p. 37674.
- (f) 29 CFR 1926.605 Marine operations and equipment, published 4/6/79, FR vol. 44, p. 20940.
- (g) 29 CFR 1926.606 Definitions applicable to this subpart, published 4/6/79, FR vol. 44, p. 20940.
- (16) Subdivision P – EXCAVATIONS:
- (a) 29 CFR 1926.650 Scope, application, and definitions applicable to this subdivision, published 10/31/89, FR vol. 54, no. 209, pp. 45959-45961.
- (b) 29 CFR 1926.651 General requirements, published 8/9/94, FR vol. 59, no. 152, p. 40730.
- (c) 29 CFR 1926.652 Requirements for protective systems, published 10/31/89, FR vol. 54, no. 209, pp. 45961-45962.
- (d) Appendices A-F to Subdivision P, Excavations, published 10/31/89, FR vol. 54, no. 209, pp. 45962-45991.
- (17) Subdivision Q – CONCRETE AND MASONRY CONSTRUCTION:
- (a) 29 CFR 1926.700 Scope, application and definitions applicable to this subpart, published 10/18/90, FR vol. 55, no. 202, p. 42326.
- (b) 29 CFR 1926.701 General requirements, published 8/9/94, FR vol. 59, no. 152, p. 40730.
- (c) 29 CFR 1926.702 Requirements for equipment and tools, published 6/16/88, FR vol. 53, p. 22612.
- (d) 29 CFR 1926.703 Requirements for cast-in-place concrete, published 6/16/88, FR vol. 53, p. 22612.
- (e) 29 CFR 1926.704 Requirements for precast concrete, published 10/5/89, FR vol. 54, no. 192, p. 41088.
- (f) 29 CFR 1926.705 Requirements for lift-slab construction operations, published 10/18/90, FR vol. 55, no. 202, p. 42326.
- (g) Appendix A to 1926.705 Lift-slab operations, published 10/18/90, FR vol. 55, no. 202, p. 42326.
- (h) 29 CFR 1926.706 Requirements for masonry construction, published 6/16/88, FR vol. 53, p. 22612; amended with OR-OSHA Admin. Order 1-2003, f. 1/30/03, ef. 4/30/03.
- (18) Subdivision R – STEEL ERECTION:
- (a) 29 CFR 1926.750 Scope, published 7/17/01, FR vol. 66, no. 137, p. 37137.
- (b) 29 CFR 1926.751 Definitions, published 7/17/01, FR vol. 66, no. 137, p. 37137; amended with AO 6-2002, f. and ef. 7/19/02; amended with AO 8-2003, f. 12/30/03, ef. 1/1/04.
- (c) 29 CFR 1926.752 Site layout, site-specific erection plan and construction sequence, published 7/17/01, FR vol. 66, no. 137, p. 37137.
- (d) 29 CFR 1926.753 Hoisting and rigging, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (e) 29 CFR 1926.754 Structural steel assembly, published 4/3/06, FR vol. 71, no. 63, p. 16669.
- (f) 29 CFR 1926.755 Column anchorage, published 7/17/01, FR vol. 66, no. 137, p. 37137.
- (g) 29 CFR 1926.756 Beams and columns, published 7/17/01, FR vol. 66, no. 137, p. 37137.
- (h) 29 CFR 1926.757 Open web steel joists, published 7/17/01, FR vol. 66, no. 137, p. 37137; amended with AO 8-2003, f. 12/30/03, ef. 1/1/04.
- (i) 29 CFR 1926.758 Systems-engineered metal buildings, published 7/17/01, FR vol. 66, no. 137, p. 37137.
- (j) 29 CFR 1926.759 Falling object protection, published 7/17/01, FR vol. 66, no. 137, p. 37137.
- (k) 29 CFR 1926.760 Fall protection, published 7/17/01, FR vol. 66, no. 137, p. 37137; amended with AO 8-2003, f. 12/30/03, ef. 1/1/04.
- (l) 29 CFR 1926.761 Training, published 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.
- (m) Appendix A to Subpart R Guidelines for establishing the components of a site-specific erection plan: Nonmandatory Guidelines for Complying with §1926.752(e), published 7/17/01, FR vol. 66, no. 137, p. 37137.
- (n) Appendix B to Subpart R Reserved.
- (o) Appendix C to Subpart R Illustrations of bridging terminus points: Nonmandatory Guidelines for Complying with §1926.757(a)(10) and §1926.757(c)(5), published 7/17/01, FR vol. 66, no. 137, p. 37137.
- (p) Appendix D to Subpart R Illustration of the use of control lines to demarcate controlled decking zones (CDZs): Nonmandatory Guidelines for Complying with §1926.760(c)(3), REPEALED with AO 6-2002, f. and ef. 7/19/02; amended with AO 8-2003, f. 12/30/03, ef. 1/1/04.
- (q) Appendix E to Subpart R Training: Nonmandatory Guidelines for Complying with §1926.761, published 7/17/01, FR vol. 66, no. 137, p. 37137.
- (r) Appendix F to Subpart R Perimeter columns: Nonmandatory Guidelines for Complying with §1926.756(e) to Protect the Unprotected Side or Edge of a Walking/Working Surface, published 7/17/01, FR vol. 66, no. 137, p. 37137.
- (s) Appendix G to Subpart R Fall protection systems criteria and practices from §1926.502: Nonmandatory Guidelines for Complying with Complying with §1926.760(d), REPEALED with AO 6-2002, f. and ef. 7/19/02; amended with AO 8-2003, f. 12/30/03, ef. 1/1/04.
- (t) Appendix H to Subpart R Double connections: Illustration of a clipped end connection and a staggered connection: Non-Mandatory Guidelines for Complying with Complying with §1926.756(c)(1), published 7/17/01, FR vol. 66, no. 137, p. 37137.
- (19) Subdivision S – UNDERGROUND CONSTRUCTION, CAISSONS, COFFERDAMS, AND COMPRESSED AIR
- (a) 29 CFR 1926.800 Underground construction, published 4/23/13, FR vol. 78, no. 78, p. 23837.
- (b) 29 CFR 1926.801 Caissons, published 4/6/79, FR vol. 44, p. 20940.
- (c) 29 CFR 1926.802 Cofferdams, published 4/6/79, FR vol. 44, p. 20940.
- (d) 29 CFR 1926.803 Compressed air, published 7/11/86, FR vol. 51, p. 25318.
- (e) 29 CFR 1926.804 Definitions applicable to this subpart, published 4/6/79, FR vol. 44, p. 20940.
- (f) Appendix A to Subpart S Decompression Tables, published 4/6/79, FR vol. 44, p. 20940.
- (20) Subdivision T – DEMOLITION:
- (a) 29 CFR 1926.850 Preparatory operations, published 4/6/79, FR vol. 44, p. 20940.
- (b) 29 CFR 1926.851 Stairs, passageways, and ladders, published 4/6/79, FR vol. 44, p. 20940.
- (c) 29 CFR 1926.852 Chutes, published 4/6/79, FR vol. 44, p. 20940.
- (d) 29 CFR 1926.853 Removal of materials through floor openings, published 4/6/79, FR vol. 44, p. 20940.
- (e) 29 CFR 1926.854 Removal of walls, masonry sections, and chimneys, published 4/6/79, FR vol. 44, p. 20940.
- (f) 29 CFR 1926.855 Manual removal of floors, published 4/6/79, FR vol. 44, p. 20940.
- (g) 29 CFR 1926.856 Removal of walls, floors, and materials with equipment, published 4/23/13, FR vol. 78, no. 78, p. 23837.
- (h) 29 CFR 1926.857 Storage, published 4/6/79, FR vol. 44, p. 20940.
- (i) 29 CFR 1926.858 Removal of steel construction, published 4/23/13, FR vol. 78, no. 78, p. 23837.

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- (j) 29 CFR 1926.859 Mechanical demolition, published 4/6/79, FR vol. 44, p. 20940.
- (k) 29 CFR 1926.860 Selective demolition by explosives, published 4/6/79, FR vol. 44, p. 20940.
- (21) Subdivision U – BLASTING AND USE OF EXPLOSIVES:
- (a) 29 CFR 1926.900 General provisions, published 4/6/79, FR vol. 44, p. 20940.
- (b) 29 CFR 1926.901 Blaster qualifications, published 4/6/79, FR vol. 44, p. 20940.
- (c) 29 CFR 1926.902 Surface transportation of explosives, published 6/30/93, FR vol. 58, no. 124, p. 35311.
- (d) 29 CFR 1926.903 Underground transportation of explosives, published 4/6/79, FR vol. 44, p. 20940.
- (e) 29 CFR 1926.904 Storage of explosives and blasting agents, published 6/30/93, FR vol. 58, no. 124, p. 35311.
- (f) 29 CFR 1926.905 Loading of explosives or blasting agents, published 6/30/93, FR vol. 58, no. 124, p. 35184.
- (g) 29 CFR 1926.906 Initiation of explosive charges – electric blasting, published 6/18/98, FR vol. 63, no. 117, p. 33469.
- (h) 29 CFR 1926.907 Use of safety fuse, published 4/6/79, FR vol. 44, p. 20940.
- (i) 29 CFR 1926.908 Use of detonating cord, published 4/6/79, FR vol. 44, p. 20940.
- (j) 29 CFR 1926.909 Firing the blast, published 4/6/79, FR vol. 44, p. 20940.
- (k) 29 CFR 1926.910 Inspection after blasting, published 4/6/79, FR vol. 44, p. 20940.
- (l) 29 CFR 1926.911 Misfires, published 4/6/79, FR vol. 44, p. 20940.
- (m) 29 CFR 1926.912 Underwater blasting, published 4/6/79, FR vol. 44, p. 20940.
- (n) 29 CFR 1926.913 Blasting in excavation work under compressed air, published 4/6/79, FR vol. 44, p. 20940.
- (o) 29 CFR 1926.914 Definitions applicable to this subpart, published 6/30/93, FR vol. 58, no. 124, p. 35184, 35311.
- (22) Subdivision V – POWER TRANSMISSION AND DISTRIBUTION:
- (a) 29 CFR 1926.950 General requirements, published 4/6/79, FR vol. 44, p. 20940.
- (b) 29 CFR 1926.951 Tools and protective equipment, published 8/9/94, FR vol. 59, no. 152, p. 40730.
- (c) 29 CFR 1926.952 Mechanical equipment, published 5/29/13, FR vol. 78, no. 103, p. 32110.
- (d) 29 CFR 1926.953 Material handling, published 4/6/79, FR vol. 44, p. 20940.
- (e) 29 CFR 1926.954 Grounding for protection of employees, published 4/6/79, FR vol. 44, p. 20940.
- (f) 29 CFR 1926.955 Overhead lines, published 4/6/79, FR vol. 44, p. 20940.
- (g) 29 CFR 1926.956 Underground lines, published 4/6/79, FR vol. 44, p. 20940.
- (h) 29 CFR 1926.957 Construction in energized substations, published 4/6/79, FR vol. 44, p. 20940.
- (i) 29 CFR 1926.958 External load helicopters, published 4/6/79, FR vol. 44, p. 20940.
- (j) 29 CFR 1926.959 Lineman's body belts, safety straps, and lanyards, published 4/6/79, FR vol. 44, p. 20940.
- (k) 29 CFR 1926.960 Definitions applicable to this subpart, published 4/6/79, FR vol. 44, p. 20940.
- (23) Subdivision W – ROLLOVER PROTECTIVE STRUCTURES: OVERHEAD PROTECTION:
- (a) 29 CFR 1926.1000 Rollover protective structures (ROPS) for material handling equipment, published 4/6/79, FR vol. 44, p. 20940.
- (b) 29 CFR 1926.1001 Minimum performance criteria for rollover protective structure for designated scrapers, loaders, dozers, graders, and crawler tractors, published 4/6/79, FR vol. 44, p. 20940.
- (c) 29 CFR 1926.1002 Protective frame (ROPS) test procedures and performance requirements for wheel-type agricultural and industrial tractors used in construction, published 7/20/06, FR vol. 71, no. 139, p. 41127.
- (d) 29 CFR 1926.1003 Overhead protection for operators of agricultural and industrial tractors, published 2/28/06, FR vol. 71, no. 39, p. 9909.
- (24) Subdivision X – STAIRWAYS AND LADDERS:
- (a) 29 CFR 1926.1050 Scope, application and definitions applicable to this Subdivision, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (b) 29 CFR 1926.1051 General requirements, published 11/14/90, FR vol. 55, no. 220, p. 47688.
- (c) 29 CFR 1926.1052 Stairways, published 8/23/91, FR vol. 56, no. 164, pp. 41793-41794.
- (d) 29 CFR 1926.1053 Ladders, published 8/23/91, FR vol. 56, no. 164, pp. 41793-41794.
- (e) 29 CFR 1926.1054 (Reserved).
- (f) 29 CFR 1926.1055 (Reserved).
- (g) 29 CFR 1926.1056 (Reserved).
- (h) 29 CFR 1926.1057 (Reserved).
- (i) 29 CFR 1926.1058 (Reserved).
- (j) 29 CFR 1926.1059 (Reserved).
- (k) 29 CFR 1926.1060 Training requirements, published 11/14/90, FR vol. 55, no. 220, p. 47691.
- (25) Subdivision Z – TOXIC AND HAZARDOUS SUBSTANCES:
- (a) 29 CFR 1926.1101 Asbestos, published 2/8/13, FR vol. 78, no. 27, p. 9311.
- (b) 29 CFR 1926.1126 Chromium (VI), published; 3/17/10, FR vol. 75, no. 51, pp. 12681-12686.
- (c) 29 CFR 1926.1127 Cadmium, published 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.
- (d) 29 CFR 1926.1152 Methylene Chloride, published 12/18/97, FR vol. 62, no. 243, p. 66275.
- (26) Subdivision AA – (Reserved).
- (27) Subdivision BB – (Reserved).
- (28) Subdivision CC – Cranes and Derricks in Construction.
- (a) 29 CFR 1926.1400 Scope, published 5/29/13, FR vol. 78, no. 103, p. 32110.
- (b) 29 CFR 1926.1401 Definitions, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (c) 29 CFR 1926.1402 Ground conditions, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (d) 29 CFR 1926.1403 Assembly/Disassembly – selection of manufacturer or employer procedures, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (e) 29 CFR 1926.1404 Assembly/Disassembly – general requirements (applies to all assembly and disassembly operations), published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (f) 29 CFR 1926.1405 Disassembly – additional requirements for dismantling of booms and jibs (applies to both the use of manufacturer procedures and employer procedures), published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (g) 29 CFR 1926.1406 Assembly/Disassembly – employer procedures – general requirements, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (h) 29 CFR 1926.1407 Power line safety (up to 350 kV) – assembly and disassembly, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (i) 29 CFR 1926.1408 Power line safety (up to 350 kV) – equipment operations, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (j) 29 CFR 1926.1409 Power line safety (over 35 kV), published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (k) 29 CFR 1926.1410 Power line safety (all voltages) – equipment operations closer than the Table A zone, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (l) 29 CFR 1926.1411 Power line safety – while traveling, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (m) 29 CFR 1926.1412 Inspections, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (n) 29 CFR 1926.1413 Wire rope – inspection, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (o) 29 CFR 1926.1414 Wire rope – selection and installation criteria, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (p) 29 CFR 1926.1415 Safety devices, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (q) 29 CFR 1926.1416 Operational aids, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (r) 29 CFR 1926.1417 Operation, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (s) 29 CFR 1926.1418 Authority to stop operation, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (t) 29 CFR 1926.1419 Signals – general requirements, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (u) 29 CFR 1926.1420 Signals – radio, telephone or other electronic transmission of signals, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

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(v) 29 CFR 1926.1421 Signals – voice signals – additional requirements, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(w) 29 CFR 1926.1422 Signals – hand signal chart, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(x) 29 CFR 1926.1423 Fall protection, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(y) 29 CFR 1926.1424 Work area control, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(z) 29 CFR 1926.1425 Keeping clear of the load, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(aa) 29 CFR 1926.1426 Free fall and controlled load lowering, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(bb) 29 CFR 1926.1427 Operator qualification and certification, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(cc) 29 CFR 1926.1428 Signal person qualifications, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(dd) 29 CFR 1926.1429 Qualifications of maintenance & repair employees, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(ee) 29 CFR 1926.1430 Training, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(ff) 29 CFR 1926.1431 Hoisting personnel, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(gg) 29 CFR 1926.1432 Multiple-crane/derrick lifts – supplemental requirements, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(hh) 29 CFR 1926.1433 Design, construction and testing, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(ii) 29 CFR 1926.1434 Equipment modifications, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(jj) 29 CFR 1926.1435 Tower cranes, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(kk) 29 CFR 1926.1436 Derricks, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(ll) 29 CFR 1926.1437 Floating cranes/derricks and land cranes/derricks on barges, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(mm) 29 CFR 1926.1438 Overhead & gantry cranes, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(nn) 29 CFR 1926.1439 Dedicated pile drivers, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(oo) 29 CFR 1926.1440 Sideboom cranes, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(pp) 29 CFR 1926.1441 Equipment with a rated hoisting/lifting capacity of 2,000 pounds or less, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(qq) 29 CFR 1926.1442 Severability, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(rr) Appendix A to Subdivision CC of 1926 – Standard Hand Signals, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(ss) Appendix B to Subdivision CC of 1926 – Assembly/Disassembly – Sample Procedures for Minimizing the Risk of Unintended Dangerous Boom Movement, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(tt) Appendix C to Subdivision CC of 1926 – Operator Certification – Written Examination – Technical Knowledge Criteria, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

These standards are available at the Oregon Occupational Safety and Health Division, Oregon Department of Consumer and Business Services, and the United States Government Printing Office.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: APD 5-1989(Temp), f. 3-31-89, ef. 5-1-89; APD 8-1989, f. & ef. 7-7-89; APD 14-1989(Temp), f. 7-20-89, ef. 8-1-89; APD 15-1989, f. & ef. 9-13-89; OSHA 3-1990(Temp), f. & cert. ef. 1-19-90; OSHA 7-1990, f. & cert. ef. 3-2-90; OSHA 8-1990, f. & cert. ef. 3-30-90; OSHA 13-1990(Temp), f. 6-28-90, ef. 8-1-90; OSHA 19-1990, f. & cert. ef. 8-31-90; OSHA 27-1990, f. 12-12-90, cert. ef. 2-1-91; OSHA 6-1991, f. 3-18-91, cert. ef. 4-15-91; OSHA 7-1991, f. & cert. ef. 4-25-91; OSHA 15-1991, f. & cert. ef. 12-13-91; OSHA 16-1991, f. 12-16-91, cert. ef. 1-1-92; OSHA 6-1992, f. & cert. ef. 5-18-92; OSHA 11-1992, f. & cert. ef. 10-9-92; OSHA 1-1993, f. & cert. ef. 1-22-93; OSHA 16-1993, f. & cert. ef. 11-1-93; OSHA 4-1994, f. & cert. ef. 8-4-94; OSHA 1-1995, f. & cert. ef. 1-19-95; OSHA 3-1995, f. & cert. ef. 2-22-95; OSHA 4-1995, f. & cert. ef. 3-29-95; OSHA 5-1995, f. & cert. ef. 4-6-95; OSHA 6-1995, f. & cert. ef. 4-18-95; OSHA 8-1995, f. & cert. ef. 8-25-95; OSHA 5-1996, f. & cert. ef. 11-29-96; OSHA 6-1996, f. & cert. ef. 11-29-96; OSHA 2-1997, f. & cert. ef. 3-12-97; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 6-1997, f. & cert. ef. 5-2-97; OSHA 7-1997, f. & cert. ef. 9-15-97; OSHA 3-1998, f. & cert. ef. 7-7-98; OSHA 6-1998, f. & cert. ef. 10-15-98; OSHA 7-1998, f. & cert. ef. 12-18-98; OSHA 2-1999, f. & cert. ef. 4-30-99; OSHA 6-1999, f. & cert. ef. 5-26-99; OSHA 3-2000, f. & cert. ef. 2-8-00; OSHA 3-2001, f. & cert. ef. 2-5-01; OSHA 3-2002, f. 4-15-02, cert. ef. 4-18-02; OSHA 5-2002, f. 6-28-02, cert. ef. 10-1-03; OSHA 6-2002, f. & cert. ef. 7-19-02; OSHA 1-2003, f. 1-30-03, cert. ef. 4-30-03; OSHA 2-2003, f. & cert. ef. 1-30-03; OSHA 7-2003, f. & cert. ef. 12-5-03; OSHA 8-2003, f. 12-30-03, cert. ef. 1-1-04; OSHA 1-2005, f. & cert. ef. 4-12-05; OSHA 2-2006, f. & cert. ef. 4-28-06; OSHA 4-2006, f. & cert. ef. 7-24-06; OSHA 5-2006, f. 8-7-06, cert. ef. 1-1-07; OSHA 6-2006, f. & cert. ef. 8-30-06; OSHA 10-2006, f. & cert. ef. 11-30-06; OSHA 6-2007, f. & cert. ef. 9-26-07; OSHA 5-2008, f. 5-1-08, cert. ef. 5-15-08; OSHA 5-2009, f. & cert. ef. 5-29-09; OSHA 3-2010, f. 6-10-10, cert. ef. 6-15-10; OSHA 1-2011, f.

& cert. ef. 2-9-11; OSHA 4-2011, f. & cert. ef. 12-8-11; OSHA 5-2011, f. 12-8-11, cert. ef. 7-1-12; OSHA 1-2012, f. & cert. ef. 4-10-12; OSHA 3-2012, f. & cert. ef. 8-20-12; OSHA 5-2012, f. & cert. ef. 9-25-12; OSHA 6-2012, f. 9-28-12, cert. ef. 4-1-13; OSHA 7-2012, f. & cert. ef. 12-14-12; OSHA 1-2013, f. & cert. ef. 2-14-13; OSHA 2-2013, f. 2-15-13, cert. ef. 4-1-13; OSHA 4-2013, f. & cert. ef. 7-19-13; OSHA 5-2013, f. & cert. ef. 9-13-13; OSHA 6-2013, f. & cert. ef. 10-9-13; OSHA 7-2013, f. & cert. ef. 12-12-13

Department of Consumer and Business Services, Workers' Compensation Board Chapter 438

Rule Caption: OAR chapter 438 provisions regarding Hearings Division, technology/response, and Claim Disposition concepts.

Adm. Order No.: WCB 2-2013

Filed with Sec. of State: 12-10-2013

Certified to be Effective: 4-1-14

Notice Publication Date: 12-1-2013

Rules Amended: 438-005-0035, 438-005-0046, 438-006-0020, 438-006-0031, 438-006-0036, 438-006-0045, 438-006-0062, 438-006-0075, 438-007-0005, 438-007-0018, 438-007-0020, 438-009-0020

Rules Repealed: 438-006-0105

Subject: After considering public comment regarding "Hearings Division-related" rules and a report from the "Hearings Procedure" Advisory Committee, the Board proposes to: (1) Amend OAR 438-005-0035, 438-006-0031, 438-006-0036, and 438-006-0045 to provide the Board's policy to promote full and complete disclosure of parties' positions regarding issues raised, relief sought, and responses to such issues/relief (but without creating binding admissions on any party), to provide "motion for clarification" procedures to achieve such disclosure policy, and to provide that amendments to issues raised, relief sought, and responses to such issues/relief may be allowed; (2) Amend OAR 438-005-0046 and 438-006-0036 to allow parties to file/serve electronic "responses" to issues raised in a hearing request; (3) Amend OAR 438-006-0020 to provide for the exceptions under ORS 656.283(4)(b) to the 60-day notice of hearing requirement under 656.283(4)(a); (4) Amend OAR 438-006-0062 to list the purposes for prehearing conferences in section (1), to provide more flexibility in scheduling prehearing conferences in section (2), and to delete sections (3), (4), and (5); (5) amend OAR 438-006-0075(1) for clarity and readability purposes; (6) Repeal OAR 438-006-0105, which conflicts with ORS 656.283(3)(a)(B); (7) Amend OAR 438-007-0005 to delete section (1); (8) Amend OAR 438-007-0018 to add a new section (4) specifying that filing exhibits at hearing does not establish that the carrier is the sponsor of such documents or that the claimant is automatically entitled to cross-examine the author of documents filed by the carrier; (9) Amend OAR 438-007-0020(6)(b) to correct the Ombudsman's title and phone number and the Board's phone number in the subpoena appeal notice; and (10) Amend OAR 438-009-0020(3) to add "or Administrative Law Judge who mediated the agreement" to the first signature line of the CDA approval paragraph.

Rules Coordinator: Karen Burton—(503) 934-0123

438-005-0035

Board Policy

(1) It is the policy of the Board to expedite claim adjudication and amicably dispose of controversies. In accordance with ORS 656.012(3), these rules shall be interpreted in an impartial and balanced manner. The overriding principle is substantial justice.

(2) With respect to postponement or continuance of hearings under OAR 438-006-0081 and 438-006-0091, substantial justice requires consideration of the relative financial hardship of the parties.

(3) The unrepresented party shall not be held strictly accountable for failure to comply with these rules. Any individual who undertakes to represent a party in proceedings under these rules shall be required to comply with these rules.

(4) It is the policy of the Board to promote the full and complete disclosure of a party's specific position concerning the issues raised and relief requested in a specification of issues under OAR 438-006-0031 and in a response under 438-006-0036. However, it is not the intent of this policy to create binding admissions on behalf of any party, but to clarify the scope of the matters to be litigated.

ADMINISTRATIVE RULES

(5) The Board recognizes the complexity of disputed claims and the time limitations concerning the scheduling and litigation process for such claims. Consistent with this recognition, as factual, medical, and legal aspects of disputed issues evolve, the amendment of issues, relief requested, theories, and defenses may be allowed as prescribed in OAR 438-006-0031(2) and 438-006-0036(2).

Stat. Auth.: ORS 656.307, 656.388, 656.593 & 656.726(4)

Stats. Implemented: ORS 656.012(2)

Hist.: WCB 1-1984, f. 4-5-84, ef. 5-1-84; WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 2-1995, f. 11-13-95, cert. ef. 1-1-96; WCB 2-2013, f. 12-10-13, cert. ef. 4-1-14

438-005-0046

Filing and Service of Documents; Correspondence

(1) Filing:

(a) Except as otherwise provided in these rules, "filing" means the physical delivery of a thing to any permanently staffed office of the Board, or the date of mailing;

(b) In addition to the procedures otherwise described in these rules, "filing" may also be accomplished in the manner prescribed in OAR 436, division 009 or 010 for filing a request for administrative review with the Director provided that the request involves a dispute that requires a determination of either the compensability of the medical condition for which medical services are proposed or whether a sufficient causal relationship exists between medical services and an accepted claim to establish compensability;

(c) If filing of a request for hearing or Board review of either an Administrative Law Judge's order or a Director's order finding no bona fide medical services dispute is accomplished by mailing, it shall be presumed that the request was mailed on the date shown on a receipt for registered or certified mail bearing the stamp of the United States Postal Service showing the date of mailing. If the request is not mailed by registered or certified mail and the request is actually received by the Board after the date for filing, it shall be presumed that the mailing was untimely unless the filing party establishes that the mailing was timely;

(d) If a settlement stipulation, disputed claim settlement, or claim disposition agreement results from a mediation, "filing" also includes the physical delivery of the settlement stipulation, disputed claim settlement, or claim disposition agreement to the Administrative Law Judge who mediated the settlement or agreement, regardless of location.

(e) The following things may be accomplished by electronic mail (e-mail) pursuant to subsection (f) of this section or by website portal pursuant to subsection (g) of this section:

(A) Request for hearing;

(B) Request for Board review of an Administrative Law Judge's order;

(C) Request for Board review of a Director's order finding no bona fide medical services dispute;

(D) Request for extension of the briefing schedule under OAR 438-011-0020;

(E) Request for waiver of the Board's rules under OAR 438-011-0030; or

(F) Response to issues under OAR 438-006-0036.

(f) To electronically file the requests listed in subsection (e) of this section by e-mail, a party shall:

(A) Send an e-mail to: request.wcb@state.or.us; and

(B) Attach an electronic copy of a completed Workers' Compensation Board "Request for Hearing Form," or a completed request for Board review, or a completed request for extension of the briefing schedule, or a completed request for waiver of the Board's rules, or a completed Board "Response to Issues Form." These attachments must be in a format of Microsoft Word 2000® (.doc, .txt, .rtf), Adobe Reader® (.pdf), or formats that can be viewed in Internet Explorer® (.tif, .jpg).

(C) For purposes of this rule, the date of an electronic filing is determined by the date the Board receives the appropriate completed electronic form which must be in a format of Microsoft Word 2000® (.doc, .txt, .rtf), Adobe Reader® (.pdf), or formats that can be viewed in Internet Explorer® (.tif, .jpg). An electronic filing under subsections (e) and (f) of this section received by the Board by 11:59 p.m. of a non-holiday, weekday is filed on that date.

(g) To electronically file the things listed in subsection (e) of this section by website portal, a party shall:

(A) Register as a "user" of the portal at: <https://portal.wcb.oregon.gov>; and

(B) Complete the electronic version of the Workers' Compensation Board "Request for Hearing Form," or complete a request for Board review, or complete a request for extension of a briefing schedule, or com-

plete a request for waiver of the Board's rules, or complete a Board "Response to Issues Form."

(C) For the purposes of this rule, the date of a portal filing is determined by the date the Board receives the appropriate portal version of the form.

(D) A portal filing under subsections (e) and (g) of this section received by the Board by 11:59 p.m. of a non-holiday, weekday is filed as of that date.

(h) "Filing" includes the submission of any document (other than the exchange of exhibits and indexes under OAR 438-007-0018) to any permanently staffed office of the Board by means of a telephone facsimile communication device (FAX) provided that:

(A) The document transmitted indicates at the top that it has been delivered by FAX;

(B) The Board's facsimile transmission number is used; and

(C) The Board receives the complete FAX-transmitted document by 11:59 p.m. of a non-holiday, weekday.

(i) Except for the documents specified in subsection (c) or (e) of this section, filing of any other thing required to be filed within a prescribed time may be accomplished by mailing by first class mail, postage prepaid. An attorney's certificate that a thing was deposited in the mail on a stated date is proof of mailing on that date. If the thing is not received within the prescribed time and no certificate of mailing is furnished, it shall be presumed that the filing was untimely unless the filing party establishes that the filing was timely.

(2) Service:

(a) A true copy of any thing delivered for filing under these rules shall be simultaneously served personally, by means of a facsimile transmission, by means of e-mail or website portal regarding requests or responses filed under OAR 438-005-0046(1)(e), (f), or (g), or by mailing by first-class mail, postage prepaid, through the United States Postal Service, to each other party, or to their attorneys. Service by mail is complete upon mailing, service by facsimile transmission is complete upon disconnection following an error-free transmission, and service by e-mail or website portal regarding requests under 438-005-0046(1)(e), (f), or (g) is complete upon successful transmission, provided that the copy is sent in a format readable by the recipient;

(b) Any thing delivered for filing under these rules shall include or have attached thereto either an acknowledgment of service by the person served or proof of service in the form of a certificate executed by the person who made service showing personal delivery, service by means of a facsimile transmission, service by means of e-mail or website portal regarding requests filed under OAR 438-005-0046(1)(e), (f), or (g), or deposit in the mails together with the names and addresses of the persons served.

(3) Correspondence. All correspondence to the Board shall be captioned with the name of the claimant, the WCB Case number and the insurer or self-insured employer claim number. Correspondence to the Hearings Division shall also be captioned with the date of the hearing and name of the assigned Administrative Law Judge, if any.

(4) Signatures.

(a) Any thing delivered for filing under these rules shall include the signature of the party or the party's attorney, which may be provided in writing, by facsimile transmission, by electronic scanning, by the website portal, or by other electronic means.

(b) The user name and password required to file a document with the Board by means of the website portal shall constitute the signature of the filer and for any other purpose for which a signature is required.

(c) Except for documents filed under subsection (b) of this section, any document filed by electronic means must include a signature block that includes the printed name of the filer, preceded by an electronic symbol intended to substitute for a signature (such as a scan of the filer's handwritten signature or "s/") in the space where the signature would otherwise appear.

(d) Any order, notice, or any other document issued by an Administrative Law Judge or a Board Member may include his/her signature in writing, by facsimile transmission, by electronic scanning, by the website portal, or by other electronic means permitted under the Board's rules.

(e) Any electronically transmitted signature shall have the same force and effect as an original signature, provided that the electronically transmitted signature is executed or adopted by a person with the intent to sign the document as prescribed in ORS Chapter 84 (Uniform Electronic Transactions Act).

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.726(5)

ADMINISTRATIVE RULES

Hist.: WCB 5-1987, f. 12-18-87, cert. ef. 1-1-88; WCB 7-1990(Temp), f. 6-14-90, cert. ef. 7-1-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 3-1991(Temp), f. 5-24-91, cert. ef. 5-28-91; WCB 8-1991, f. 11-6-91, cert. ef. 11-7-91; WCB 1-1999, f. 8-24-99, cert. ef. 11-1-99; WCB 2-1999(Temp), f. 9-24-99, cert. ef. 10-23-99 thru 4-14-00; WCB 1-2000, f. 3-29-00, cert. ef. 4-3-00; WCB 1-2007, f. 1-19-07, cert. ef. 3-1-07; WCB 2-2007, f. 12-11-07, cert. ef. 1-1-08; WCB 1-2012, f. 8-22-12, cert. ef. 11-1-12; WCB 2-2013, f. 12-10-13, cert. ef. 4-1-14

438-006-0020

Acknowledgment; Notice of Conference and Hearing in Ordinary Hearing Process

The Hearings Division shall, by mail, acknowledge receipt of a request for hearing. Such acknowledgment may include notice of date for an informal prehearing conference pursuant to OAR 438-006-0062 or notice of hearing date. The hearing shall be scheduled for a date that is within 90 days of the request for hearing and not less than 60 days after mailing of a notice of hearing date subject to the exceptions prescribed in ORS 656.283(4)(b).

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.283(4)(5)(a)

Hist.: WCB 1-1984, f. 4-5-84, ef. 5-1-84; WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 2-1989, f. 3-3-89, ef. 4-1-89; WCB 6-1990(Temp), f. 4-24-90, cert. ef. 4-25-90; WCB 7-1990(Temp), f. 6-14-90, cert. ef. 7-1-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 2-2007, f. 12-11-07, cert. ef. 1-1-08; WCB 2-2013, f. 12-10-13, cert. ef. 4-1-14

438-006-0031

Specification of Issues

(1) Consistent with the Board's policy described in OAR 438-005-0035, the request for hearing under OAR 438-005-0070 filed with the Board shall include, on a form prescribed by the Board, a specific listing of all issues to be raised at the hearing and all relief requested.

(2) Consistent with the Board's policy described in OAR 438-005-0035, amendments may be allowed, subject to a motion by an adverse party for a postponement under OAR 438-006-0081 or a continuance under OAR 438-006-0091. If, during the hearing, the evidence supports an issue or issues not previously raised, the Administrative Law Judge may allow the issue(s) to be raised during the hearing. In such a situation, the Administrative Law Judge may continue the hearing pursuant to OAR 438-006-0091.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.307 & 656.726(5)

Hist.: WCB 3-1987(Temp), f. 8-27-87, ef. 9-15-87; WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 1-2003, f. 2-21-03, cert. ef. 5-1-03; WCB 2-2013, f. 12-10-13, cert. ef. 4-1-14

438-006-0036

Response

(1) Consistent with the Board's policy described in OAR 438-005-0035 and subject to 438-006-0045(2), not later than 21 days after the issuance of the Board's Notice of Hearing under OAR 438-006-0020, a party defending against a request for hearing shall, on a form prescribed by the Board, file with the Board and simultaneously serve copies on all other parties a response specifying the respondent's position on the issues raised and relief requested and any additional issues raised and relief requested by the respondent.

(2) Consistent with the Board's policy described in OAR 438-005-0035, amendments may be allowed, subject to a motion by an adverse party for a postponement under OAR 438-006-0081 or a continuance under 438-006-0091. If, during the hearing, the evidence supports an issue or issues not previously raised, the Administrative Law Judge may allow the issue(s) to be raised during the hearing. In such a situation, the Administrative Law Judge may continue the hearing pursuant to OAR 438-006-0091.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.307 & 656.726(5)

Hist.: WCB 3-1987(Temp), f. 8-27-87, ef. 9-15-87; WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 1-2003, f. 2-21-03, cert. ef. 5-1-03; WCB 2-2013, f. 12-10-13, cert. ef. 4-1-14

438-006-0045

Motions, Arguments

(1) Except for motions under section (2) of this rule, unless otherwise agreed among the parties and the Administrative Law Judge, pre or post hearing motions shall be filed in writing and copies shall be simultaneously served on all parties or their attorneys.

(2) A party may file a motion for clarification of the issues raised and relief requested by any party in a specification of issues under OAR 438-006-0031 or a response under 438-006-0036.

(3) A motion under section (2) of this rule shall be denied, unless the moving party files a certificate verifying a good faith effort to confer in an attempt to clarify the issues raised and relief requested.

(4) In resolving a motion for clarification under section (2) of this rule, the Administrative Law Judge shall consider the Board's policy described in OAR 438-005-0035.

(5) Failure of a party to reasonably respond to a clarification request may be grounds for a postponement under OAR 438-006-0081 or a continuance under OAR 438-006-0091.

(6) Unless otherwise ordered by the Administrative Law Judge, ten days after filing shall be allowed for written response to a motion.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.307, 656.388, 656.593 & 656.726(4)

Hist.: WCB 1-1984, f. 4-5-84, ef. 5-1-84; WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 2-1989, f. 3-3-89, ef. 4-1-89; WCB 2-2013, f. 12-10-13, cert. ef. 4-1-14

438-006-0062

Prehearing Conference

(1) In accordance with ORS 656.726(5), an informal prehearing conference may be held by the Hearings Division to:

- Expedite claim adjudication;
- Amicably dispose of controversies, if possible;
- Narrow issues; and
- Simplify the method of proof at hearings.

(2) Unless otherwise agreed among the parties and the Administrative Law Judge, the parties shall be given not less than ten days notice of the date of the conference.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.726(5) & 656.283(9)

Hist.: WCB 7-1990(Temp), f. 6-14-90, cert. ef. 7-1-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 1-1994, f. 11-1-94, cert. ef. 1-1-95; WCB 3-2001, f. 11-14-01, cert. ef. 1-1-02; WCB 2-2013, f. 12-10-13, cert. ef. 4-1-14

438-006-0075

Expedited Remedy for Failure to Pay Temporary Disability

(1) The claimant may file with the Hearings Division with copies to the insurer, a motion supported by affidavit asserting the failure to receive such compensation if it is alleged that the self-insured employer or insurer has terminated temporary disability compensation without:

(a) The attending physician advising the worker and documenting in writing that the worker is released to return to regular employment; or

(b) The injured worker's actual return to regular or modified employment; or

(c) The attending physician advising the worker and documenting in writing that the worker is released to return to modified employment, when such employment has been offered in writing to the worker and the worker fails to begin such employment; or

(d) Any other event that causes temporary disability benefits to be lawfully suspended, withheld or terminated under ORS 656.262(4) or other provisions under chapter 656; or

(e) The issuance of a determination order or notice of closure; or

(f) Authorization of the Board or the Director.

(2) If the Hearings Division determines that the amount in controversy is less than \$1,000, the case shall be referred to the Expedited Claims Service under the provisions of Division 013 of these rules;

(3) If the matter cannot be resolved by referral to the Expedited Claims Service, the Hearings Division shall immediately upon receipt of the motion and affidavit issue an Order requiring the self-insured employer or insurer to show cause within 15 days why said compensation has not been provided to the claimant. The show cause order shall contain notice of the date, time and place of the show cause hearing. Within 10 days after the close of the record, the Administrative Law Judge shall enter an order denying or granting temporary disability compensation and awarding penalties and attorney fees when appropriate.

Stat. Auth.: ORS 656.726(5) & 656.291(4)

Stats. Implemented: ORS 656.262(4), 656.291 & 656.726(5)

Hist.: WCB 1-1984, f. 4-5-84, ef. 5-1-84; WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 7-1990(Temp), f. 6-14-90, cert. ef. 7-1-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 2-1995, f. 11-13-95, cert. ef. 1-1-96; WCB 1-2003, f. 2-21-03, cert. ef. 5-1-03; WCB 2-2013, f. 12-10-13, cert. ef. 4-1-14

438-007-0005

Medical and Vocational and Other Documentary Evidence

(1) To avoid unnecessary delay and expense medical evidence should be presented in the form of written reports and should include:

(a) History of the injury or disease;

(b) Pertinent medical history;

(c) Present complaints;

(d) All sources of history and complaints;

(e) Date of examination;

(f) Findings on examination;

(g) Impairment of physical or mental function including loss of reserve capacity;

(h) Restrictions of activities, such as lifting, bending, twisting, sitting, standing and repetitive use;

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- (i) Cause of the impairment and opinion whether the impairment is all or in part work related;
 - (j) Medical treatment indicated;
 - (k) Likelihood of permanent impairment and opinion whether the condition is likely to change; and
 - (l) The reason for the opinion.
- (2) The insurer or self-insured employer may subpoena the claimant's attending or consulting physician(s) and vocational expert(s) for cross-examination. Medical, surgical, hospital and vocational reports offered by the insurer or self-insured employer will also be accepted as prima facie evidence provided the insurer or self-insured employer agrees to produce the medical and vocational expert(s) for cross-examination upon request of the claimant. The reports of any medical or vocational expert who has refused to make herself or himself available for cross-examination shall be excluded from the record unless good cause is shown why such evidence should be received. The cost of cross-examination of any medical or vocational expert(s) under this section shall be paid by the insurer or self-insured employer.

(3) To avoid unnecessary cost and delay, the Board encourages the use of written interrogatories or depositions to secure medical or vocational expert testimony.

(4) The Administrative Law Judge may appoint a medical or vocational expert to examine the claimant and to file a report with the Administrative Law Judge. The parties may also agree in advance to be bound by such expert's findings. The cost of examination and reports under this rule shall be paid by the insurer.

Stat. Auth.: ORS 656.307, 656.388, 656.593 & 656.726(4)
Stats. Implemented: ORS 656.287 & 656.310(2)
Hist.: WCB 1-1984, f. 4-5-84, ef. 5-1-84; WCB 1-1987, f. 3-4-87, ef. 4-15-87; WCD 2-1987(Temp), f. 4-13-87, ef. 4-15-87; WCB 4-1987, f. 11-6-87, ef. 11-16-87; WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 1-1997, f. 3-20-97, cert. ef. 7-1-97; WCB 2-2013, f. 12-10-13, cert. ef. 4-1-14

438-007-0018

Exchange and Admission of Exhibits at Hearing

(1) Not later than 28 days before the hearing, the insurer or self-insured employer shall provide the claimant and other insurer or self-insured employer legible copies of all documents that are relevant and material to the matters in dispute in the hearing, together with an index. The index shall include the document numbers, description of each document, author, number of pages and date of the document. The documents shall be arranged in chronological order and numbered, in Arabic numerals, in the lower right corner of each page, beginning with the document of earliest date. The numbers shall be preceded by the designation "Ex," and pagination of multiple-page documents shall be designated by a hyphen followed by the page number. For example, page two of document two shall be designated "Ex 2-2." A physician's chart notes constitute a multi-page document to the extent that the date of each individual chart note is subsequent to the date of the preceding exhibit and is earlier than the date of the next exhibit. However, for deposition transcripts, only the cover page of the deposition need be numbered; i.e., "Ex. 3."

(2) Not less than 14 days before the hearing, or within seven days of receipt of the insurer document index and documents, whichever is later, the claimant shall provide the insurer(s) or self-insured employer(s) legible copies of any additional documents that are relevant and material to the matters in dispute in the hearing. The additional documents shall be marked and accompanied by a supplemental document index, prepared in the same manner as the insurer documents and index and numbered to coincide in chronological order with the insurer's documents. Letter subdesignations shall be used to ensure chronological numbering. For example, a document which is chronologically between documents six and seven of the insurer documents shall be designated "Ex 6A."

(3) Before or at the hearing, the parties shall delete from their indexes and packets of documents those documents which are cumulative, or which no party can in good faith represent to be relevant and material to the issues, and the revised indexes and packets of documents shall be submitted to the Administrative Law Judge. For compliance with this rule, it is sufficient for the parties to mark neatly through the index description of the documents not being offered in evidence with ink, and to remove the corresponding documents from the packets submitted to the Administrative Law Judge.

(4) Filing of the documents described in section (1) shall not establish that:

(a) The insurer or self-insured employer is the sponsor for each of these documents for purposes of admission into the evidentiary record; or

(b) The claimant is automatically entitled to cross-examine the author of any document filed by the insurer or self-insured employer under section (1).

(5) Subject to ORS 656.287(1), at the hearing the Administrative Law Judge may in his or her discretion allow admission of additional medical reports or other documentary evidence not disclosed as required by OAR 438-007-0015. In the exercise of this discretion, the Administrative Law Judge shall determine whether material prejudice has resulted from the timing of the disclosure and, if so, whether there is good cause for the failure to timely disclose that outweighs any prejudice to the other party or parties. Following a finding of material prejudice, the Administrative Law Judge may exclude a document or continue the hearing for such action as is appropriate to cure the material prejudice caused by the late disclosure of the document.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.726(5)

Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 2-1989, f. 3-3-89, ef. 4-1-89; WCB 1-1994, f. 11-1-94, cert. ef. 1-1-95; WCB 2-1995, f. 11-13-95, cert. ef. 1-1-96; WCB 3-2001, f. 11-14-01, cert. ef. 1-1-02; WCB 1-2003, f. 2-21-03, cert. ef. 5-1-03; WCB 2-2013, f. 12-10-13, cert. ef. 4-1-14

438-007-0020

Subpoenas; Witness Fees

(1) Whenever a party has requested a hearing, a subpoena may be issued to compel:

(a) Attendance and testimony at a hearing; or

(b) The production of documentary or physical evidence under a witness' control at or before a hearing.

(2) Subpoenas may be issued by an Administrative Law Judge or the attorney of record of a party. Upon request, the Hearings Division shall provide blank subpoenas.

(3) Subpoenas issued on behalf of a party may be served by the party or the party's representative. Service may be made in person or by certified mail or other mail that provides for a receipt signed by the recipient.

(4) Subpoenas shall be served far enough in advance of an appearance to allow the witness or party a reasonable time to comply with the subpoena or to file an objection.

(5) Witness fees and mileage shall be provided at the time the subpoena is served, in the amount provided for in civil actions.

(6) "Individually identifiable health information," as defined in ORCP 55(H)(1)(a), may be obtained through a subpoena under the following procedures:

(a) At the time a subpoena for individually identifiable health information is issued, the party issuing the subpoena must serve a copy of the subpoena to the party or the attorney for the party whose individually identifiable health information is being subpoenaed. Such service shall be as provided in section (3) above.

(b) The subpoena shall provide notice to the person or the person's attorney, if represented, whose individually identifiable health information is being subpoenaed of the extent of the information being sought, and shall describe the procedure for submitting a timely objection to the disclosure of such information. The subpoena shall include the following in prominent or boldface type:

"IF YOU OPPOSE THE DISCLOSURE OF THE INFORMATION INCLUDED IN THIS SUBPOENA, YOU MUST FILE A WRITTEN OBJECTION, WITH THE WORKERS' COMPENSATION BOARD, 2601 25TH STREET SE, SUITE 150, SALEM OREGON 97302-1280. YOUR OBJECTION MUST BE FILED WITHIN SEVEN (7) CALENDAR DAYS OF THE MAILING DATE OF THIS NOTICE, AND MUST STATE THAT YOU OBJECT TO THE RELEASE OF THE INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION, THE BASIS FOR YOUR OBJECTION, YOUR ADDRESS, AND THE DATE OF YOUR INJURY IF YOU KNOW THE DATE. A COPY OF YOUR LETTER MUST ALSO BE PROVIDED SIMULTANEOUSLY TO THE RECIPIENT OF THE SUBPOENA, AS WELL AS TO THE PARTY ISSUING THE SUBPOENA. IF YOU HAVE QUESTIONS YOU MAY CALL THE WORKERS' COMPENSATION BOARD AT (503) 378-3308 OR TOLL-FREE AT 1-877-311-8061, OR THE OMBUDSMAN FOR INJURED WORKERS TOLL-FREE AT 1-800-927-1271."

(c) The subpoena must also contain the following certification: "I certify that I mailed a copy of this subpoena to [the person or the person's attorney, if represented] at [address] on [date] by certified mail return receipt requested."

(d) "File," as used in this section, has the same meaning as OAR 438-005-0046.

(e) If the person whose individually identifiable health information is being subpoenaed does not timely object or waives any objection, the recipient of the subpoena shall comply with the subpoena.

(f) If the recipient of the subpoena receives a timely objection from the party whose individually identifiable health information is being subpoenaed, the recipient shall comply with the subpoena by mailing the infor-

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mation sought to the Workers' Compensation Board, at 2601 25TH STREET SE, SUITE 150, SALEM OREGON 97302-1280.

(g) If the person whose individually identifiable health information is being subpoenaed timely objects, an expedited pre-hearing conference will be conducted under the provisions of ORS 656.283.

(h) A party who receives information under this section is required to disclose that information under OAR 438-007-0015.

Stat. Auth.: ORS 656.726(5)
Stats. Implemented: ORS 656.283(8), 656.724(4) & 656.726(2)(c)
Hist.: WCB 1-1984, f. 4-5-84, ef. 5-1-84; WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 1-2003, f. 2-21-03, cert. ef. 5-1-03; WCB 1-2005, f. 6-29-05, cert. ef. 9-1-05; WCB 2-2013, f. 12-10-13, cert. ef. 4-1-14

438-009-0020

Claim Disposition Agreements; Form

Any document filed with the Board for approval by the Administrative Law Judge who mediated the agreement or the Board Members as a claim disposition agreement shall:

(1) Contain the terms, conditions, and information as prescribed by the Board pursuant to OAR 438-009-0022;

(2) Be in a separate document from a disputed claim settlement; and

(3) Include, in prominent or bold-face type, the following paragraph, which shall be located at the conclusion of the document after the signature lines for the parties:

"THIS AGREEMENT IS IN ACCORDANCE WITH THE TERMS AND CONDITIONS PRESCRIBED BY THE BOARD. SEE ORS 656.236(1). ACCORDINGLY, THIS CLAIM DISPOSITION AGREEMENT IS APPROVED. AN ATTORNEY FEE PAYABLE TO CLAIMANT'S ATTORNEY ACCORDING TO THE TERMS OF THIS AGREEMENT IS ALSO APPROVED. IT IS SO ORDERED.
DATED THIS ___ DAY OF _____, 20__.

Board Member or Administrative Law Judge who mediated the agreement

Board Member
NOTICE TO ALL PARTIES: THIS ORDER IS FINAL AND IS NOT SUBJECT TO REVIEW. ORS 656.236(2)."

(4) If the document filed for approval lacks any of the information required by section (1) of this rule, the Administrative Law Judge who mediated the agreement or the Board may:

(a) Mail a letter notifying the parties that the deficiency must be corrected and that an addendum signed by one or more of the parties or their representatives must be filed in the manner described in the letter within 21 days from the date of the letter; and

(b) In the event that the deficiency is not corrected in the manner and within the time described in subsection (a) of this section, disapprove the proposed agreement as unreasonable as a matter of law under ORS 656.236(1)(a).

Stat. Auth.: ORS 656.726(5)
Stats. Implemented: ORS 656.236
Hist.: WCB 7-1990(Temp), f. 6-14-90, cert. ef. 7-1-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 1-1991(Temp), f. & cert. ef. 3-8-91; WCB 5-1991, f. 8-22-91, cert. ef. 9-2-91; WCB 2-1995, f. 11-13-96, cert. ef. 1-1-96; WCB 1-1999, f. 8-24-99, cert. ef. 11-1-99; WCB 2-2007, f. 12-11-07, cert. ef. 1-1-08; WCB 1-2013, f. 2-11-13, cert. ef. 4-1-13; WCB 2-2013, f. 12-10-13, cert. ef. 4-1-14

Rule Caption: Adopting OAR 438-011-0055, which requires "paying agency" to issue a "third party election" letter.

Adm. Order No.: WCB 3-2013

Filed with Sec. of State: 12-12-2013

Certified to be Effective: 4-1-14

Notice Publication Date: 12-1-2013

Rules Adopted: 438-011-0055

Subject: After considering the report from the "Third Party Rule Concepts" Advisory Committee, the Board proposes to adopt OAR 438-011-0055 to provide the parties' respective responsibilities in the third party "election/assignment" process under ORS 656.578 and 656.583. Section (1) of the rule requires a carrier ("paying agency") to serve a written demand ("third party election" letter) on the claimant/beneficiaries/legal representative ("the claimant") if the paying agency intends to require the claimant to exercise the right of election in ORS 656.578 to recover damages from a noncomplying employer or third person ("third party"). Section (2) requires the "paying agency" to include with this "third party election" letter a separate enclosure prescribed by Board bulletin that explains the "third party election/assignment" process. If the claimant does not read or understand English, or is otherwise unable to understand written language, the paying agency shall provide this information in a

language or other manner that ensures the claimant's understanding. Id. Section (3) provides that the "third party election" letter must: (a) contain the information prescribed in ORS 656.583; and (b) include a statement that the claimant has been provided with the informational enclosure prescribed by Board bulletin in section (2).

Rules Coordinator: Karen Burton—(503) 934-0123

438-011-0055

Third Party Election Letter

(1) If a self-insured employer or insurer (hereafter "paying agency") intends to require the claimant or other beneficiaries or the legal representative of a deceased worker (hereafter "the claimant") to exercise the right of election provided in ORS 656.578 to recover damages from a noncomplying employer or third person (hereafter "third party"), the paying agency shall serve a written demand by registered or certified mail or by personal service upon the claimant or, if represented, the claimant's attorney.

(2) The paying agency shall include with its "third party election" letter described in section (1) of this rule, in a separate enclosure, information explaining the "third party election/assignment" process. The Board shall prescribe by bulletin the specific form and format for the enclosure. If the claimant does not read or comprehend English, or is otherwise unable to understand written language, the paying agency shall provide this information in a language or other manner that ensures that the claimant understands the meaning of the letter.

(3) The "third party election" letter, as described in section (1) of this rule shall:

(a) Contain the information prescribed by ORS 656.583; and

(b) Include a statement that the claimant has also been provided the informational enclosure prescribed by bulletin pursuant to section (2) of this rule.

Stat. Auth.: ORS 656.726(5)
Stats. Implemented: ORS 656.576; 656.578, 656.583, 656.591, 656.593
Hist.: WCB 3-2013, f. 12-12-13, cert. ef. 4-1-14

Department of Corrections

Chapter 291

Rule Caption: Non-Cash Incentives for inmates in Department of Correctional institutions

Adm. Order No.: DOC 14-2013

Filed with Sec. of State: 11-18-2013

Certified to be Effective: 12-1-13

Notice Publication Date: 9-1-2013

Rules Amended: 291-077-0035

Subject: The department has developed non-cash incentives to encourage pro-social behavior among inmates and to motivate inmates toward positive institutional behavior and program compliance. These modifications update the privileges and services available to inmates to increase the effectiveness of the use of the incentives in managing inmate behavior.

Rules Coordinator: Janet R. Worley—(503) 945-0933

291-077-0035

Non-Monetary Incentives (Non-Cash Incentives)

The purpose of non-cash incentives is to enhance cost effective inmate management by providing tiered access to services and privileges at department facilities. Non-cash incentives encourage pro-social behavior among inmates consistent with good correctional practices and the mission of the department. Functional unit managers may limit an inmate's access to services and privileges available within the incentive level attained by the inmate, as necessary, to ensure the safe and secure operation of the facility and within resources available to and physical plant limitations of the facility.

(1) General:

(a) Functional unit managers will develop a list of services and privileges specific to their facility as part of the DOC non-cash incentives program (institution incentive level matrix).

(b) Specific services and privileges available to inmates may differ between facilities depending on size and configuration of space and availability of resources.

(c) Some incentive services and privileges will be offered consistently throughout the department at each facility, when possible, as outlined in Appendix C.

(d) There will be three incentive levels (Level I, Level II, and Level III) available to inmates.

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(e) Incentive Level I is a restricted level statewide. Restrictions imposed may differ between facilities due to the size and configuration of each facility. Level I inmates are identified with an orange identification card.

(f) Incentive Level II offers more services and privileges than Level I. Level II inmates are identified with the standard identification card (red fading into white).

(g) Incentive Level III is the highest attainable incentive level. Level III inmates are identified with a silver, holographic tamper resistant "NCI 3" sticker placed on their identification.

(h) Incentive levels will be calculated electronically at the end of each business day and made available to staff the following business day.

(2) Inmate Eligibility:

(a) All general population inmates will be eligible to earn services and privileges identified as non-cash incentives. Inmates who are not in general population will be ineligible to participate in the non-cash incentive program within the context of this rule. A non-cash incentive program may be developed and implemented in select special housing assignments as recommended by the functional unit manager and approved by the Assistant Director for Operations or designee.

(b) All department facilities will share a single set of inmate eligibility criteria.

(c) The incentive levels and corresponding eligibility are shown in Appendix B. Functional unit managers may develop additional criteria to manage services and privileges specific to the institution within the framework of Appendix B (e.g., waiting lists).

(d) New or returning commitments to the department will be placed at incentive Level II if they have not had a major misconduct in the last 180 incarcerated days or program fail in the last 90 incarcerated days.

(e) If an inmate has segregation time to complete from a prior incarceration period with the department. Upon readmission, once segregation time is completed, the inmate will be placed at the proper incentive level as outlined in Appendix B.

(f) The time period necessary to attain eligibility to promote to a higher incentive level will not start until an inmate is released from special housing and after all disciplinary sanctions (segregation and loss of privileges) are satisfied.

(g) The time an inmate spends in the infirmary or mental health infirmary, for non-disciplinary reasons and while not serving any disciplinary sanctions, will not negatively impact their incentive level. Time spent in these units will count toward eligibility to promote to the next incentive level so long as these criteria are met.

(h) Inmates may earn promotion to higher incentive levels by compliance with prescribed programming and good institutional behavior.

(i) Alternatively, an inmate's incentive level may be lowered as a consequence of noncompliance with prescribed programming or engaging in prohibited conduct.

(j) The functional unit manager or designee may adjust an inmate's incentive level by two levels, up or down, as necessary to promote good institutional conduct and program compliance.

(k) An inmate's incentive level will be lowered no more than one level as a result of a disciplinary sanction and program failure arising out of a single act of prohibited conduct except when the inmate receives a sanction of more than 21 days in segregation. When the sanction is greater than 21 days in segregation, the inmate will be placed at the lowest incentive level available at the facility. An inmate whose incentive level has been reduced one level as a result of a disciplinary sanction will be considered as meeting all the eligibility criteria of the reduced incentive level.

(l) An inmate's incentive level will be adjusted once the inmate is found in violation of a major misconduct or a program failure is upheld.

(m) The functional unit manager or designee may waive the non-cash incentive system for a specific event(s) to allow all general population inmates to participate.

(3) Transfers:

(a) Inmates will retain the incentive level they have earned and any time accrued towards promotion to the next incentive level upon transfer to another facility.

(b) Inmates transferred to another facility will retain incentive property and commissary spending limit privileges earned prior to the transfer. Access to institution-specific services and privileges available at the receiving facility may be subject to waiting periods established by the functional unit manager or designee.

(4) Property:

(a) Inmates will retain property purchased (e.g., television, CD player, CDs) prior to the adoption of this rule subject to limitations on use established by the functional unit manager or designee.

(b) Property items offered as part of the non-cash incentive program (incentive property) will be offered department wide unless the property is part of a limited duration pilot project approved by the Assistant Director of Operations or designee.

(c) Once purchased, incentive property will be handled in accordance with the rule on Personal Property (Inmate) (OAR 291-117).

(d) When access to property is restricted by a disciplinary sanction (loss of privileges or assignment to special housing), incentive property will be stored at the direction of the functional unit manager/designee.

(e) Inmates will not be required to send incentive property home as a result of disciplinary infractions.

(f) The use of specific property, including but not limited to personal electronics, may be restricted until the proper incentive level is achieved. Select incentive property and the manner in which the property is restricted will be at the functional unit manager's/designee's discretion and may differ by institution. The property may be stored or disabled until the proper incentive level is achieved.

(g) Certain property sold prior to implementation of this rule will not transfer to the receiving facility; e.g., 13-inch television (box or CRT).

(5) The functional unit manager or designee will create a matrix of non-cash incentives detailing services and privileges available to inmates at each incentive level within the facility. The matrix will be updated and made available to inmates at least annually. Any restrictions or additional eligibility criteria for institution-specific services and privileges (e.g., waiting lists) will be included in the matrix.

(6) Miscellaneous:

(a) Any inmate, regardless of incentive level, may be placed on the Security Threat Management caseload.

(b) The use of some or all of an inmate's incentive property and non-mandated services and privileges may be authorized or restricted by the functional unit manager or designee regardless of the inmate's incentive level.

[ED. NOTE: Appendices referenced are available from the agency.]

Stat. Auth.: ORS 179.040, 421.440, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 421.440, 423.020, 423.030 & 423.075

Hist.: DOC 2-2001(Temp), f. & cert. ef. 1-22-01 thru 7-18-01; DOC 15-2001, f. & cert. ef. 7-9-01; DOC 14-2003, f. 9-25-03, cert. ef. 10-1-03; DOC 1-2006, f. & cert. ef. 2-15-06; DOC 14-2013, f. 11-18-13, cert. ef. 12-1-13

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Rule Caption: Cross-gender searches and searches of transgender and intersex inmates in ODOC custody.

Adm. Order No.: DOC 15-2013(Temp)

Filed with Sec. of State: 12-13-2013

Certified to be Effective: 12-13-13 thru 6-11-14

Notice Publication Date:

Rules Adopted: 291-041-0018

Rules Amended: 291-041-0020

Subject: The Prison Rape Elimination Act (PREA) was passed unanimously by Congress and signed into law by President Bush in 2003. The U.S. Department of Justice finalized and published national PREA standards (28 C.F.R. Part 115) for all prisons, jails, lockups, and detention facilities in the United States in 2012. The final rule adopts national standards to prevent, detect, and respond to incidents of sexual violence, sexual coercion and sexual solicitation. These rule modifications are necessary to ensure ODOC administrative rules for conducting cross-gender searches and searches of transgender and intersex inmates align with the national PREA standards.

Rules Coordinator: Janet R. Worley—(503) 945-0933

291-041-0018

Training

The department shall train staff assigned to supervise inmates in how to conduct cross-gender pat-down searches, and searches of transgender and intersex inmates, in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs.

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

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

Hist.: DOC 15-2013(Temp), f. & cert. ef. 12-13-13 thru 6-11-14

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291-041-0020

Inmates

(1) Search of inmates, living units, work areas, other places they inhabit or frequent, and their property will be conducted regularly on an unannounced and unscheduled basis.

(2) An inspection of each cell, room or dormitory area will occur prior to occupancy by a new inmate.

(3) In conducting searches of an inmate's living unit, place of work, or other places frequented or inhabited, the employee conducting the search will be expected to leave the search area in an orderly and neat condition. Care will be exercised to ensure that authorized property is not damaged or disposed of.

(4) Inmates may be subject to search at any time; but no more frequently than is necessary to control contraband or to recover stolen or missing property. However, all inmates will be subject to a search on each occasion before and after they leave a Department of Corrections facility, and on each occasion before and after visits, entering or exiting special housing units and before or after contact with persons outside the facility.

(5) The type of search administered will avoid unnecessary force, embarrassment, or indignity to the inmate. Non-intrusive sensors and inspection devices may be used when appropriate.

(6) Frisk Searches: Inmates may be searched only by authorized Department of Corrections personnel or a sworn police officer in the performance of his/her official duty. Cross-gender frisk searches of female inmates will not occur unless there is an emergency, and shall be documented.

(7) Skin Searches: Skin searches conducted by DOC staff will be of the same gender as the inmate, unless there is an emergency. Except in emergencies, inmates undergoing skin searches will be removed to a private area for the search.

(a) The facility shall document all strip searches to include cross-gender and cross-gender visual body cavity searches.

(b) The facility shall not search or physically examine a transgender or intersex inmate for the sole purpose of determining the inmate's genital status.

(c) If the inmate's genital status is unknown, it may be determined during conversations with the inmate, by reviewing medical records, or, if necessary, by learning that information as part of a broader medical examination conducted in private by a medical practitioner.

(8) Visual inspections for security reasons may be conducted by authorized personnel. All internal examinations must be conducted by medical personnel only upon authorization of the functional unit manager or the officer-of-the-day and only when there is reasonable suspicion as defined in OAR 291-041-0010(16) to justify the search. The inmate's written consent will not be required; however, an internal search will not be conducted if it could result in injury to the inmate or the personnel conducting the search.

(9) Hair:

(a) If staff need to conduct a hair search, it may be necessary to require the inmate to unbraided, loosen or cut the hair to complete the search.

(b) The inmate will be given an adequate amount of time to unbraided or loosen the hair.

(c) An inmate who refuses to unbraided or loosen the hair is subject to disciplinary action in accordance with the rule on Prohibited Inmate Conduct and Processing of Disciplinary Actions (OAR 291-105).

(d) If the inmate is unable to unbraided or loosen the hair so a search can be accomplished, staff shall conduct the search if possible in the least intrusive manner (e.g., hand wand, visual inspection, etc.). At no time shall staff cut an inmate's hair to complete a search WITHOUT approval of the functional unit manager or officer-of-the-day.

(e) If an inmate's hair creates a significant security or operational concern, a religious sincerity test may be conducted as outlined in DOC policy on Searching of Dreadlocks (90.2.1). Based on the results of the sincerity test, the functional unit manager or designee will determine what further action shall be taken.

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

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

Hist.: CD 42-1978, f. 12-19-78, ef. 12-20-78; CD 3-1980(Temp), f. & ef. 3-5-80; CD 24-1980, f. & ef. 7-3-80; CD 42-1981, f. & ef. 10-30-81; CD 36-1983(Temp), f. & ef. 10-14-83; CD 11-1984, f. & ef. 4-11-84; CD 46-1985, f. & ef. 8-16-85; CD 12-1989, f. & cert. ef. 6-30-89; CD 4-1991, f. & cert. ef. 1-22-91; DOC 2-2008, f. 2-1-08, cert. ef. 2-4-08; DOC 15-2013(Temp), f. & cert. ef. 12-13-13 thru 6-11-14

Rule Caption: Inmate Grievances Regarding Allegations of Sexual Abuse

Adm. Order No.: DOC 16-2013(Temp)

Filed with Sec. of State: 12-13-2013

Certified to be Effective: 12-13-13 thru 6-11-14

Notice Publication Date:

Rules Adopted: 291-109-0200

Rules Amended: 291-109-0180

Rules Suspended: 291-109-0125

Subject: The Prison Rape Elimination Act (PREA) was passed unanimously by Congress and signed into law by President Bush in 2003. The U.S. Department of Justice finalized and published national PREA standards (28 C.F.R. Part 115) for all prisons, jails, lockups, and detention facilities in the United States in 2012. The final rule adopts national standards to prevent, detect, and respond to incidents of sexual violence, sexual coercion and sexual solicitation. These rule modifications are necessary to ensure ODOC administrative rules for processing of inmate grievances regarding allegations of sexual abuse align with the national PREA standards.

Rules Coordinator: Janet R. Worley—(503) 945-0933

291-109-0125

Methods of Reporting Sexual Contact

(1) Inmates should immediately report incidents of information regarding sexual contact between staff and an inmate to a trusted staff or use the Inspector General's hotline number or both.

(2) Inmates with information or concerns regarding sexual contact between staff and an inmate may also use the inmate grievance review system.

(3) The Inspector General's hotline number is posted throughout Department of Corrections facilities.

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

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

Hist.: DOC 3-2011, f. 2-23-11, cert. ef. 3-1-11; Suspended by DOC 16-2013(Temp), f. & cert. ef. 12-13-13 thru 6-11-14

291-109-0180

Abuse of Grievance Review System

(1) An inmate shall submit no more than two inmate grievances in any one week or six in any calendar month. This will not apply to grievances regarding allegations of sexual abuse. A week is defined as Sunday through Saturday. Grievances submitted in excess of two grievances in any one-week or six in any calendar month will be denied and returned to the inmate, noting that he/she has abused the grievance review system.

(2) If a life, health or safety situation arises whereby there is valid reason to submit more than two grievances in one week or six in a calendar month, the inmate must clearly state in writing the reason for submission of the grievance above the number allowed. If the grievance coordinator determines that these reasons are not clear, concise or valid for submission of an additional grievance, the grievance will be returned to the inmate denied.

(3) Actions taken against an inmate who has abused the grievance review system under these rules are not grievable.

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

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

Hist.: DOC 3-2003, f. 2-13-03, cert. ef. 3-1-03; Renumbered from 291-109-0140(6), DOC 13-2006, f. 10-18-06, cert. ef. 11-1-06; DOC 3-2011, f. 2-23-11, cert. ef. 3-1-11; DOC 16-2013(Temp), f. & cert. ef. 12-13-13 thru 6-11-14

291-109-0200

Grievance Regarding Allegations of Sexual Abuse

(1) For purposes of this rule sexual abuse is defined as sexual abuse of an inmate by another inmate and sexual abuse of an inmate by a staff member.

(a) Sexual abuse of an inmate by another inmate includes any of the following acts, if the victim does not consent, is coerced into such act by overt or implied threats of violence, or is unable to consent or refuse:

(A) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;

(B) Contact between the mouth and the penis, vulva, or anus;

(C) Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object or other instrument; and

(D) Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation.

(b) Sexual abuse of an inmate by a staff member, contractor or volunteer includes any of the following acts, with or without consent of the inmate, detainee, or resident:

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(A) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;

(B) Contact between the mouth and the penis, vulva, or anus;

(C) Contact between the mouth and any body part where the staff member, contractor, or volunteer has the intent to abuse, arouse or gratify sexual desire;

(D) Penetration of the anal or genital opening, however slight, by a hand, finger, object, or other instrument, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;

(E) Any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks that is unrelated to the official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse or gratify sexual desire;

(F) Any attempt, threat, or request by a staff member, contractor, or volunteer to engage in the activities described by paragraphs (A)–(E) of this section;

(G) Any display by a staff member, contractor, or volunteer of his or her uncovered genitalia, buttocks, or breast in the presence of an inmate, detainee, or resident, and

(H) Voyeurism by a staff member, contractor, or volunteer. Voyeurism by a staff member, contractor or volunteer means an invasion of privacy of an inmate by staff for reasons unrelated to official duties, such as peering at an inmate who is using a toilet in his or her cell to perform bodily functions; requiring an inmate to expose his or her buttocks, genitals, or breasts; or taking images of all or part of an inmate's naked body or of an inmate performing bodily functions.

(2) Grievances alleging sexual abuse must be submitted to the functional unit grievance coordinator on the departments approved inmate grievance form (CD117). The grievance should have the words "sexual abuse grievance" clearly written on the top of the grievance form.

(3) There is no time limit on when an inmate may submit a grievance regarding an allegation of sexual abuse.

(4) Third parties, including fellow inmates, staff members, family members, attorneys, and outside advocates, shall be permitted to assist inmates in filing requests for administrative remedies relating to allegations of sexual abuse, and shall also be permitted to file such requests on behalf of inmates.

(a) If a third party files such a request on behalf of an inmate, the facility may require as a condition of processing the request that the alleged victim agree to have the request filed on his or her behalf, and may also require the alleged victim to personally pursue any subsequent steps in the administrative remedy process.

(b) If the inmate declines to have the request processed on his or her behalf, the agency shall document the inmate's decision.

(5) The grievance coordinator may not refer a grievance alleging sexual abuse to a staff member who is the subject of the grievance. The grievance coordinator will coordinate with the appropriate manager by sending the grievance and a grievance response form (CD 117b) to the manager respondent for reply.

(6) An inmate may appeal the initial grievance response using the grievance appeal form (CD 117c). The appeal must be submitted to the grievance coordinator together with the original grievance, attachments and manager's response.

(7) The department shall issue a final decision on the merits of any portion of a grievance alleging sexual abuse within 90 days of the initial filing of the grievance.

(a) Computation of the 90-day time period shall not include time consumed by inmates in preparing any administrative appeal.

(b) The department may claim an extension of time to respond, of up to 70 days, if the normal time period for response is insufficient to make an appropriate decision. The department shall notify the inmate in writing of any such extension and provide a date by which a decision will be made.

(c) At any level of the administrative process, including the final level, if the inmate does not receive a response within the time allotted for reply, including any properly noticed extension, the inmate may consider the absence of a response to be a denial of the allegations made by the inmate at that level.

(8) An inmate who alleges that he or she is subject to a substantial risk of imminent sexual abuse may provide the grievance directly to the officer-in-charge (OIC) or the OIC's designee.

(a) After receiving an emergency grievance alleging an inmate is subject to a substantial risk of imminent sexual abuse, the OIC or the OIC's designee shall immediately review and take immediate corrective action as necessary to mitigate the risk of sexual assault.

(b) The OIC or the OIC's designee shall provide the emergency grievance and the initial response to the inmate and the grievance coordinator within 48 hours of the submission of the grievance.

(c) The grievance coordinator will issue to the inmate a final response to the emergency grievance within five days of the submission of the emergency grievance.

(d) The initial and final responses shall document the department's determination whether the inmate is in substantial risk of imminent sexual abuse and any action, if necessary, taken in response to the emergency grievance.

Stat Auth: ORS 179.040, 423.020, 423.030 and 423.075

Stat Impl: ORS 179.040, 423.020, 423.030 and 423.075

Hist.: DOC 16-2013(Temp), f. & cert. ef. 12-13-13 thru 6-11-14

Rule Caption: Earned Time Credits for Crimes Committed on or after July 1, 2013

Adm. Order No.: DOC 17-2013(Temp)

Filed with Sec. of State: 12-13-2013

Certified to be Effective: 12-13-13 thru 6-11-14

Notice Publication Date:

Rules Adopted: 291-097-0231

Subject: This temporary rule is necessary to establish by administrative rule changes made to ORS 421.121 with regard to earned time credits from 2010 legislation (SB 1007) that went into effect on July 1, 2013. Inmates serving sentences for crimes committed on or after July 1, 2013 may earn sentence reduction credits up to 20 percent. Some inmates are not eligible for any earned time credits, including inmates serving a sentence for a Measure 11 crime (mandatory minimum).

Rules Coordinator: Janet R. Worley—(503) 945-0933

291-097-0231

Earned Time Credits for Crimes Committed on or after July 1, 2013

(1) Pursuant to ORS 421.121, inmates with crimes committed on or after July 1, 2013, may earn sentence reduction credits up to 20 percent of the total sentencing guidelines prison term imposed for acceptable participation in case plan requirements and for maintaining appropriate institution conduct, except inmates:

(a) Serving a sentence subject to ORS 137.635;

(b) Serving presumptive sentences or required incarceration terms under ORS 161.737;

(c) Serving statutory minimum sentences under ORS 137.700 or 137.707;

(d) Serving a presumptive sentence under ORS 137.719;

(e) Subject to ORS 137.750 and whose judgment does not state that the inmate may be considered for sentence reductions;

(f) Serving time as a sanction for violation of conditions of post prison supervision;

(g) Serving a mandatory minimum incarceration term of 90 days under ORS 813.011(3) for Felony Driving under the Influence of Intoxicants under ORS 813.010(5)(a) and 813.011 committed on or after December 2, 2010; or

(h) Subject to any other Oregon statutes restricting earned time credits.

(2) In determining whether an inmate will receive earned time credits for the review period under consideration, inmate performance will be evaluated in two areas: half credit for compliance with the Case Plan and half credit for maintaining appropriate institution conduct. The only possible determination for each area is noncompliance or compliance.

Stat. Auth: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030, 423.075

Stats. Impl: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030, 423.075

Hist.: DOC 17-2013(Temp), f. & cert. ef. 12-13-13 thru 6-11-14

Rule Caption: Arrest and Transport of Offenders

Adm. Order No.: DOC 18-2013

Filed with Sec. of State: 12-13-2013

Certified to be Effective: 12-13-13

Notice Publication Date: 6-1-2013

Rules Amended: 291-014-0100, 291-014-0110, 291-014-0120

Subject: These modifications are necessary to clarify the minimum training standards needed for a parole officer to make an arrest.

Rules Coordinator: Janet R. Worley—(503) 945-0933

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291-014-0100

Authority, Purpose, and Policy

(1) Authority: The authority for this rule is granted to the Director of the Department of Corrections in accordance with ORS 179.040, 423.020, 423.030, and 423.075.

(2) Purpose: The purpose of these rules is to provide community protection by the apprehension and arrest of offenders who engage in violation behavior or are subject to an arrest warrant. Arrest shall be made in the appropriate manner as prescribed by law (ORS 137.550; 144.331; 144.334, 144.350, 144.360, 144.610 and 144.613) and this rule.

Stat. Auth.: ORS 137.545, 144.350, 144.360, 179.040, 423.020, 423.030, 423.075
Stats. Implemented: ORS 137.545, 144.331, 144.334, 144.350, 144.360, 144.610, 144.613, 179.040, 423.020, 423.030, 423.075
Hist.: DOC 5-2006, f. & cert. ef. 7-24-06; DOC 18-2013, f. & cert. ef. 12-13-13

291-014-0110

Definitions

(1) Arrest: To place an offender under actual or constructive restraint or to take a person into custody.

(2) Offender: Any person under supervision who is on parole, post prison supervision, transitional leave, local control or probation status.

(3) Officer: Any state parole and probation officer certified as such by the Department of Public Safety Standards and Training.

(4) Reasonable Grounds: Exists when facts and circumstances within the officer's knowledge are sufficient to justify a belief that a violation has occurred.

(5) Warrant: A written order made on behalf of the releasing authority, or the court, which commands the officer to arrest the offender.

Stat. Auth.: ORS 137.545, 144.350, 144.360, 179.040, 423.020, 423.030, 423.075
Stats. Implemented: ORS 137.545, 144.331, 144.334, 144.350, 144.360, 144.610, 144.613, 179.040, 423.020, 423.030, 423.075
Hist.: DOC 5-2006, f. & cert. ef. 7-24-06; DOC 18-2013, f. & cert. ef. 12-13-13

291-014-0120

Arrest

(1) A parole/probation officer is authorized to make an arrest if the officer participates in a minimum of eight hours annual training in arrest procedures, use of restraints, less than lethal force options, and defensive tactics.

(2) When a warrant has been issued for an offender by the releasing authority or the Court, based on a violation of a release condition, the supervising officer shall cause the execution of any arrest warrant.

(3) In all other arrest cases, at least one of the following criteria must be met:

(a) Reasonable grounds that a violation(s) has occurred and is serious enough to warrant a recommendation of incarceration;

(b) The offender's behavior constitutes a threat or danger to the community or to himself/herself.

Stat. Auth.: ORS 137.545, 144.350, 144.360, 179.040, 423.020, 423.030, 423.075
Stats. Implemented: ORS 137.545, 144.331, 144.334, 144.350, 144.360, 144.610, 144.613, 179.040, 423.020, 423.030, 423.075
Hist.: DOC 5-2006, f. & cert. ef. 7-24-06; DOC 18-2013, f. & cert. ef. 12-13-13

Department of Energy Chapter 330

Rule Caption: Establishing Alternative Fuel Vehicle Revolving Fund program; revising Small Scale Local Energy Loan Program rules.

Adm. Order No.: DOE 4-2013

Filed with Sec. of State: 12-12-2013

Certified to be Effective: 12-12-13

Notice Publication Date: 11-1-2013

Rules Adopted: 330-110-0060

Rules Amended: 330-110-0010, 330-110-0040

Rules Repealed: 330-110-0040(T)

Subject: These permanent rules implement the Alternative Fuel Vehicle Revolving Fund program established in Oregon Laws 2013, chapter 774, sections 1 through 7 (SB 583). The program provides loans to Oregon's public bodies and federally recognized Indian tribes in Oregon. These loans assist in the purchase of new alternative fuel vehicles and help convert or modify existing gasoline or diesel vehicles to alternative fuels. The rules provide the policies and procedures for the Alternative Fuel Vehicle Revolving Fund program. The rules create procedures for the department to allocate monies for loans from the Alternative Fuel Vehicle Revolving Fund by outlin-

ing a prioritization process, if the program is oversubscribed. The rules adopt policies for establishing loan terms and interest rates to ensure that the objectives of SB 583 are met and adequate funds are maintained to meet future fund needs. The rules adopt procedures and standards necessary for the department to administer the Alternative Fuel Vehicle Revolving Fund program such as application contents, application processing procedures, reporting requirements and funding limits.

The rules amend the definition of "fleet" for the Small Scale Local Energy Loan Program to require a minimum of two (rather than three) vehicles and further adopt a temporary rule filed by the department on June 17, 2013 to clarify eligible uses of loan proceeds for Small Scale Local Energy Loan Program projects.

Rules Coordinator: Kathy Stuttaford—(503) 373-2127

330-110-0010

Definitions

As used in ORS Chapter 470 and in these rules, the following definitions apply:

(1) "Adequate security" means the pledge of real or personal property given to secure a loan against loss or credit enhancement, guaranty or other security of value authorized by ORS 470.170, given as assurance that the loan will be paid.

(2) "Alternative fuel project" means sub-sections (a) and (b):

(a) The purchase of a fleet of vehicles that are modified or acquired directly from a factory and that:

(A) Use an alternative fuel including electricity, gasohol with at least twenty percent denatured alcohol content, hydrogen, hythane, methane, methanol, natural gas, propane, biodiesel or any other fuel approved by the Director; and

(B) Produce lower exhaust emissions or are more energy efficient than those fueled by gasoline.

(b) A facility, including a fueling station, necessary to operate alternative fuel vehicles.

(3) "Alternative Fuel Vehicle Revolving Fund Program" means the loan program established by Oregon Laws 2013, chapter 774, sections 1 through 7 for public bodies defined in ORS 174.109 and federally recognized Indian tribes in Oregon.

(4) "Applicant" means a loan program applicant.

(5) "Application" means a completed loan application on a Department-approved form that contains all required information, is dated and signed by an authorized representative of the applicant, and is accompanied by the required documentation and the application and underwriting fees. The term "application" includes all documentation submitted in conjunction with a loan application, whether at the time of original submission of the loan application or later and all modifications of the application that was originally submitted.

(6) "Biomass" means plant and animal matter, but not fossil fuels.

(7) "Cogeneration" means the sequential production of electrical or mechanical energy and useful thermal energy from a primary source including but not limited to oil, natural gas or biomass. Cogeneration must qualify under the Small Scale Local Energy Loan Program Technical Requirements.

(8) "Committee" means the Small Scale Local Energy Project Advisory Committee.

(9) "Conservation measure" means a system, component of a system, mechanism or series of mechanisms, support service or combination thereof that:

(a) Reduces the use of energy at the project site;

(b) Directly avoids the loss of energy in the transmission of energy;

(c) Conserves energy used in transportation with the energy savings being substantially in Oregon;

(d) Is a cogeneration project; or

(e) Increases the production or efficiency of or extends operating life of a system or project otherwise described in OAR 330-110-0010, including but not limited to restarting a dormant project.

(10) "Conventional fuels" means purchased electricity or fossil fuels.

(11) "Creditworthy" means, in regard to an applicant, able to repay its debts as they become due, as evidenced by a satisfactory credit history, sufficient financial resources or other indication of financial strength as approved by the Department.

(12) "Delinquent account" means a loan that has not been paid in accordance with the terms of the underlying loan documents.

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(13) "Demonstration project" means a project that showcases new or improved technologies or designs that promise cost-effective production or conservation of energy if adopted by the marketplace.

(14) "Department" means Oregon Department of Energy.

(15) "Director" means the Director of the Department or designee.

(16) "Energy need" means any of the energy demands forecasted by the Department under ORS 469.070 and the need to save energy to cut costs.

(17) "Financial feasibility" means that:

(a) The primary repayment source for the loan has been identified, the applicant is creditworthy and the project is financially viable; and

(b) Adequate security is offered to provide a secondary source of repayment.

(18) "Financial statement" means a report of a person's financial operations or condition including but not limited to balance sheets, statements of financial condition, statements of financial position, income statements, statement of earnings, statements of revenues and expenses, statements of profit and loss, statements of operations, statements of retained income, statements of cash flows, statements of changes in financial position, pro forma statements, aging reports and any accounting reports, reviews, audits, tax returns or other financial information submitted as, or as a part of, a representation of financial condition in a Department approved format using Generally Accepted Accounting Principles (GAAP).

(19) "Fleet" means two or more vehicles used for commercial or governmental purposes primarily operated in Oregon.

(20) "Interim loan" means a disbursement of a program loan for the purpose of paying for pre-construction and other approved project costs prior to permanent funding.

(21) "Loan contract" means, in addition to the meaning set forth in ORS 470.050, the loan agreement and all other documentation required by the Director to make a loan or change its terms and conditions.

(22) "Local community or region" means one or more energy users in Oregon.

(23) "Municipal corporation" has the meaning assigned to that term by ORS 470.050.

(24) "Person" means a natural person or a validly existing entity that is duly organized under the laws of a state, including but not limited to a partnership.

(25) "Preference" means, in any choice between financially feasible projects or applicants, preference under ORS 470.080 and these rules.

(26) "Primary repayment source" means the business revenues produced by the borrower of a loan that is or will be used to pay the debt service on a loan.

(27) "Program" means the Small Scale Local Energy Loan Program.

(28) "Project" has the meaning given to "small scale local energy project" in ORS 470.050; including systems or devices that implement one or more conservation measures, use renewable resources to meet a local community or regional energy need in Oregon or are recycling or alternative fuel projects. The project may produce heat, electricity, mechanical action or alternative fuels. A project may also be an improvement that increases the production or efficiency of or extends the operating life of a system or device or project otherwise described in these rules, including but not limited to restarting a dormant project. A project also:

(a) Must be primarily in Oregon but can have a minor contiguous component in a neighboring state, or in the case of energy conservation the project can provide substantial benefits to Oregon. The components located in Oregon should exceed 70 percent of the portion of the project cost financed by the program;

(b) Can directly or indirectly conserve energy or enable the conservation of energy or use or enable the use of a renewable resource, by the applicant or another person, to produce energy, as, for example, power transmission or conditioning, energy storage or smart metering; and

(c) Can directly or indirectly reduce the amount of energy needed in the construction and operation of a facility, including the manufacture and transportation of construction materials, but the project or components must meet acceptable sustainability practices established in the Small Scale Local Energy Loan Program Technical Requirements.

(29) "Qualified" means, in regard to an applicant, able and eligible under the law to apply for a loan and enter into a loan contract.

(30) "Recycling project" means a facility or equipment that conserves energy by converting solid waste, as defined in ORS 459.005, into a new and usable product.

(31) "Renewable resource" means solar, wind, geothermal, biomass, waste heat or water resource.

(32) "Security value" means the value assigned by the Department, based upon an internal review or an appraisal by a qualified third party acceptable to the Department, to the project or security being offered as collateral for a loan.

(33) "Small business" has the meaning given in ORS 470.050.

(34) "Small Scale Local Energy Loan Program Technical Requirements" means the specific technical requirements of the Department for certain projects. An application will be subject to the Technical Requirements in effect on the date the Department receives a complete application.

(35) "Usable life" of a project means the number of years that a project can likely function without major repair or replacement.

(36) "Waste heat" means produced but unused heat that can be applied to an energy need.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.050 - 470.310

Hist.: DOE 12-1980, f. & ef. 12-16-80; DOE 2-1981(Temp), f. & ef. 6-3-81; DOE 6-1982, f. & ef. 4-21-82; DOE 2-1983, f. & ef. 5-16-83; DOE 3-1983(Temp), f. & ef. 9-20-83; DOE 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 4-1988, f. & cert. ef. 7-26-88; DOE 1-1991(Temp), f. & cert. ef. 6-10-91; DOE 3-1991, f. & cert. ef. 12-3-91; DOE 1-1993, f. & cert. ef. 1-27-93; DOE 1-1994, f. & cert. ef. 4-1-94; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04; DOE 1-2006, f. & cert. ef. 4-3-06; DOE 13-2012, f. & cert. ef. 12-20-12; DOE 4-2013, f. & cert. ef. 12-12-13

330-110-0040

Loan Limits, Security, and Conditions

(1) The Director may limit the term and amount of any loan or loan approval. The Director may deny any application or set such terms and conditions in regard to any loan or loan approval as needed to assure a sound loan or to protect the fiscal integrity of the program.

(2) A loan secured by real property must be secured by a first lien on such real property in favor of the State of Oregon and must not exceed eighty percent of the security value of such real property. The real property that is collateral for the loan must have been appraised by a licensed appraiser, county assessor or Department appraiser, at the discretion of the director, no longer than six months prior to the date of the loan approval. The Department will consider junior liens only on a case-by-case basis.

(3) If a loan to a municipal corporation will be repaid from project income, the security package for the loan may include the project income.

(4) A loan to a state agency, an eligible federal agency or a public corporation may be secured by project income, in addition to the facility or equipment that make up the project, by a lease purchase contract or by other income or security in accordance with ORS 470.170. State agencies, eligible federal agencies or public corporation borrowers must provide resolutions or other official action of borrower's governing body approving the loan and the other matters contemplated by the loan documents, and of all other documents evidencing any other necessary action by Applicant's governing body.

(5) The Department generally requires an unconditional and absolute guaranty of the owners or the principal shareholder of the borrower or that of a person having sufficient resources to satisfy the borrower's repayment obligation for the loan should the borrower default.

(6) The Director may consider savings in operation and maintenance costs in estimating the annual project cost savings. The Director may also, when calculating the estimated savings in fuel costs, consider reasonably expected increases in the cost of fuel.

(7) A project that primarily produces energy for sale must have:

(a) Secure sources of supply and contracts for the sale of output;

(b) Projected income, net of operating expenses and maintenance costs, of at least 125 percent of annual debt service for each year of the loan; and

(c) An identified secondary source of repayment apart from the project income.

(8) Unless the Director finds that mitigating financial factors warrant otherwise, a loan to a business for a project that saves or produces energy for use on site, is an alternative fuel project or is an energy-saving recycling project may be made only:

(a) Upon an identifiable and reasonable primary repayment source and the pledge of adequate security;

(b) For less than 80 percent of the security value of real property on which the Department has a first lien, the Department will consider junior liens on a case-by-case basis;

(c) To a business that has made a profit after taxes for at least the two years immediately preceding the loan application; and

(d) To a business that has a ratio of current assets to current liabilities of at least 1.75 to 1 and a ratio of total debt to owner's equity of no more than 2 to 1. The Director may exempt a business from the requirements of

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OAR 330-110-0040 if it demonstrates to the satisfaction of the Director that sound businesses of similar type and size do not normally meet these standards.

(9) Loan proceeds must be used for the costs of a small scale local energy project, with the following limitations:

(a) Cost of acquisition of the project site must not exceed ten percent of the loan amount.

(b) Start-up costs must not exceed three percent of the loan amount.

(c) Reserves must not exceed fifteen percent of the loan amount.

(10) The loan proceeds of an alternative fuel project may only be used for the following purposes:

(a) Incremental costs of the project that are beyond the reasonable estimated minimum costs to construct or install a similar project without alternative fuel features. Incremental costs do not include the cost of equipment or devices that, in standard industry practice, are used to dispense gasoline or, in the case of vehicles, equipment or devices that use gasoline and that also allow use of an alternative fuel without modification. Alternative fueling stations with underground fuel tanks do not qualify for funding as alternative fuel projects.

(b) In the case of vehicles, products and installation of such products approved by and meeting or exceeding the emission standards of the Department of Environmental Quality.

(11) No more than fifty percent of loan proceeds may be used to refinance existing debt authorized by ORS 470.050(27)(g) unless such debt is with the Department. The refinancing must result in a significant increase in the security value of the loan security.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.080, 470.120, 470.150 - 470.155, 470.170 & 470.210

Hist.: DOE 12-1980, f. & ef. 12-16-80; DOE 6-1982, f. & ef. 4-21-82; DOE 2-1983, f. & ef. 5-16-83; DOE 3-1983(Temp), f. & ef. 9-20-83; DOE 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 4-1988, f. & cert. ef. 7-26-88; DOE 1-1993, f. & cert. ef. 1-27-93; DOE 1-1994, f. & cert. ef. 4-1-94; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04; DOE 13-2012, f. & cert. ef. 12-20-12; DOE 2-2013(Temp), f. & cert. ef. 6-17-13 thru 12-13-13; DOE 4-2013, f. & cert. ef. 12-12-13

330-110-0060

Alternative Fuel Vehicle Revolving Fund Program; Loan Terms

(1) The department will use the moneys from the Alternative Fuel Vehicle Revolving Fund to provide loans to public bodies defined in ORS 174.109 and federally recognized Indian tribes in Oregon and may use the moneys to pay for the department's expenses in administering the Alternative Fuel Vehicle Revolving Fund, Alternative Fuel Vehicle Revolving Fund Program and related costs.

(2) The loans must be used to:

(a) Assist in the purchase of new alternative fuel vehicles by providing funding for the incremental cost of purchasing alternative fuel vehicles that exceeds the cost of purchasing vehicles that are not alternative fuel vehicles; or

(b) Convert or modify existing vehicles that use gasoline or diesel to alternative fuel vehicles. A conversion or modification of a motor vehicle must include at least one eligible alternative fuel as described in OAR 330-110-0060(3).

(3) Alternative fuel vehicle means:

(a) A motor vehicle, as defined in ORS 801.360;

(b) That is manufactured or modified to use an alternative fuel, including but not limited to electricity, biofuel, gasohol with at least 20 percent denatured alcohol content, hydrogen, hythane, methane, methanol, natural gas, propane or any other fuel approved by the department;

(c) That produces lower exhaust emissions or is more energy efficient than equivalent equipment fueled by gasoline or diesel;

(d) Registered in Oregon in accordance with ORS 803; and

(e) If a conversion or modification, new equipment is installed by a qualified technician that is compliant with Environmental Protection Agency or California Air Resources Board standards.

(4) The terms and interest rate for these loans will be established by the department to recover the administrative cost of this loan program and to maintain a perpetual source of funding for the Alternative Fuel Vehicle Revolving Fund Program. A loan must be fully amortized not later than six years after the purchase of the new alternative fuel vehicle being financed by the loan or the conversion of a vehicle that uses gasoline or diesel to an alternative fuel vehicle.

(5) The department will convene a review committee to review and prioritize loans, as needed.

(6) The department may list the evaluation criteria for prioritizing loan applications. The department will give priority to loans for conversions or modifications. The additional criteria the department may consid-

er for each vehicle covered by the application include, but are not limited to:

(a) Fuel displacement capacity,

(b) Geographical area or local economic conditions of the home base,

(c) Accelerated repayment schedule,

(d) Age of the vehicle,

(e) Estimated annual mileage,

(f) Gross weight of the vehicle, and

(g) Emissions.

(7) A loan application must be made on department approved forms and in a manner set by the department. An applicant must designate the Alternative Fuel Vehicle Revolving Fund Program in the purpose section of the application. For each vehicle covered by the application, the application must include information needed for prioritization in OAR 330-110-0060(6) plus the following information:

(a) Vehicle Identification Number;

(b) Vehicle make, model, year and description;

(c) Current odometer reading;

(d) Name of titled owner;

(e) Gross vehicle weight;

(f) Fuel economy;

(g) Estimated annual mileage;

(h) Borrowing authority;

(i) Loan repayment information, identifying the dedicated source of revenue for repayment purposes; and

(j) Any other information requested by the department.

(8) Submitting a loan application does not guarantee the department will provide a loan to the applicant.

(9) The proceeds of loans made from the Alternative Fuel Vehicle Revolving Fund may be used for purchases or conversions as described in OAR 330-110-0060(2) no more than 60 days prior to the department receiving the loan application.

(10) No one borrower may obtain a loan for greater than 30 percent of the total available, uncommitted funds in the Alternative Fuel Vehicle Revolving Fund. The department may adjust the allowed percentage for a borrower based on program usage. The department may also set a maximum aggregate amount of all loans outstanding that a single public entity or tribe may have under the Alternative Fuel Vehicle Revolving Fund.

(11) Loans made from the Alternative Fuel Vehicle Revolving Fund will be subject to the department's underwriting standards and the requirements in OAR Chapter 330, division 110. Loans require final approval by the Director.

(12) An Alternative Fuel Vehicle Revolving Fund borrower must report, on an annual basis for the term of the loan, the following:

(a) Miles driven,

(b) Amount of fuel consumed, and

(c) Other data as described in the loan agreement.

Stat. Auth.: ORS 469.040 & OL 2013, ch. 774, sec. 4, 7

Stats. Implemented: OL 2013, ch. 774, sec. 1 - 7

Hist.: DOE 4-2013, f. & cert. ef. 12-12-13

Department of Fish and Wildlife

Chapter 635

Rule Caption: Non-Resident Uniformed Services Personnel May Purchase Licenses, Tags and Permits At Resident Rates

Adm. Order No.: DFW 128-2013(Temp)

Filed with Sec. of State: 11-18-2013

Certified to be Effective: 12-1-13 thru 12-31-13

Notice Publication Date:

Rules Amended: 635-011-0104

Subject: This amended rule authorizes non-resident members of the uniformed services, as defined by ORS 497.006, to purchase licenses, tags, or permits at Oregon resident rates with the exception of controlled hunt tags. Revisions are required by HB 2252 (2013). Affected licenses, tags and permits go on sale December 1, 2013 and these rule modifications are scheduled for consideration as permanent amendments at the Oregon Fish and Wildlife Commission meeting, December 6, 2013.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-011-0104

Licenses, Tags, and Permits

(1) Hatchery Salmon and Steelhead Harvest Tag Requirements:

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(a) Persons holding an annual angling license and an annual angling harvest tag may purchase Hatchery Salmon and Steelhead Harvest Tags. There is no limit on the number of Hatchery Salmon and Steelhead Harvest Tags an angler may purchase per year. The purchase of each tag entitles the angler to take a combined total of 10 hatchery salmon or steelhead;

(b) Only adipose or otherwise fin-clipped adult salmon or adipose fin-clipped steelhead may be recorded on the Hatchery Salmon and Steelhead Harvest Tag;

(c) A valid annual angling license and a valid annual angling harvest tag must be in possession while fish validated on the Hatchery Salmon and Steelhead Harvest Tag are in angler's possession. All tags purchased must be in angler's possession while angling for salmon or steelhead;

(d) Fish must be recorded immediately upon removal from the water and fish must be recorded in the chronological order caught. The angler who landed the fish must record the fish on his or her tag irrespective of who hooked the fish; and

(e) Hatchery Salmon and Steelhead Harvest Tags should be returned to ODFW upon expiration.

(2) Columbia River Basin Endorsement:

(a) The Columbia River Basin is defined as: The mainstem Columbia River from Buoy 10 upstream to include all rivers and their tributaries that drain into the mainstem Columbia River.

(b) Effective January 1, 2014 a valid Columbia River Basin Endorsement must be in possession while angling for salmon, steelhead, or sturgeon in the Columbia River Basin.

(c) The fee for the Columbia River Basin Endorsement, when purchased in conjunction with an annual license is \$9.75, in addition to fees as described in ORS 497.121 and ORS 497.123.

(d) The fee for the Columbia River Basin Endorsement when purchased separately is \$9.75 (plus a \$2.00 agent fee).

(e) The fee for the Columbia River Basin Endorsement, when purchased in conjunction with a daily license is \$1.00 per each day, in addition to those fees as described in ORS 497-121.

(f) No fee will be charged for a Columbia River Basin Endorsement for an angler(s) in possession of:

(A) A resident disabled veteran, resident pioneer, resident and non-resident youth under 14 license; or

(B) A Permanent Wheel-chair Angling License a Permanent Blind Angler License, or a Permanent Senior Combination License.

(3) Non Resident Uniformed Services: A non resident member of the uniformed services, as defined by ORS 497.006, may purchase licenses, tags, or permits at Oregon resident rates with the exception of controlled hunt tags.

Stat. Auth.: ORS 496.138, 496.146, 497.121, 497.123 & 506.119
Stats. Implemented: ORS 496.162 & 506.129
Hist.: DFW 101-2001, f. & cert. ef. 10-23-01; DFW 125-2013, f. 10-30-13, cert. ef. 11-1-13; DFW 128-2013(Temp), 11-18-13, cert. ef. 12-1-13 thru 12-31-13

Rule Caption: Season Opening for the Ocean Commercial Dungeness Crab Fishery Delayed

Adm. Order No.: DFW 129-2013(Temp)

Filed with Sec. of State: 11-25-2013

Certified to be Effective: 12-1-13 thru 12-31-13

Notice Publication Date:

Rules Amended: 635-005-0465

Subject: This amended rule delays the opening of the 2013 commercial ocean Dungeness crab fishing season from December 1 until December 16, 2013 in accordance with the Tri-State Memorandum-Of-Understanding and Preseason Testing Protocol.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-005-0465

Closed Season in Pacific Ocean and Columbia River

(1) It is *unlawful* to take, land or possess Dungeness crab for commercial purposes from the Pacific Ocean or Columbia River from August 15 through December 15.

(2) The season opening for the commercial Ocean Dungeness crab fishery may be delayed in one or more fishing zones based on the results of crab quality testing. The Pre-season Testing Protocol for the Tri-State Coastal Dungeness crab Commercial Fishery (hereafter, "Tri-State Protocol") specifies the process for establishing fishing zones (section VI) and coordinating the opening of the fishery in Washington, Oregon, and California north of Point Arena (sections IV and V). Therefore, the following sections of the Tri-State Protocol (Revised August, 2011) are hereby incorporated into Oregon Administrative Rule by reference:

(a) Section IV — Season Opening Criteria.

(b) Section V — Test Fishing and Process for Setting the Season Opening Date.

(c) Section VI — Procedure for Establishing Fishing Zones.

(3) It is unlawful to land, receive or buy, Dungeness crab in the first thirty days of the ocean Dungeness crab fishery from a vessel that has not been certified by officials of the State of Oregon, Washington, or California to have been free of Dungeness crab before fishing in the ocean Dungeness crab fishery. In the event the area between Gray's Harbor, Washington and Point Arena, California is divided into zones with different season opening dates, the ocean Dungeness crab fishery refers to the fishery in that zone for the purposes of this rule.

(4) In the event the area between Gray's Harbor, Washington and Point Arena, California is divided into zones with different season opening dates, the transfer of a permit from one vessel to another is suspended from the earliest season opening date through thirty days after the latest season opening date, except in the event a vessel is unintentionally destroyed due to fire, capsizing, sinking, or other event.

(5) Upon a determination by the Department that catch in Oregon's ocean Dungeness crab fishery after May 31 is greater than ten percent of the catch in the previous December 1 through May 31 period, the Director shall adopt a temporary rule closing the commercial season until the following December 1.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 506.306
Hist.: FC 246, f. 5-5-72, ef. 5-15-72; FC 285(74-20), f. 11-27-74, ef. 12-25-74; FC 293(75-6), f. 6-23-75, ef. 7-11-75; FWC 30, f. & ef. 11-28-75; FWC 132, f. & ef. 8-4-77; FWC 30-1985, f. 6-27-1985, ef. 7-1-85, Renumbered from 625-010-0155, Renumbered from 635-036-0125; FWC 56-1982, f. & ef. 8-27-82; FWC 13-1983, f. & ef. 3-24-83; FWC 39-1983(Temp), f. & ef. 8-31-83; FWC 11-1984, f. 3-30-84, ef. 9-16-84, except section (1) per FWC 45-1984, f. & ef. 8-30-84; FWC 30-1985, f. 6-27-85, ef. 7-1-85; FWC 78-1986(Temp), f. & ef. 12-1-86; FWC 36-1987, f. & ef. 7-1-87; FWC 97-1987(Temp), f. & ef. 11-17-87; FWC 102-1988, f. 11-29-88, cert. ef. 12-29-88; FWC 119-1989(Temp), f. 11-29-89, cert. ef. 12-1-89; FWC 135-1991(Temp), f. 12-10-91, cert. ef. 12-11-91; FWC 136-1991(Temp), f. & cert. ef. 12-19-91; FWC 112-1992, f. 10-26-92, cert. ef. 11-1-92; FWC 70-1993, f. 11-9-93, cert. ef. 11-11-93; FWC 88-1994(Temp), f. 11-30-94, cert. ef. 12-1-94; FWC 89-1994(Temp), f. & cert. ef. 12-1-94; FWC 89-1995(Temp), f. 11-28-95, cert. ef. 12-1-95; FWC 1-1996(Temp), f. 1-11-96, cert. ef. 1-13-96; DFW 51-1998(Temp), f. 6-29-98, cert. ef. 7-1-98 thru 9-15-98; DFW 54-1998(Temp), f. & cert. ef. 7-24-98 thru 9-15-98; DFW 40-1999, f. & cert. ef. 5-26-99; DFW 70-2000, f. & cert. ef. 10-23-00; DFW 77-2000(Temp), f. 11-27-00, cert. ef. 12-1-00 thru 12-14-00; DFW 39-2002, f. & cert. ef. 4-26-02; DFW 128-2002(Temp), f. & cert. ef. 11-15-02 thru 1-31-03; DFW 129-2002(Temp), f. & cert. ef. 11-20-02 thru 1-31-03; DFW 132-2002(Temp), f. & cert. ef. 11-25-02 thru 1-31-03 (Suspended by DFW 133-2002(Temp)); DFW 133-2002(Temp), f. & cert. ef. 12-6-02 thru 1-31-03; DFW 117-2003(Temp), f. 11-25-03, cert. ef. 12-1-03 thru 2-29-04; Administrative correction 10-26-04; DFW 113-2004(Temp), f. 11-23-04, cert. ef. 12-1-04 thru 3-1-05; DFW 116-2004(Temp), f. & cert. ef. 12-8-04 thru 3-1-05; DFW 126-2004(Temp), f. & cert. ef. 12-21-04 thru 3-1-05; DFW 132-2004(Temp), f. & cert. ef. 12-30-04 thru 3-1-05; Administrative correction, 3-18-05; DFW 129-2005(Temp), f. & cert. ef. 11-29-05 thru 12-31-05; DFW 140-2005(Temp), f. 12-12-05, cert. ef. 12-30-05 thru 5-31-06; Administrative correction 7-20-06; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 161-2010(Temp), f. 12-9-10, cert. ef. 12-10-10 thru 2-16-11; Administrative correction, 3-29-11; DFW 155-2011(Temp), f. 11-18-11, cert. ef. 12-1-11 thru 12-31-11; DFW 156-2011(Temp), f. 12-9-11, cert. ef. 12-15-11 thru 1-31-12; Administrative correction 4-24-12; DFW 37-2012, f. 4-24-12, cert. ef. 5-1-12; Renumbered from 635-005-0045, DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12; DFW 145-2012(Temp), f. 12-11-12, cert. ef. 12-1-12 thru 12-31-12; DFW 146-2012(Temp), f. 12-11-12, cert. ef. 12-1-12 thru 6-9-13; Administrative correction, 6-27-13; DFW 118-2013, f. 10-11-13, cert. ef. 10-15-13; DFW 129-2013(Temp), f. 11-25-13, cert. ef. 12-1-13 thru 12-31-13

Rule Caption: Radio-Tagged Hatchery Winter Steelhead May Be Retained in Northwest Zone Streams

Adm. Order No.: DFW 130-2013(Temp)

Filed with Sec. of State: 12-9-2013

Certified to be Effective: 12-10-13 thru 6-8-14

Notice Publication Date:

Rules Amended: 635-011-0100

Subject: This amended rule adds radio-tagged hatchery steelhead in Northwest Zone streams to the existing exception to non-retention of radio-tagged fish (item 17, found on page 10 of the 2013 Oregon Sport Fishing Regulations and page 11 of the 2014 Oregon Sport Fishing Regulations). Rule modifications allow retention of radio-tagged fish in conjunction with a planned radio telemetry study in the North Fork Nehalem River. This amended rule encompasses the entire Northwest Zone do to the possibility that some radio-tagged hatchery winter steelhead may stray into adjacent basins.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-011-0100

General Rule

(1) It is *unlawful* to take any fish, shellfish, or marine invertebrates for personal use except as provided in these rules which include and incorpo-

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rate the **2013/2014 Oregon Sport Fishing Regulations** by reference. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2013/2014 Oregon Sport Fishing Regulations**.

(2) Item 17 of "General Restrictions: The following activities are unlawful:" found on Page 10 of the **2013 Oregon Sport Fishing Regulations** and on page 11 of the **2014 Oregon Sport Fishing Regulations**, is amended to read: "17. Take a fish which has had a radio tag inserted (a fish with an antenna trailing from its mouth or body) except radio-tagged fish may be retained, when otherwise legal, (consistent with all other existing regulations and applicable laws) in the mainstem Columbia River and its tributaries. And, radio-tagged hatchery steelhead may be retained, when otherwise legal, (consistent with all other existing regulations and applicable laws) in Northwest Zone streams."

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 496.162 & 506.129
Hist.: FWC 11-1982, f. & ef. 2-9-82; FWC 2-1984, f. & ef. 1-10-84; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 153-2011(Temp), f. 11-7-11, cert. ef. 11-15-11 thru 5-12-12; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 142-2012(Temp), f. 11-6-12, cert. ef. 11-15-12 thru 5-12-13; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 130-2013(Temp), f. 12-9-13, cert. ef. 12-10-13 thru 6-8-14

Rule Caption: Prior Year 5,000 Pound Landing Requirement Temporarily Removed from Brine Shrimp Permit Renewal Rule
Adm. Order No.: DFW 131-2013(Temp)

Filed with Sec. of State: 12-9-2013

Certified to be Effective: 12-9-13 thru 6-7-14

Notice Publication Date:

Rules Amended: 635-005-0705

Subject: This amended rule allows the renewal of Brine Shrimp permits without the previously required 5,000 pound landing from the previous year. Due to low water in Lake Abert, in 2013, harvesters were unable to use their boats and harvest enough Brine Shrimp to satisfy the 5,000 pounds in landings required for permit renewal.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-005-0705

Renewal of Permit

(1) Brine Shrimp Permits may be renewed the following year by submitting to the Department a \$100.00 fee (plus a \$2.00 license agent fee) and a complete application date-stamped or postmarked by January 31 of the year for which renewal is sought.

(2) An application for renewal of a Brine Shrimp Permit shall be considered complete if it is legible, has all information requested in the form, and is accompanied by the required fee in full. Any application which is not complete shall be returned, and unless it is thereafter resubmitted and deemed complete by December 31 of the permit year sought, the individual may not be considered to have applied for renewal in a timely manner.

(3) It is the responsibility of the permittee to ensure that an application is complete and is filed in a timely manner. Failure of the Department to return an application for incompleteness or of an individual to receive a returned application may not be grounds for treating the application as having been filed in a timely and complete manner.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12; DFW 131-2013(Temp), f. & cert. ef. 12-9-13 thru 6-7-14

Rule Caption: Federal Actions and Management Measures Implemented for Commercial Fixed-gear Groundfish Fisheries

Adm. Order No.: DFW 132-2013(Temp)

Filed with Sec. of State: 12-9-2013

Certified to be Effective: 12-9-13 thru 6-7-14

Notice Publication Date:

Rules Amended: 635-004-0275

Rules Suspended: 635-004-0275(T)

Subject: This amended rule implements in-season actions previously adopted by the federal government for 2013 and 2014 Pacific ocean

commercial groundfish fisheries, including but not limited to changes in limited entry and open access fixed gear sablefish trip limits.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-004-0275

Scope, Inclusion, and Modification of Rules

(1) The commercial groundfish fishery in the Pacific Ocean off Oregon is jointly managed by the state of Oregon and the federal government through the Pacific Fishery Management Council process. The Code of Federal Regulations provides federal requirements for this fishery, including but not limited to the time, place, and manner of taking groundfish. However, additional regulations may be promulgated subsequently by publication in the Federal Register, and these supersede, to the extent of any inconsistency, the Code of Federal Regulations. Therefore, the following publications are incorporated into Oregon Administrative Rule by reference:

(a) Code of Federal Regulations, Part 660, Subparts C, D, E and F (October 1, 2012 ed.);

(b) Federal Register Vol. 78, No. 2, dated January 3, 2013 (78 FR 580).

(2) Persons must consult the federal regulations in addition to division 4 to determine all applicable groundfish fishing requirements. Where federal regulations refer to the fishery management area, that area is extended from shore to three nautical miles from shore coterminous with the Exclusive Economic Zone.

(3) The Commission may adopt additional or modified regulations that are more conservative than federal regulations, in which case Oregon Administrative Rule takes precedence. See OAR 635-004-0205 through 635-004-0235 and 635-004-0280 through 635-004-0365 for additions or modifications to federal groundfish regulations.

(4) Notwithstanding the regulations defined in section (1) of this rule, the National Marine Fisheries Service, by means of Federal Register/Vol. 78, No. 156/Tuesday, August 13, 2013, announced inseason actions and management measures effective August 13, 2013, including but not limited to:

(a) Changes to limited entry fixed gear and open access fixed gear sablefish DTL fishery trip limits; and

(b) Changes to limited entry fixed gear fishery trip limits for short-spine thornyhead.

(5) Notwithstanding the regulations defined in section (1) of this rule, the National Marine Fisheries Service, by means of Federal Register/Vol. 78, No. 232/Tuesday, December 3, 2013, announced inseason actions and management measures effective December 3, 2013, including but not limited to:

(a) Changes to limited entry fixed gear and open access fixed gear sablefish DTL fishery trip limits for Period 6, 2013; and

(b) Changes to limited entry fixed gear and open access fixed gear sablefish DTL fishery trip limits for Periods 1-6, 2014.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.162, 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 496.162, 506.109 & 506.129
Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12; DFW 78-2012(Temp), f. 6-28-12, cert. ef. 7-1-12 thru 10-27-12; DFW 106-2012(Temp), f. 8-15-12, cert. ef. 9-1-12 thru 12-31-12; DFW 1-2013, f. & cert. ef. 1-3-13; DFW 96-2013(Temp), f. 8-27-13, cert. ef. 9-1-13 thru 12-31-13; DFW 132-2013(Temp), f. & cert. ef. 12-9-13 thru 6-7-14

Rule Caption: Non Resident Uniformed Services Personnel Angling License Fees

Adm. Order No.: DFW 133-2013

Filed with Sec. of State: 12-9-2013

Certified to be Effective: 12-9-13

Notice Publication Date: 11-1-2013

Rules Amended: 635-011-0104

Rules Repealed: 635-011-0104(T)

Subject: These Oregon Administrative Rule amendments will implement changes to the fees charged for uniformed services members. The passage of HB 2252 (2013) allowed non-resident uniformed services personnel to pay the same rates as Oregon residents when purchasing angling and shellfish licenses from the Department. Housekeeping and technical corrections to the regulations may occur to ensure rule consistency.

Rules Coordinator: Therese Kucera—(503) 947-6033

ADMINISTRATIVE RULES

635-011-0104

Licenses, Tags, and Permits

(1) Hatchery Salmon and Steelhead Harvest Tag Requirements:

(a) Persons holding an annual angling license and an annual angling harvest tag may purchase Hatchery Salmon and Steelhead Harvest Tags. There is no limit on the number of Hatchery Salmon and Steelhead Harvest Tags an angler may purchase per year. The purchase of each tag entitles the angler to take a combined total of 10 hatchery salmon or steelhead;

(b) Only adipose or otherwise fin-clipped adult salmon or adipose fin-clipped steelhead may be recorded on the Hatchery Salmon and Steelhead Harvest Tag;

(c) A valid annual angling license and a valid annual angling harvest tag must be in possession while fish validated on the Hatchery Salmon and Steelhead Harvest Tag are in angler's possession. All tags purchased must be in angler's possession while angling for salmon or steelhead;

(d) Fish must be recorded immediately upon removal from the water and fish must be recorded in the chronological order caught. The angler who landed the fish must record the fish on his or her tag irrespective of who hooked the fish; and

(e) Hatchery Salmon and Steelhead Harvest Tags should be returned to ODFW upon expiration.

(2) Columbia River Basin Endorsement:

(a) The Columbia River Basin is defined as: The mainstem Columbia River from Buoy 10 upstream to include all rivers and their tributaries that drain into the mainstem Columbia River.

(b) Effective January 1, 2014 a valid Columbia River Basin Endorsement must be in possession while angling for salmon, steelhead, or sturgeon in the Columbia River Basin.

(c) The fee for the Columbia River Basin Endorsement, when purchased in conjunction with an annual license is \$9.75, in addition to fees as described in ORS 497.121 and ORS 497.123.

(d) The fee for the Columbia River Basin Endorsement when purchased separately is \$9.75 (plus a \$2.00 agent fee).

(e) The fee for the Columbia River Basin Endorsement, when purchased in conjunction with a daily license is \$1.00 per each day, in addition to those fees as described in ORS 497-121.

(f) No fee will be charged for a Columbia River Basin Endorsement for an angler(s) in possession of:

(A) A resident disabled veteran, resident pioneer, resident and non-resident youth under 14 license; or

(B) A Permanent Wheel-chair Angling License a Permanent Blind Angler License, or a Permanent Senior Combination License.

(3) Non Resident Uniformed Services: A non resident member of the uniformed services, as defined by ORS 497.006, may purchase licenses, tags, or permits at Oregon resident rates.

Stat. Auth.: ORS 496.138, 496.146, 497.121, 497.123 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 101-2001, f. & cert. ef. 10-23-01; DFW 125-2013, f. 10-30-13, cert. ef. 11-1-13; DFW 128-2013(Temp), 11-18-13, cert. ef. 12-1-13 thru 12-31-13; DFW 133-2013, f. & cert. ef. 12-9-13

Rule Caption: 2014 Harvest Quota for Commercial Roe Herring Fishery in Yaquina Bay Set

Adm. Order No.: DFW 134-2013(Temp)

Filed with Sec. of State: 12-11-2013

Certified to be Effective: 1-1-14 thru 4-15-14

Notice Publication Date:

Rules Amended: 635-004-0505

Subject: This amended rule sets the 2014 harvest quota for the Yaquina Bay commercial roe herring fishery for the period from January 1 through April 15, 2014 at 43.4 tons. The yearly harvest quota for the Yaquina Bay commercial roe herring fishery shall not exceed 20% of the available spawning biomass as established in the Yaquina River Basin Fish Management Operating Principles and Objectives described in OAR 635-500-0665(2). Only fishers with a limited entry permit issued pursuant to ORS 508.765 may participate in this fishery.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-004-0505

Roe-Herring Season and Harvest Limit

(1) The open season for the taking of herring for roe in Yaquina Bay is January 1 through April 15.

(2) The yearly commercial harvest cap for the Yaquina Bay commercial roe herring fishery shall not exceed 20% of the available spawning bio-

mass as established in the Yaquina River Basin Fish Management Operating Principles and Objectives 635-500-0665(2). The available spawning biomass shall be determined by the ODFW Fish Division's Marine Resources Program. The harvest quota for the Yaquina Bay commercial roe herring fishery during the period January 1 through April 15, 2014 is 43.4 tons. Only fishers with a limited entry permit issued pursuant to ORS 508.765 may participate in this fishery.

(3) The factor used to convert an equivalent amount of "whole fish" resource in the Yaquina Bay commercial roe herring fishery during the period of January 1 through April 15 to the equivalent amount of herring eggs on kelp fishery is 0.2237.

(4) During the period January 1 through April 15 it is *unlawful* to:

(a) Fish commercially from midnight Friday through midnight Sunday with nets; and

(b) Use any fishing gear or method of harvest for the taking of herring other than: a purse seine with a maximum length of 50 fathoms (300 feet), defined as the maximum distance from the first to last pursuing rings on the purse line; lampara net; hook and line; or eggs-on-kelp method.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12; DFW 134-2013(Temp), f. 12-11-13, cert. ef. 1-1-14 thru 4-15-14

Rule Caption: Recreational Sturgeon Fishery In the Bonneville Pool Begins January 1, 2014

Adm. Order No.: DFW 135-2013(Temp)

Filed with Sec. of State: 12-12-2013

Certified to be Effective: 1-1-14 thru 1-31-14

Notice Publication Date:

Rules Amended: 635-023-0095

Rules Suspended: 635-023-0095(T)

Subject: This amended rule opens a recreational white sturgeon fishery in the Bonneville Pool of the Columbia River, including adjacent tributaries, effective at 12:01 a.m. Wednesday, January 1, 2014. White Sturgeon between 38-54 inches in fork length may be retained. Modifications were made consistent with Joint State Action taken December 11, 2013 by Columbia River Compact agencies of the states of Oregon and Washington.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-023-0095

Sturgeon Season

(1) The **2014 Oregon Sport Fishing Regulations** provide requirements for the Columbia River Zone and the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2014 Oregon Sport Fishing Regulations**.

(2) Effective January 1 through January 19, retention of white sturgeon between 38-54 inches in fork length is allowed in the mainstem Columbia River from Bonneville Dam upstream to The Dalles Dam (Bonneville Pool) including adjacent tributaries.

(3) Effective January 1, 2014, the mainstem Columbia River from the mouth at Buoy 10 upstream to Bonneville Dam, including Oregon tributaries upstream to the mainline railroad bridges, is closed to the retention of white sturgeon.

Stat. Auth.: ORS 183.325, 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: DFW 129-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 2-28-05; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 22-2005(Temp), f. 4-1-05, cert. ef. 4-30-05 thru 7-31-05; DFW 50-2005(Temp), f. 6-3-05, cert. ef. 6-11-05 thru 11-30-05; DFW 60-2005(Temp), f. 6-21-05, cert. ef. 6-24-05 thru 12-21-05; DFW 65-2005(Temp), f. 6-30-05, cert. ef. 7-10-05 thru 12-31-05; DFW 76-2005(Temp), f. 7-14-05, cert. ef. 7-18-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 19-2006(Temp), f. 4-6-06, cert. ef. 4-8-06 thru 7-31-06; DFW 54-2006(Temp), f. 6-29-06, cert. ef. 7-1-06 thru 12-27-06; DFW 62-2006(Temp), f. 7-13-06, cert. ef. 7-24-06 thru 12-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 20-2007(Temp), f. 3-26-07, cert. ef. 3-28-07 thru 7-30-07; DFW 38-2007(Temp), f. & cert. ef. 5-31-07 thru 11-26-07; DFW 59-2007(Temp), f. 7-18-07, cert. ef. 7-29-07 thru 12-31-07; DFW 75-2007(Temp), f. 8-17-07, cert. ef. 8-18-07 thru 12-31-07; DFW 102-2007(Temp), f. 9-28-07, cert. ef. 10-1-07 thru 12-31-07; DFW 135-2007(Temp), f. 12-28-07, cert. ef. 1-1-08 thru 6-28-08; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 8-2008, f. & cert. ef. 2-11-08; DFW 23-2008(Temp), f. 3-12-08, cert. ef. 3-15-08 thru 9-10-08; DFW 28-2008(Temp), f. 3-24-08, cert. ef. 3-26-08 thru 9-10-08; DFW 72-2008(Temp), f. 6-30-08, cert. ef. 7-10-08 thru 12-31-08; DFW 78-2008(Temp), f. 7-9-08, cert. ef. 7-12-08 thru 12-31-08; DFW 86-2008(Temp), f. & cert. ef. 7-25-08 thru 12-31-08; DFW 148-2008(Temp), f. 12-19-08, cert. ef. 1-1-09 thru 6-29-09; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 18-2009, f. & cert. ef. 2-26-09; DFW 33-2009(Temp), f. 4-2-09, cert. ef. 4-13-09 thru 10-9-09; DFW 63-2009(Temp), f. 6-3-09, cert. ef. 6-6-09 thru 10-9-09; DFW 83-2009(Temp), f. 7-8-

ADMINISTRATIVE RULES

09, cert. ef. 7-9-09 thru 12-31-09; DFW 86-2009(Temp), f. 7-22-09, cert. ef. 7-24-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 13-2010(Temp), f. 2-16-10, cert. ef. 2-21-10 thru 7-31-10; DFW 19-2010(Temp), f. 2-26-10, cert. ef. 3-1-10 thru 8-27-10; DFW 34-2010, f. 3-16-10, cert. ef. 4-1-10; DFW 49-2010(Temp), f. 4-27-10, cert. ef. 4-29-10 thru 7-31-10; DFW 50-2010(Temp), f. 4-29-10, cert. ef. 5-6-10 thru 11-1-10; DFW 88-2010(Temp), f. 6-25-10, cert. ef. 6-26-10 thru 7-31-10; DFW 91-2010(Temp), f. 6-29-10, cert. ef. 8-1-10 thru 12-31-10; DFW 99-2010(Temp), f. 7-13-10, cert. ef. 7-15-10 thru 12-31-10; DFW 165-2010(Temp), f. 12-28-10, cert. ef. 1-1-11 thru 6-29-11; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 11-2011(Temp), f. 2-10-11, cert. ef. 2-11-1 thru 7-31-11; DFW 23-2011, f. & cert. ef. 3-21-11; DFW 26-2011(Temp), f. 4-5-11, cert. ef. 4-10-11 thru 9-30-11; DFW 74-2011(Temp), f. 6-24-11, cert. ef. 6-27-11 thru 7-31-11; DFW 87-2011(Temp), f. 7-8-11, cert. ef. 7-9-11 thru 7-31-11; DFW 96-2011(Temp), f. 7-20-11, cert. ef. 7-30-11 thru 12-31-11; DFW 129-2011(Temp), f. 9-15-11, cert. ef. 9-30-11 thru 12-31-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 1-2012(Temp), f. & cert. ef. 1-5-12 thru 7-2-12; DFW 10-2012, f. & cert. ef. 2-7-12; DFW 16-2012(Temp), f. 2-14-12, cert. ef. 2-18-12 thru 7-31-12; DFW 44-2012(Temp), f. 5-1-12, cert. ef. 5-20-12 thru 7-31-12; DFW 73-2012(Temp), f. 6-29-12, cert. ef. 7-1-12 thru 8-31-12; DFW 97-2012(Temp), f. 7-30-12, cert. ef. 8-1-12 thru 12-31-12; DFW 129-2012(Temp), f. 10-3-12, cert. ef. 10-20-12 thru 12-31-12; DFW 140-2012(Temp), f. 10-31-12, cert. ef. 11-4-12 thru 12-31-12; DFW 152-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 154-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 2-28-13; DFW 12-2013(Temp), f. 2-12-13, cert. ef. 2-28-13 thru 7-31-13; DFW 23-2013(Temp), f. 3-20-13, cert. ef. 4-1-13 thru 9-27-13; DFW 47-2013(Temp), f. 5-30-13, cert. ef. 6-14-13 thru 9-30-13; DFW 59-2013(Temp), f. 6-19-13, cert. ef. 6-21-13 thru 10-31-13; DFW 64-2013(Temp), f. 6-27-13, cert. ef. 6-29-13 thru 10-31-13; DFW 104-2013(Temp), f. 9-13-13, cert. ef. 10-19-13 thru 12-31-13; DFW 126-2013(Temp), f. 10-31-13, cert. ef. 11-12-13 thru 12-31-13; DFW 135-2013(Temp), f. 12-12-13, cert. ef. 1-1-14 thru 1-31-14

Department of Forestry Chapter 629

Rule Caption: Emergency Fire Cost Committee Rules Renumbering and Rewriting

Adm. Order No.: DOF 3-2013

Filed with Sec. of State: 12-9-2013

Certified to be Effective: 1-1-14

Notice Publication Date: 7-1-2013

Rules Adopted: 629-165-0005, 629-165-0010, 629-165-0200, 629-165-0210

Rules Repealed: 629-061-0025, 629-061-0040, 629-061-0045, 629-061-0050, 629-061-0075

Rules Ren. & Amend: 629-060-0000 to 629-160-0000, 629-060-0005 to 629-160-0005, 629-061-0000 to 629-165-0000, 629-061-0005 to 629-165-0100, 629-061-0015 to 629-165-0300, 629-061-0020 to 629-165-0305, 629-061-0035 to 629-165-0310, 629-061-0060 to 629-165-0315, 629-061-0065 to 629-165-0320

Subject: The proposed rules renumber the existing rules to add more flexibility in future rulemaking, eliminate rules that are no longer used by the committee, and reworks existing rules to mirror current operating and accounting procedures that have been instituted over time.

Rules Coordinator: Sabrina Perez—(503) 945-7210

629-160-0000

Administrative Rule Notification

Prior to the adoption, amendment, or repeal of any rule, the Emergency Fire Cost Committee shall give notice of the proposed adoption, amendment, or repeal:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days prior to the effective date of the rule.

(2) By mailing or e-mailing a copy of the notice to persons on the Emergency Fire Cost Committee's mailing list established pursuant to ORS 183.335(8), at least 28 days prior to the effective date of the rule.

(3) By e-mailing a copy of the notice to the legislators specified in ORS 183.335(15) at least 49 days prior to the effective date of the rule; and

(4) By mailing or e-mailing, or furnishing a copy of the notice to the following persons, organizations, and publications at least 28 days prior to the effective date:

- (a) Oregon Forest Industries Council;
- (b) Associated Oregon Loggers;
- (c) Association of Oregon Counties;
- (d) Oregon Forest Resource Institute;
- (e) Oregon Cattlemen's Association;
- (f) Oregon Farm Bureau Federation;
- (g) Oregon Sheep Growers Association;
- (h) Oregon Small Woodlands Association;
- (i) Oregon State Grange;
- (j) Clackamas-Marion Forest Protective Association;
- (k) Coos Forest Protective Association;
- (l) Douglas Forest Protective Association;

- (m) East Oregon Forest Protective Association;
 - (n) Eastern Lane Forest Protective Association;
 - (o) Klamath Forest Protective Association;
 - (p) Linn Forest Protective Association;
 - (q) Northwest Oregon Forest Protective Association;
 - (r) Rogue Forest Protective Association;
 - (s) Walker Range Forest Protective Association;
 - (t) Western Lane Forest Protective Association;
 - (u) West Oregon Forest Protective Association;
 - (v) Western Oregon Livestock Association;
 - (w) Governor's Office, Natural Resource Advisor;
 - (x) Legislative Fiscal Office;
 - (y) Oregon Department of Administrative Services (Risk Management & BAM);
 - (z) Oregon Department of Revenue;
 - (aa) The Associated Press; and
 - (bb) The Capitol Press Room.
- Stat. Auth.: ORS 321, 477 & 477.770
Stats. Implemented: ORS 183.335, 183.341, 477.440 - 477.460 & 477.750 - 477.775
Hist.: FB 5-1982, f. & ef. 6-16-82; FB 1-1995, f. & cert. ef. 1-12-95; Renumbered from 629-060-0000 by DOF 3-2013, f. 12-9-13, cert. ef. 1-1-14

629-160-0005

Model Rules of Procedure

Pursuant to ORS 183.341, the Emergency Fire Cost Committee adopts the Attorney General's Model Rules of Procedure, effective January 31, 2012.

Stat. Auth.: ORS 321, 477 & 477.770

Stats. Implemented: ORS 183.335, 183.341, 477.440 - 477.460 & 477.750 - 477.775

Hist.: FB 4-1982, f. & ef. 4-29-82; FB 2-1984, f. & ef. 1-6-84; FB 4-1986, f. & ef. 6-17-86; FB 1-1989, f. & cert. ef. 1-18-89; FB 1-1995, f. & cert. ef. 1-12-95; Renumbered from 629-060-0005 by DOF 3-2013, f. 12-9-13, cert. ef. 1-1-14

629-165-0000

Definitions

The definitions set forth in ORS 477.001 are made a part of this division by this reference; and the following definitions also apply:

(1) "Administrator" means a staff member of the State Forestry Department designated by the State Forester to act as secretary of the committee and to carry out the provisions of ORS 477.440 to 477.460 in such manner as the committee shall direct.

(2) "Committee" means the Emergency Fire Cost Committee established pursuant to ORS 477.440.

(3) "District" means a forest protection district pursuant to ORS 477.225.

(4) "Emergency fire" means a fire that due to the specific circumstances of the fire, requires more suppression resources to control and extinguish than the district can reasonably provide within the approved district budget, based on declared fire season resource levels, whether or not the fire occurs during a declared fire season (see also OAR 629-165-0005).

(5) "Emergency fire suppression costs" means those fire suppression costs attributable to an emergency fire that exceed:

(a) The costs of the fire suppression response provided by the approved district budget as further described in OAR 629-165-0005; and

(b) An additional per fire or per day cost of suppression further defined in OAR 629-165-0010.

(6) "Fiscal year" means the period beginning July 1 of any year and ending June 30 of the next year.

(7) "Oregon Forest Land Protection Fund (OFLPF or the fund)" means that account established in the State Treasury as a trust fund for the purpose of equalizing emergency fire suppression costs and other listed purposes pursuant to ORS 477.750 to 477.775.

(8) "Regular fire suppression costs" means those fire suppression costs which are annually budgeted for and incurred by a forest protection district pursuant to ORS 477.205 to 477.281.

Stat. Auth.: ORS 321, 477 & 477.770

Stats. Implemented: ORS 183.335, 183.341, 477.440 - 477.460 & 477.750 - 477.775

Hist.: FB 21, f. 9-25-69; FB 1-1981, f. 6-10-81, ef. 7-1-81, Renumbered from 629-044-0100; FB 1-1995, f. & cert. ef. 1-12-95; FB 3-1996, f. & cert. ef. 3-13-96; Renumbered from 629-061-0000 by DOF 3-2013, f. 12-9-13, cert. ef. 1-1-14

629-165-0005

Emergency Fires

As defined in OAR 629-165-0000 (4), an emergency fire is a fire that due to the specific circumstances of the fire, requires more suppression resources to control and extinguish the fire than the district can reasonably provide within the approved district budget based on declared fire season resource levels, whether or not the fire occurs during a declared fire season. The following are examples of emergency fires:

ADMINISTRATIVE RULES

(1) A fire occurs in August, when the district is at full strength. The pre-planned dispatch for the fire at this time and place (as an example) specifies two engines, six persons and a district dozer. If these forces are inadequate to suppress the fire and additional forces must be hired, it becomes an emergency fire;

(2) If a fire in the same location as in section (1) occurs in February, when the readiness resources are substantially less, the district must still suppress the fire. Hired resources from cooperators will normally be used to supplement limited district resources. The fire becomes an emergency fire when hired and regular district resources exceed the resources equivalent to the fire season pre-planned dispatch of two engines, six persons and a dozer;

(3) An emergency fire situation may occur when there are multiple fires in a district, even though none of the fires individually have exceeded the planned dispatch level, if the total effort of all the fires exceeds the district's budgeted resource level. This situation most frequently occurs during and after widespread lightning events. Additional resources, hired to supplement regular forces in the described multiple fire situation, are emergency fire resources eligible for payment from the OFLPP.

Stat. Auth.: ORS 321, 477 & 477.770

Stats. Implemented: ORS 183.335, 183.341, 477.440 - 477.460 & 477.750 - 477.775

Hist.: DOF 3-2013, f. 12-9-13, cert. ef. 1-1-14

629-165-0010

Additional Amount Not Considered Emergency Fire Suppression Costs

(1) Notwithstanding OAR 629-165-0005, it is a policy of the committee that a district is expected to pay an amount of fire suppression costs in addition to the pre-planned dispatch, before any costs are considered emergency fire suppression costs. This additional amount in most cases will be \$25,000 per day or per fire as follows:

(a) If multiple fires occur on the same day within a district, only one additional amount of \$25,000 may be applied to the sum of the costs of all the fires that began on that day.

(b) If any individual fire or group of fires that began on the same day (or from the same lightning storm that continues into a second day, at the discretion of the committee) burns past midnight, or the suppression action continues for multiple days, only one additional amount of \$25,000 may be applied to the sum of the costs of those fires.

(c) If one fire or a group of fires begin on one day and suppression action continues for multiple days, and then a new fire or group of fires begin on a different day, an additional amount of \$25,000 may be applied to each day that new fires are ignited.

(2) The additional amount described in section (1) may be modified or waived by the committee if conditions so warrant. Conditions that may warrant modification or waiver include, but are not limited to:

(a) The unencumbered balance of the fund is determined to be in excess of the reserve base established in ORS 477.760.

(b) A district requesting waiver has over-expended the regular protection budget for the year in which the waiver request is made.

(3) If the additional amounts described in section (1) of this rule directly result in an increase in a district's annual budget greater than fifteen cents per acre on timberland or six cents on grazing land, the committee may waive that part in excess of these amounts. It is the committee's intent that the maximum effect of section (1) of this rule on a district budget will be limited to an additional fifteen cents per acre on timberland and six cents per acre on grazing land.

Stat. Auth.: ORS 321, 477 & 477.770

Stats. Implemented: ORS 183.335, 183.341, 477.440 - 477.460 & 477.750 - 477.775

Hist.: DOF 3-2013, f. 12-9-13, cert. ef. 1-1-14

629-165-0100

Deductible Amount per Acre

Emergency fire suppression costs are subject to a deductible amount based on protected acres in the district. The committee shall establish the deductible amount for each district on or before January 15 of each year. The deductible amount shall be an amount for each acre covered by the timber budget and an amount for each acre covered by the grazing budget established under ORS 477.230, but may not exceed the limit established under 477.770.

Stat. Auth.: ORS 321, 477 & 477.770

Stats. Implemented: ORS 183.335, 183.341, 477.440 - 477.460 & 477.750 - 477.775

Hist.: FB 21, f. 9-25-69; FB 2-1978, f. 1-6-78, ef. 7-1-78; FB 1-1981, f. 6-10-81, ef. 7-1-81; FB 6-1982, f. 6-16-82, ef. 7-1-82, Renumbered from 629-044-0105; FB 1-1995, f. & cert. ef. 1-12-95; FB 3-1996, f. & cert. ef. 3-13-96; FB 5-1996, f. & cert. ef. 6-13-96; Renumbered from 629-061-0005 by DOF 3-2013, f. 12-9-13, cert. ef. 1-1-14

629-165-0200

Unencumbered Balance

(1) ORS 477.760(1) requires the committee, on or about the last day of February of each year, to meet and determine the unencumbered balance of the fund as of February 16 of the same year.

(2) The meeting to determine the unencumbered balance will normally occur at the regularly scheduled meeting of the committee prior to the Board of Forestry meeting in early March.

(3) The unencumbered balance of the fund shall be calculated as the actual cash balance in the state treasury on February 16; less the best available estimate of eligible suppression cost claims for fires occurring before February 16, but not yet paid; less estimated administrative expenses through February 16, but not yet paid; less any other anticipated payments known to the committee at that time due for expenses committed prior to February 16, but not yet paid.

Stat. Auth.: ORS 321, 477 & 477.770

Stats. Implemented: ORS 183.335, 183.341, 477.440 - 477.460 & 477.750 - 477.775

Hist.: DOF 3-2013, f. 12-9-13, cert. ef. 1-1-14

629-165-0210

Transfer of Funds from State Treasurer

(1) Pursuant to ORS 477.760 (2), the committee is authorized to request a transfer of funds from the State Treasurer to the OFLPP at any time and in any amount that does not cause the fund to exceed the reserve base specified in ORS 477.760 (1).

(2) To minimize the effect of repayment of transfers on the landowner community, it is the committee's intent that the amount of transfer requested should be limited to an amount by which known and anticipated claims will exceed the sum of the cash balance in the fund and the anticipated revenues for the remainder of the fiscal year.

(3) If the monies in the OFLPP are inadequate to ensure repayment of the transfer and the interest thereon, the State Forester must increase the assessments, surcharge and harvest tax in equal proportions for the ensuing fiscal and calendar years, respectively, adequate to make repayment of the transfer:

(A) The increase in assessments in the next fiscal year will apply to:

(a) The surcharge on improved lots referred to in ORS 477.277;

(B) The OFLPP portion of the minimum assessment referred to in ORS 477.295; and

(C) The acreage assessments referred to in ORS 477.880.

(b) The increase in taxes in the next calendar year will apply to the forest products harvest tax referred to in ORS 321.015(2).

(4) Negotiations for and approval of any transfer should be completed as soon as practicable after February 16 of any year that a transfer is necessary, to allow the State Forester sufficient time to meet the requirements of ORS 477.760, requiring increases to assessment, surcharge and harvest tax rates for the ensuing fiscal and calendar years, respectively.

Stat. Auth.: ORS 321, 477 & 477.770

Stats. Implemented: ORS 183.335, 183.341, 477.440 - 477.460 & 477.750 - 477.775

Hist.: DOF 3-2013, f. 12-9-13, cert. ef. 1-1-14

629-165-0300

Evidence of Necessity

When payment is claimed from the fund for emergency fire suppression costs incurred on a fire where an owner, operator or other person has an obligation to pay those costs pursuant to ORS 477.068, 477.085 or 477.120, the district warden must provide evidence to the administrator supporting the necessity of advancing payment, pending ultimate resolution. Evidence which may be acceptable to the administrator must include, but is not limited to:

(1) A statement signed by the district warden stating the entity responsible for fire suppression costs has refused to accept responsibility or is unable to pay fire costs;

(2) A notification to the administrator that fire cost recovery proceedings have been initiated against an owner, operator or other person that has an obligation to pay fire suppression costs;

(3) A statement from an authorized State Forester's staff member or by an assistant attorney general that fire suppression costs are deemed uncollectible. This statement must include the reason for the decision; or

(4) A statement by a district warden that recovery of fire costs appears to be assured, but delays in the recovery process will make it necessary to support the district's financial resources until costs can be processed, the responsible party is billed and payment is received.

Stat. Auth.: ORS 321, 477 & 477.770

Stats. Implemented: ORS 183.335, 183.341, 477.440 - 477.460 & 477.750 - 477.775

Hist.: FB 21, f. 9-25-69, Renumbered from 629-044-0115; FB 1-1995, f. & cert. ef. 1-12-95; Renumbered from 629-061-0015 by DOF 3-2013, f. 12-9-13, cert. ef. 1-1-14

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629-165-0305

Qualifications for Payment

(1) The administrator must pay only those emergency fire suppression costs as described in this rule, incurred by a district during the fiscal year, if the district has first expended for similar or other emergency fire suppression costs the deductible amount described in OAR 629-165-0100.

(2) When a fire originates in one fiscal year and continues burning in a subsequent fiscal year, all emergency fire suppression costs for that fire shall be included in the expenditures for the year in which the fire started.

(3) Emergency fire suppression costs eligible for payment by the OFLPP include, but are not limited to labor, services, transportation, supplies, reconditioning and rental equipment, and expenses incurred for the recovery of fire suppression costs.

(4) Emergency fire suppression costs, where applicable, are based on the wage rates and equipment rental rates approved by the State Forester.

(5) Notwithstanding section (3) of this rule, the committee may further limit qualifying emergency fire suppression costs, by publishing its qualifications in a form readily available to the districts, prior to the beginning of the fiscal year in which expenses are incurred.

Stat. Auth.: ORS 321, 477 & 477.770

Stats. Implemented: ORS 183.335, 183.341, 477.440 - 477.460 & 477.750 - 477.775

Hist.: FB 21, f. 9-25-69; FB 24, f. 6-11-71, ef. 7-11-71, Renumbered from 629-044-0120; FB 1-1995, f. & cert. ef. 1-12-95; Renumbered from 629-061-0020 by DOF 3-2013, f. 12-9-13, cert. ef. 1-1-14

629-165-0310

Payments for Fire Suppression Costs

(1) The administrator must pay to any district an amount from the fund equal to the emergency fire suppression costs such district has qualified for under OAR 629-165-305. The payment shall be 100 percent of the itemized certified costs unless otherwise determined by the committee.

(2) In the event the administrator makes a payment under section (1) of this rule that is less than 100 percent of the itemized and certified emergency fire suppression costs, final payment must not be made until all emergency fire suppression cost claims against the fund have been submitted for the subject fiscal year.

(3) Each payment under section (1) of this rule is a conditional payment until:

(a) All emergency fire suppression cost claims against the fund have been submitted for the subject fiscal year;

(b) The administrator has audited the claims; and

(c) The committee has approved the audited claims.

(4) The district must reimburse the fund for any conditional payments that are disapproved by the committee.

(5) In addition to sections (1) to (3) of this rule, any payment made by the administrator to a claimant, shall be conditioned on proceedings being brought to recover fire suppression costs from parties liable thereto under ORS Chapter 477 or other law.

Stat. Auth.: ORS 321, 477 & 477.770

Stats. Implemented: ORS 183.335, 183.341, 477.440 - 477.460 & 477.750 - 477.775

Hist.: FB 21, f. 9-25-69; Renumbered from 629-044-0135; Renumbered from 629-061-0035 by DOF 3-2013, f. 12-9-13, cert. ef. 1-1-14

629-165-0315

Collection — Approval

If a district warden or other representative of the State Forester initiates collection of fire suppression costs from a responsible party under ORS 477.068, 477.085 or 477.120, prior to acceptance of any payment for such suppression costs, the district warden or forester must first secure the approval of the administrator, if:

(1) Such fire suppression costs include moneys which have been advanced by the administrator to a district from the fund;

(2) Such settlement will affect the amount otherwise payable from the fund to a district; or

(3) Such settlement will affect the amount otherwise reimbursable by a district to the fund.

Stat. Auth.: ORS 321, 477 & 477.770

Stats. Implemented: ORS 183.335, 183.341, 477.440 - 477.460 & 477.750 - 477.775

Hist.: FB 21, f. 9-25-69; FB 6-1982, f. 6-16-82, ef. 7-1-82, Renumbered from 629-044-0160; Renumbered from 629-061-0060 by DOF 3-2013, f. 12-9-13, cert. ef. 1-1-14

629-165-0320

Reimbursement to Account

Whenever a district or the forester receives payment pursuant to ORS 477.068, 477.085 or 477.120, the district shall retain an amount equal to the emergency fire suppression costs not paid by the administrator from the OFLPP, but eligible for payment, and reimburse the fund with the remainder, if any. Any such reimbursement shall in no event exceed the amount paid by the respondent.

Stat. Auth.: ORS 321, 477 & 477.770

Stats. Implemented: ORS 183.335, 183.341, 477.440 - 477.460 & 477.750 - 477.775

Hist.: FB 21, f. 9-25-69, Renumbered from 629-044-0165; Renumbered from 629-061-0065 by DOF 3-2013, f. 12-9-13, cert. ef. 1-1-14

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

Rule Caption: Medicaid Home and Community-Based Services

Adm. Order No.: SPD 44-2013

Filed with Sec. of State: 12-13-2013

Certified to be Effective: 12-15-13

Notice Publication Date: 11-1-2013

Rules Amended: 411-001-0510, 411-030-0070, 411-030-0100, 411-040-0000, 411-045-0010, 411-045-0050, 411-048-0150, 411-048-0160, 411-048-0170, 411-065-0000, 411-070-0033

Rules Repealed: 411-001-0510(T), 411-030-0070(T), 411-030-0100(T), 411-040-0000(T), 411-045-0010(T), 411-045-0050(T), 411-048-0150(T), 411-048-0160(T), 411-048-0170(T), 411-065-0000(T), 411-070-0033(T)

Subject: The Department of Human Services is permanently amending the rules for Aging and People with Disabilities in OAR chapter 411 to make permanent the changes adopted by temporary rule that became effective on July 1, 2013 as a result of a change in Medicaid funding for community-based services.

Rules Coordinator: Christina Hartman—(503) 945-6398

411-001-0510

Lay Representation in Contested Case Hearings

(1) Subject to the approval of the Attorney General, an officer or employee of the Department of Human Services (Department) is authorized to appear on behalf of the Department in the following types of hearings conducted by the Office of Administrative Hearings:

(a) Eligibility for services available through a waiver or state plan administered by the Department's Aging and People with Disabilities (APD) or Developmental Disabilities (DD), including but not limited to the level or amount of benefits, and effective date;

(b) Eligibility for medical benefits, the level and amount of benefits, and effective date;

(c) Overpayments related to waived or state plan service benefits or medical benefits;

(d) Suspension, reduction, or denial of medical assistance services, prior authorizations, or medical management decisions; and

(e) Consumer-employed provider matters, including but not limited to provider enrollment or denial of enrollment, overpayment determinations, audits, and sanctions.

(2) A Department officer or employee acting as the Department's representative may not make legal argument on behalf of the Department.

(a) "Legal argument" includes arguments on:

(A) The jurisdiction of the Department to hear the contested case;

(B) The constitutionality of a statute or rule or the application of a constitutional requirement to the Department; and

(C) The application of court precedent to the facts of the particular contested case proceeding.

(b) "Legal argument" does not include presentation of motions, evidence, examination and cross-examination of witnesses, or presentation of factual arguments or arguments on:

(A) The application of the statutes or rules to the facts in the contested case;

(B) Comparison of prior actions of the Department in handling similar situations;

(C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case;

(D) The admissibility of evidence; and

(E) The correctness of procedures being followed in the contested case hearing.

(3) When an officer or employee appears on behalf of the Department, the administrative law judge shall advise the Department's representative of the manner in which objections may be made and matters preserved for appeal. Such advice is of a procedural nature and does not change applicable law on waiver or the duty to make timely objection.

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(4) If the administrative law judge determines that statements or objections made by the Department representative appearing under section (1) of this rule involve legal argument as defined in this rule, the administrative law judge shall provide reasonable opportunity for the Department representative to consult the Attorney General and permit the Attorney General to present argument at the hearing or to file written legal argument within a reasonable time after conclusion of the hearing.

(5) The Department is subject to the Code of Conduct for Non-Attorney Representatives at Administrative Hearings, which is maintained by the Oregon Department of Justice and available at <http://www.doj.state.or.us>. A Department representative appearing under section (1) of this rule must read and be familiar with the Code of Conduct for Non-Attorney Representatives at Administrative Hearings.

(6) When a Department officer or employee represents the Department in a contested case hearing, requests for admission and written interrogatories are not permitted.

Stat. Auth.: ORS 409.050

Stats Implemented: ORS 183.452 & 409.010

Hist.: SPD 6-2013, f. & cert. ef. 4-2-13; SPD 14-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 44-2013, f. 12-13-13, cert. ef. 12-15-13

411-030-0070

Maximum Hours of Service

(1) LEVELS OF ASSISTANCE FOR DETERMINING SERVICE PLAN HOURS.

(a) "Minimal Assistance" means an individual is able to perform the majority of an activity, but requires some assistance from another person.

(b) "Substantial Assistance" means an individual is able to perform only a small portion of the tasks that comprise an activity without assistance from another person.

(c) "Full Assistance" means an individual needs assistance from another person through all phases of an activity, every time the activity is attempted.

(2) MAXIMUM MONTHLY HOURS FOR ADL.

(a) The planning process uses the following limitations for time allotments for ADL tasks. Hours authorized must be based on the service needs of an individual. Case managers may authorize up to the amount of hours identified in these assistance levels (minimal, substantial, or full assist).

(A) Eating:

- (i) Minimal assistance, 5 hours;
- (ii) Substantial assistance, 20 hours;
- (iii) Full assistance, 30 hours.

(B) Dressing/Grooming:

- (i) Minimal assistance, 5 hours;
- (ii) Substantial assistance, 15 hours;
- (iii) Full assistance, 20 hours.

(C) Bathing and Personal Hygiene:

- (i) Minimal assistance, 10 hours;
- (ii) Substantial assistance, 15 hours;
- (iii) Full assistance, 25 hours.

(D) Mobility:

- (i) Minimal assistance, 10 hours;
- (ii) Substantial assistance, 15 hours;
- (iii) Full assistance, 25 hours.

(E) Elimination (Toileting, Bowel, and Bladder):

- (i) Minimal assistance, 10 hours;
- (ii) Substantial assistance, 20 hours;
- (iii) Full assistance, 25 hours.

(F) Cognition/Behavior:

- (i) Minimal assistance, 5 hours;
- (ii) Substantial assistance, 10 hours;
- (iii) Full assistance, 20 hours.

(b) Service plan hours for ADL may only be authorized for an individual if the individual requires assistance (minimal, substantial, or full assist) from another person in that activity of daily living as determined by a service assessment applying the parameters in OAR 411-015-0006.

(c) For households with two or more eligible individuals, each individual's ADL service needs must be considered separately. In accordance with section (3)(c) of this rule, authorization of IADL hours is limited for each additional individual in the home.

(d) Hours authorized for ADL are paid at hourly rates in accordance with the rate schedule. The Independent Choices Program cash benefit is based on the hours authorized for ADLs paid at the hourly rates. Participants of the Independent Choices Program may determine their own employee provider pay rates.

(3) MAXIMUM MONTHLY HOURS FOR IADL.

(a) The planning process uses the following limitations for time allotments for IADL tasks. Hours authorized must be based on the service needs of an individual. Case managers may authorize up to the amount of hours identified in these assistance levels (minimal, substantial, or full assist).

(A) Medication and Oxygen Management:

- (i) Minimal assistance, 2 hours;
- (ii) Substantial assistance, 4 hours;
- (iii) Full assistance, 6 hours.

(B) Transportation or Escort Assistance:

- (i) Minimal assistance, 2 hours;
- (ii) Substantial assistance, 3 hours;
- (iii) Full assistance, 5 hours.

(C) Meal Preparation:

(i) Minimal assistance prior to January 1, 2012:

- (I) Breakfast, 4 hours;
- (II) Lunch, 4 hours;
- (III) Supper, 8 hours.

(ii) Minimal assistance effective January 1, 2012:

- (I) Breakfast, 3 hours;
- (II) Lunch, 3 hours;
- (III) Supper, 7 hours.

(iii) Substantial assistance prior to January 1, 2012:

- (I) Breakfast, 8 hours;
- (II) Lunch, 8 hours;
- (III) Supper, 16 hours.

(iv) Substantial assistance effective January 1, 2012:

- (I) Breakfast, 7 hours;
- (II) Lunch, 7 hours;
- (III) Supper, 14 hours.

(v) Full assistance prior to January 1, 2012:

- (I) Breakfast, 12 hours;
- (II) Lunch, 12 hours;
- (III) Supper, 24 hours.

(vi) Full assistance effective January 1, 2012:

- (I) Breakfast, 10 hours;
- (II) Lunch, 10 hours;
- (III) Supper, 21 hours.

(D) Shopping:

- (i) Minimal assistance, 2 hours;
- (ii) Substantial assistance, 4 hours;
- (iii) Full assistance, 6 hours.

(E) Housecleaning:

- (i) Minimal assistance:
 - (I) Prior to January 1, 2012, 5 hours.
 - (II) Effective January 1, 2012, 4 hours.
- (ii) Substantial assistance:

- (I) Prior to January 1, 2012, 10 hours.
- (II) Effective January 1, 2012, 9 hours.

(iii) Full assistance:

- (I) Prior to January 1, 2012, 20 hours.
- (II) Effective January 1, 2012, 18 hours.

(b) Rates are paid in accordance with the rate schedule.

(A) When a live-in employee is present, IADL hours may be paid at less than minimum wage according to the Fair Labor Standards Act.

(B) The Independent Choices Program cash benefit is based on the hours authorized for IADL tasks paid at the hourly rates. Participants of the Independent Choices Program may determine their own employee provider pay rates.

(c) When two or more individuals eligible for IADL task hours live in the same household, the assessed IADL need of each individual must be calculated. Payment is made for the highest of the allotments and a total of four additional IADL hours per month for each additional individual to allow for the specific IADL needs of the other individuals.

(d) Service plan hours for IADL tasks may only be authorized for an individual if the individual requires assistance (minimal, substantial, or full assist) from another person in that IADL task as determined by a service assessment applying the parameters in OAR 411-015-0007.

(4) TWENTY-FOUR HOUR AVAILABILITY.

(a) Payment for 24-hour availability is authorized only when an individual employs a live-in homecare worker or Independent Choices Program employee provider and requires 24-hour availability due to the following:

(A) The individual requires assistance with ADL or IADL tasks at unpredictable times throughout most 24-hour periods; and

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(B) The individual requires minimal, substantial, or full assistance with ambulation and requires assistance with transfer (as defined in OAR 411-015-0006); or

(C) The individual requires full assistance in transfer or elimination (as defined in OAR 411-015-0006); or

(D) The individual requires full assist in at least three of the eight components of cognition/behavior (as defined in OAR 411-015-0006).

(b) The number of hours allowed per month shall have the following maximums. Hours authorized are based on the service needs of an individual. Case managers may authorize up to the amount of hours identified in these assistance levels (minimal, substantial, or full assist).

(A) Minimal assistance — 60 hours. Minimal assistance hours may be authorized when an individual requires one of these assessed needs as defined in OAR 411-015-0006:

(i) Full assist in cognition; or

(ii) Full assist in toileting or bowel or bladder.

(B) Substantial assistance — 110 hours. Substantial assistance hours may be authorized when an individual requires these assessed needs as defined in OAR 411-015-0006:

(i) Assist in transfer; and

(ii) Assist in ambulation; and

(iii) Full assist in cognition; or

(iv) Full assist in toileting or bowel or bladder.

(C) Full assistance — 159 hours. Full assistance hours may be authorized when:

(i) The authorized provider is unable to get at least five continuous hours of sleep in an eight hour period during a 24-hour work period; and

(ii) The eligible individual requires the following assessed needs as defined in OAR 411-015-0006:

(I) Full assist in transfer; and

(II) Assist in mobility; or

(III) Full assist in toileting or bowel or bladder; or

(IV) Full assist in cognition.

(c) Service plans that include full-time live-in homecare workers or Independent Choices Program employee providers must include a minimum of 60 hours per month of 24-hour availability.

(A) When a live-in homecare worker or Independent Choices Program employee provider is employed less than full time, the hours must be pro-rated.

(B) Full-time means the live-in homecare worker is providing services to the consumer-employer seven days per week throughout a calendar month.

(d) Rates for 24-hour availability are in accordance with the rate schedule and paid at least minimum wage according to the Fair Labor Standards Act and ORS 653.020.

(e) Twenty-four hour availability assumes the homecare worker is available to address the service needs of an individual as they arise throughout a 24-hour period. A homecare worker who engages in employment outside the eligible individual's home or building during the work periods the homecare worker is on duty, is not considered available to meet the service needs of the individual.

(5) A provider may not receive payment from the Department for more than the total amount authorized by the Department on the service plan authorization form under any circumstances. All service payments must be prior-authorized by a case manager.

(6) AUTHORIZED HOURS ARE SUBJECT TO THE AVAILABILITY OF FUNDS. Case managers must assess and utilize as appropriate, natural supports, cost-effective assistive devices, durable medical equipment, housing accommodations, and alternative service resources (as defined in OAR 411-015-0005) to reduce an individual's reliance on paid in-home services hours.

(7) The Department may authorize paid in-home services only to the extent necessary to supplement potential or existing resources within an individual's natural supports system.

(8) Payment by the Department for Medicaid home and community-based services are only made for the tasks described in this rule as ADL, IADL tasks, and 24-hour availability. Services must be authorized to meet the needs of an eligible individual and may not be provided to benefit an entire household.

(9) EXCEPTIONS TO MAXIMUM HOURS OF SERVICE.

(a) To meet an extraordinary ADL service need that has been documented, the hours authorized for ADL may exceed the full assistance hours (described in section (2) of this rule) as long as the total number of ADL hours in the service plan does not exceed 145 hours per month.

(b) Monthly service payments that exceed 145 ADL hours per month may be approved by the Department when the exceptional payment criteria identified in OAR 411-027-0020 and 411-027-0050 is met.

(c) Monthly service plans that exceed 145 ADL, 76 IADL, and 159 24-hour availability hours per month for a live-in homecare worker or Independent Choices Program employee provider, or that exceed the equivalent monthly service payment for an hourly services plan, may be approved by the Department when the exceptional payment criteria identified in OAR 411-027-0020 and 411-027-0050 is met.

(d) As long as the total number of IADL task hours in the service plan does not exceed 76 hours per month and the service need is documented, the hours authorized for IADL tasks may exceed the hours for full assistance (as described in section (3) of this rule) for the following tasks and circumstances:

(A) Housekeeping based on medical need (such as immune deficiency);

(B) Short-term extraordinary housekeeping services necessary to reverse unsanitary conditions that jeopardize the health of an individual; or

(C) Extraordinary IADL needs in medication management or service-related transportation.

(e) Monthly service plans that exceed 76 hours per month in IADL tasks may be approved by the Department when an individual meets the exceptional payment criteria identified in OAR 411-027-0020 and 411-027-0050.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 409.050, 410.070 & 410.090

Stats. Implemented: ORS 410.010, 410.020 & 410.070

Hist.: SSD 4-1993, f. 4-30-93, cert. ef. 6-1-93; SSD 6-1994, f. & cert. ef. 11-15-94; SDDSD 8-1999(Temp), f. & cert. ef. 10-15-99 thru 4-11-00; SDDSD 3-2000, f. 4-11-00, cert. ef. 4-12-00; SPD 14-2003, f. & cert. ef. 7-31-03; SPD 15-2003 f. & cert. ef. 9-30-03; SPD 15-2004, f. 5-28-04, cert. ef. 6-7-04; SPD 15-2004, f. 5-28-04, cert. ef. 6-7-04; SPD 18-2005(Temp), f. 12-20-05, cert. ef. 12-21-05 thru 6-1-06; SPD 20-2006, f. 5-26-06, cert. ef. 6-1-06; SPD 4-2008(Temp), f. & cert. ef. 4-1-08 thru 9-24-08; SPD 13-2008, f. & cert. ef. 9-24-08; SPD 15-2008, f. 12-26-08, cert. ef. 1-1-09; SPD 24-2011(Temp), f. 11-15-11, cert. ef. 1-1-12 thru 6-29-12; SPD 6-2012, f. 5-31-12, cert. ef. 6-1-12; SPD 14-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 44-2013, f. 12-13-13, cert. ef. 12-15-13

411-030-0100

Independent Choices Program

(1) The Independent Choices Program (ICP) is an In-Home Services Program that empowers participants to self-direct their own service plans and purchase goods and services that enhance independence, dignity, choice, and well-being.

(2) The ICP is limited to a maximum of 2,600 participants.

(a) The Department establishes and maintains a waiting list for individuals eligible for in-home services requesting ICP after the ICP has reached its maximum.

(b) The Department enters names on the waiting list according to the date submitted by the Department/AAA office.

(c) As vacancies occur, eligible individuals on the waiting list are offered the ICP according to his or her place on the waiting list.

(d) Individuals on the waiting list may receive services through other appropriate Department programs for which they are eligible.

(3) INITIAL ELIGIBILITY REQUIREMENTS.

(a) To be eligible for the ICP an individual must:

(A) Meet all requirements for in-home services as described in these rules;

(B) Develop a service plan and budget to meet the needs identified in his or her CA/PS assessment;

(C) Sign the ICP participation agreement;

(D) Have or be able to establish a checking account;

(E) Provide evidence of a stable living situation for the past three months; and

(F) Demonstrate the ability to manage money as evidenced by timely and current utility and housing payments.

(b) If a participant is unable to direct and purchase his or her own in-home services, the participant must have a representative to act on the participant's behalf. The "representative" is the person assigned by the participant to act as the participant's decision maker in matters pertaining to the ICP service plan and service budget. A representative must:

(A) Complete a background check pursuant to OAR chapter 407, division 007 and receive a final fitness determination of approval; and

(B) Sign and adhere to the "Independent Choices Program Representative Agreement" on behalf of the participant.

(c) If a participant is unable to manage ICP cash payment accounting, tax, or payroll responsibilities and does not have a representative, the participant must arrange and purchase the ongoing services of a fiscal inter-

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mediary, such as an accountant, bookkeeper, or equivalent financial services.

(A) A participant, or the participant's representative who has met the eligibility criteria in subsection (b) of this section, may also choose to use a fiscal intermediary.

(B) The participant is responsible for any fees or payment to the fiscal intermediary and may allocate the fees or payment from discretionary funds or other non-ICP funds.

(4) **DISENROLLMENT CRITERIA.** Participants may be disenrolled from the ICP voluntarily or involuntarily. Participants who are disenrolled from the ICP may not reapply for six months. After the six month disenrollment period, an individual may re-enroll and must meet all ICP eligibility requirements. If the ICP enrollment cap has been reached, participants who were disenrolled are added to the waiting list.

(a) **VOLUNTARY DISENROLLMENT.** Participants or representatives must provide notice to the Department of intent to discontinue participation in the ICP. The participant or the representative must meet with the Department to reconcile remaining ICP cash payment either within 30 days of the date of disenrollment or before the termination date, whichever is sooner.

(b) **INVOLUNTARY DISENROLLMENT.** The participant may be involuntarily disenrolled from the ICP when the participant, representative, or employee provider does not adequately meet the participant's service needs or carry out the following ICP responsibilities:

(A) Non-payment of employee's wages, as stated in the service budget.

(B) Failure to maintain the participant's health and well-being by obtaining personal care as evidenced by:

(i) Decline in functional status due to the failure to meet the participant's needs; or

(ii) Substantiated complaints of self-neglect, neglect, or other abuse on the part of the employee provider or representative.

(C) Failure to purchase goods and services according to the participant's service plan;

(D) Failure to comply with the legal or financial obligations as an employer;

(E) Failure to maintain a separate ICP checking account or commingling ICP cash benefit with other assets;

(F) Inability to manage the cash benefit as evidenced by two or more incidents of overdrafts of the participant's ICP checking account during the last cash benefit review period;

(G) Failure to deposit monthly service liability payment into the ICP checking account;

(H) Failure to maintain an individualized back-up plan (as part of the participant's service plan) resulting in a negative consequence;

(I) Failure to sign or follow the ICP Participation Agreement; and

(J) Failure to select a representative within 30 days if a participant needs a representative and does not have one.

(5) **INTERRUPTION OF SERVICES.** The ICP cash benefit is terminated when a participant is absent from the home for longer than 30 days due to illness or medical treatment. The cash benefit may resume upon the participant's return to the home, providing ICP eligibility criteria is met.

(6) **SELECTION OF EMPLOYEE PROVIDERS.**

(a) The participant or representative carries full responsibility for locating, screening, interviewing, hiring, training, paying, and terminating employee providers. The participant or representative must comply with Immigration and Customs Enforcement laws and policies.

(b) The participant or representative must assure the employee provider's ability to perform or assist with ADL, IADL, and twenty-four hour availability needs.

(c) Employee providers must complete a background check pursuant to OAR chapter 407, division 007. If a record of a potentially disqualifying crime is revealed, the participant or representative may employ the provider at the participant's or representative's discretion.

(d) A representative may not be an employee provider regardless of relationship to the participant.

(e) A participant's relative may be employed as an employee provider.

(7) **CASH BENEFIT.**

(a) The cash benefit is determined based on the participant's CA/PS assessment of need, service plan, level of assistance standards in OAR 411-030-0070, and natural supports.

(b) The cash benefit is calculated by adding the ADL task hours, the IADL task hours, and the twenty-four hour availability hours that the participant is eligible for as determined in the CA/PS assessment, at the rates according to the Department's rate schedule.

(c) The following services, which are approved by the case manager and paid for by the Department, are excluded from the ICP cash benefit:

(A) Long-term care community nursing;

(B) Contracted community transportation;

(C) Medicaid home delivered meals; and

(D) Emergency response systems.

(d) The cash benefit includes the employer's portion of required FICA, FUTA, and SUTA.

(e) The cash benefit is directly deposited into a participant's ICP designated checking account.

(8) **SERVICE BUDGET.**

(a) The service budget must identify the cash benefit, the discretionary and contingency funds if applicable, the reimbursement to an employee provider, and all other expenditures. The service budget must be initially approved by a Department/AAA case manager.

(b) The participant may amend the service budget as long as the amendments relate to meeting the participant's service needs and are within ICP program guidelines.

(c) A budget review to assure financial accountability and review service budget amendments must be completed at least every six months.

(9) **CONTINGENCY FUND.**

(a) The participant may establish a contingency fund in the service budget to purchase identified items that are not otherwise covered by Medicaid or the Supplemental Nutrition Assistance Program (SNAP) that substitute for personal assistance and allow for greater independence.

(b) The contingency fund must be approved by the case manager, identified in the service budget, and related to service plan needs.

(c) Contingency funds may be carried over into the next month's budget until the item is purchased.

(10) **DISCRETIONARY FUND.**

(a) The participant may establish a monthly discretionary fund in the service budget to purchase items that directly relate to the health, safety, and independence of the participant and are not otherwise covered under Medicaid home and community-based services or delineated in the monthly service budget.

(b) The maximum amount of discretionary funds may be up to 10 percent of the participant's cash benefit not including employee taxes.

(c) The discretionary fund must be approved by the case manager, identified in the service budget, and related to service plan needs.

(d) Discretionary funds must be used by the end of the month.

(11) **ISSUING BENEFITS.**

(a) The service plan and service budget must be prior approved by the case manager before the first ICP cash benefit is paid.

(b) A cash benefit is considered issued and received by the participant when the direct deposit is made to the participant's ICP bank account or a benefit check is received by the participant.

(c) The cash benefit is exempt from resource calculations for other Department programs only while in the ICP bank account and not commingled with other personal funds.

(d) The cash benefit is not subject to assignment, transfer, garnishment, or levy as long as the cash benefit is identified as a program benefit and is separate from other money in the participant's possession.

(12) **CASE MANAGER RESPONSIBILITIES.**

(a) The case manager is responsible to review and authorize service plans and service budgets that meet the ICP program criteria.

(b) If a participant is disenrolled, the case manager must review eligibility for other Medicaid long term care and community-based service options and offer other alternatives if the participant is eligible.

(c) At least every six months, a Department/AAA case manager must complete a service budget review to assure financial accountability and review service budget amendments.

(13) **HEARING RIGHTS.** ICP participants have contested case hearing rights as described in OAR chapter 461, division 025.

Stat. Auth.: ORS 410.090

Stats. Implemented: ORS 410.070

Hist.: SPD 4-2008(Temp), f. & cert. ef. 4-1-08 thru 9-24-08; SPD 13-2008, f. & cert. ef. 9-24-08; SPD 15-2008, f. 12-26-08, cert. ef. 1-1-09; SPD 14-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 44-2013, f. 12-13-13, cert. ef. 12-15-13

411-040-0000

Medicaid Funded Home Delivered Meals

(1) Home delivered meals, exclusive of those funded through the Older Americans Act or Oregon Project Independence, constitute a service that is provided as part of Medicaid home and community-based services to assist an individual to remain in his or her own home.

(2) Payment for meals delivered to an individual at his or her home may be provided when other plans do not appear feasible and home deliv-

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ered meals are determined by the Department's local unit to be more appropriate for the individual's needs than nursing facility services. The cost for these meals is calculated into the individual's service plan in conjunction with in-home services provided by a consumer-employed provider or a home care agency.

(3) All requests for Medicaid-funded home delivered meals must be referred to the Department's local unit.

(4) The Department/AAA case manager is responsible for establishing, authorizing, purchasing, and monitoring a plan for home-delivered meals.

(5) Individuals who are required to make a monthly payment under OAR 461-185-0050 in order to remain eligible for Medicaid home and community-based services must have the home-delivered meal costs calculated in conjunction with the in-home service provider costs.

(a) To remain eligible for Medicaid home and community-based services, pay-in individuals are responsible for payment of authorized home-delivered meals received up to their specified monthly pay-in amount. Individual payments due for meal services are to be included as part of the monthly sum sent to the Department's pay-in unit rather than making any direct payments to the meal provider.

(b) The Department is responsible for direct payments made to providers for all authorized home-delivered meals to individuals receiving Medicaid home and community-based services. Direct payment from the Department includes meals paid through the individual's monthly pay-in and for meals that exceed the individual's total monthly liability.

(6) For individuals whose meals are delivered through an Older Americans Act meal service program, which also contracts as a Medicaid home delivered meals provider:

(a) Individuals receiving home-delivered meals authorized and paid for by the Department must be officially informed by the case manager that there is no obligation to make any voluntary or suggested donation for this service. However, if the individual chooses to make a voluntary donation, there is no restriction from doing so.

(b) If the individual has a monthly payment to the Department under OAR 461-185-0050 in order to remain eligible for services, the individual must meet the criteria in both subsections (5) and (6)(a) of this rule.

(c) An individual who meets the criteria in subsections (2) or (5) of this rule and is age 65 or older, may choose to receive meals through the Older Americans Act (OAA) meal service program and may make voluntary donations. For individuals required to make a monthly payment under OAR 461-185-0050, these donations may not be credited toward the pay-in liability. In turn, OAA meal programs are not mandated to provide home-delivered meals to individuals age 65 and older receiving Medicaid home and community-based services unless the agency is a Medicaid-contracted meal provider and the meals are authorized and paid for by the Department.

Stat. Auth.: ORS 410.070, 411.060 & 411.070
Stats. Implemented: ORS 410.070

Hist.: SSD 11-1982, f. & ef. 10-1-82; SPD 12-2004, f. & cert. ef. 6-1-04; SPD 26-2011(Temp), f. & cert. ef. 12-20-11 thru 6-13-12; Administrative correction, 6-27-12; SPD 14-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 44-2013, f. 12-13-13, cert. ef. 12-15-13

411-045-0010

Definitions

Unless the context indicates otherwise, the following definitions apply to the rules in OAR chapter 411, division 045:

(1) **Administrative Hearing** — A hearing related to a denial, reduction, or termination of benefits that is held when requested by the PACE participant or his or her representative. A hearing may also be held when requested by a PACE participant who believes a claim for services was not acted upon with reasonable promptness or believes the payor took an action erroneously.

(2) **Advance Directive** — A process that allows a person to have another person make health care decisions when he or she is unable to make the decision and tell a doctor what life sustaining measures to take if he or she is near death.

(3) **Aging and People with Disabilities Division (APD)** — A division within the Department that is the designated State Unit on Aging (SUA) that also administers Medicaid's long-term care program. APD is responsible for nursing facility and Medicaid home and community-based services for eligible older adults and individuals with disabilities. APD includes local offices and the AAAs who have contracted to perform specific functions of the licensing and enrollment processes.

(4) **Alternate Service Settings** — Residential 24-hour care facilities that include, but are not limited to, residential care facilities, assisted living facilities, adult foster homes, and nursing facilities.

(5) **Americans with Disabilities Act (ADA)** — Federal law defining the civil rights of persons with disabilities. The ADA requires that reasonable accommodations be made in employment, service delivery, and facility accessibility.

(6) **Ancillary Services** — Those medical services that are medically appropriate to support a covered service under the PACE benefit package. A list of ancillary services and limitations is specified in DMAP's Ancillary Services Criteria Guide.

(7) **Appeal** — A PACE participant's action taken with respect to any instance where the PACE program reduces, terminates, or denies a covered service.

(8) **Area Agency on Aging (AAA)** — An established public agency within a planning and service area designated under Section 305 of the Older American's Act that has responsibility for local administration of Department programs. AAAs contract with the Department to perform specific activities in relation to PACE programs including processing of applications for Medicaid and determining the level of care required under Oregon's State Medicaid Plan for coverage of nursing facility services.

(9) **Assessment** — The determination of a participant's need for covered services. An assessment involves the collection and evaluation of data by each of the members of the Interdisciplinary Team pertinent to the participant's health history and current problems obtained through interview, observation, and record review. The Assessment concludes with one of the following:

(a) Documentation of a diagnosis providing the clinical basis for a written care plan; or

(b) A written statement that the participant is not in need of covered services for a particular condition.

(10) **Automated Information System (AIS)** — A computer system that provides information on the current eligibility status for participants under the Medical Assistance Program.

(11) **Care Plan** — Service plan as defined in this rule.

(12) **Centers for Medicare and Medicaid Services (CMS)** — Formerly known as the Health Care Financing Administration (HCFA). The federal agency under the Department of Health and Human Services that is responsible for approving the PACE program and joining the state in signing an agreement with the PACE program once it has been approved as a provider under 42 CFR Part 460.

(13) **Clinical Record** — The clinical record includes, but is not limited to, the medical, social services, dental, and mental health records of a PACE participant. Clinical records include the Interdisciplinary Team's records, hospital records, and grievance and disenrollment records.

(14) **Comfort Care** — The provision of medical services or items that give comfort or pain relief to a participant who has a terminal illness. Comfort care includes the combination of medical and related services designed to make it possible for a participant with terminal illness to die with dignity, respect, and with as much comfort as is possible given the nature of the illness. Comfort care includes but is not limited to, pain medication, palliative services, and hospice care including those services directed toward ameliorating symptoms of pain or loss of bodily function or to prevent additional pain or disability. These guarantees are provided pursuant to 45 CFR, Chapter XIII, 1340.15. Where applicable comfort care is provided consistent with Section 4751 OBRA 1990 — Patient Self-Determination Act and ORS 127.505-127.660 and 127.800-127.897 relating to health care decisions. Comfort care does not include diagnostic or curative care for the primary illness or care focused on active treatment of the primary illness and intended to prolong life.

(15) **Community Standard** — Typical expectations for access to the health care delivery system in the PACE participant's community of residence. The Department requires that the health care delivery system available to PACE participants take into consideration the community standard and be adequate to meet the needs of PACE participants except where the community standard is less than sufficient to ensure quality of care.

(16) **Covered Services** — Those diagnoses, treatments, and services listed in OAR 410-141-0520. In addition, all services that are to be covered by Medicare are covered services even if the services fall below the currently funded line for the Oregon Health Plan. Covered services also include those services listed in 42 CFR Sections 460.92 and 460.94.

(17) **Dentally Appropriate** — Services that are required for prevention, diagnosis, or treatment of a dental condition and that are:

(a) Consistent with the symptoms of a dental condition or treatment of a dental condition;

(b) Appropriate with regard to standards of good dental practice and generally recognized by the relevant scientific community and professional standards of care as effective;

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(c) Not solely for the convenience of the PACE participant or a provider of the service; and

(d) The most cost effective of the alternative levels of dental services that may be safely provided to a PACE participant.

(18) Dental Emergency Services — Dental services provided for severe pain, bleeding, unusual swelling of the face or gums, or an avulsed tooth.

(19) Department — The Department of Human Services.

(20) DHS — Department of Human Services (DHS).

(21) Disenrollment — The act of discharging a PACE participant from a PACE program. After the effective date of disenrollment a PACE participant is no longer authorized to obtain covered services from the PACE program.

(22) Emergency Services — The health care and services provided for diagnosis and treatment of 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, may reasonably expect the absence of immediate medical attention to result in placing the health of the individual in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.

(23) Enrollment — A process for the PACE program. A PACE participant's enrollment with a PACE program indicates that the PACE participant obtains from, or is referred by, the PACE program for all covered services.

(24) Grievance — A PACE participant's or the participant's representative's clear expression of dissatisfaction with the PACE program that addresses issues that are part of the PACE program's contractual responsibility. The expression states the reason for the dissatisfaction and may be in whatever form of communication or language that is used by the participant or the participant's representative.

(25) Health Management Unit (HMU) — The DMAP unit responsible for adjustments to enrollments and retroactive disenrollments.

(26) Interdisciplinary Team (IDT) — PACE staff and PACE subcontractors with current and appropriate licensure, certification, or accreditation who are responsible for assessment and development of the PACE participant's care plan. An IDT may conduct assessments of PACE participants and provide services to PACE participants within their scope of practice, state licensure, or certification. An IDT includes at least one representative from each of the following groups:

(a) Medical Doctor, Osteopathic Physician, Nurse Practitioner, or Physician's Assistant;

(b) Registered Nurse or a Licensed Practical Nurse supervised by a Registered Nurse;

(c) Social Worker with a Master's degree or a Social Worker with a Bachelor degree who is supervised by a Master's level Social Worker;

(d) Occupational Therapist or a Certified Occupational Therapy Assistant supervised by an Occupational Therapist;

(e) Recreational Therapist or an Activity Coordinator with two years experience;

(f) Physical Therapist or a Physical Therapy Assistant supervised by a Physical Therapist;

(g) Dietician and Pharmacist as indicated; and

(h) In addition to the positions listed above in subsections (a) to (g) of this section, the IDT includes the PACE Center Manager, the Home Care Coordinator, Personal Care Attendant, and the Driver or Transportation Coordinator.

(27) Medicaid — 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 Department of Human Services.

(28) Medically Appropriate — Services and medical supplies required for prevention, diagnosis, or treatment of a health condition that encompasses physical or mental conditions, or injuries, and that 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 a PACE participant 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 may be safely provided to a PACE participant in the PACE program's judgment.

(29) Medicare — The federal health insurance program for people who are 65 or older, certain younger people with disabilities, and people

with End-Stage Renal Disease (permanent kidney failure requiring dialysis or a transplant, sometimes called ESRD).

(30) Non-Covered Services — Services or items the PACE program is not responsible for providing or paying for.

(31) Non-Participating Provider — A provider who does not have a contractual relationship with the PACE program, i.e., is not on their panel of providers.

(32) Division of Medical Assistance Programs (DMAP) — The division of the Oregon Health Authority responsible for coordinating medical assistance programs. DMAP writes and administers the state Medicaid rules for medical services, contracts with providers, maintains records of participant eligibility and processes, and pays DMAP providers and contractors such as PACE.

(33) Oregon Health Plan (OHP) — The Medicaid demonstration project that expands Medicaid eligibility. The Oregon Health Plan relies substantially upon a prioritization of health services and managed care to achieve the policy objectives of access, cost containment, efficacy, and cost effectiveness in the allocation of health resources.

(34) PACE — The Program of all Inclusive Care for the Elderly (PACE) is a managed care entity that provides medical, dental, mental health, social services, transportation, and long-term care services to persons age 55 and older on a prepaid capitated basis in accordance with a signed agreement with the Department and CMS.

(35) PACE Participant — An individual who meets the Department criteria for nursing facility care and is enrolled in the PACE program. These individuals are eligible under the following categories:

(a) AB/AD (Assistance to Blind and Disabled) with Medicare — Individuals with concurrent Medicare eligibility with income under Medicaid eligibility;

(b) AB/AD without Medicare — Individuals without Medicare with income under Medicaid eligibility;

(c) OAA (Old Age Assistance) with Medicare — Individuals with concurrent Medicare Part A or Medicare Parts A and B eligibility with income under Medicaid eligibility;

(d) OAA without Medicare — Individuals without Medicare with income under Medicaid eligibility; or

(e) Private — Individuals with or without Medicare with incomes over Medicaid eligibility.

(36) Participating Provider — An individual, facility, corporate entity, or other organization that supplies medical, dental, or mental health services or items who have agreed to provide those services or items and to bill in accordance with a signed agreement with a PACE program.

(37) Preventive Services — Those services as defined under Expanded Definition of Preventive Services in OAR 410-141-0480 and 410-141-0520.

(38) Primary Care Provider (PCP) — A medical practitioner who has responsibility for supervising and coordinating initial and primary care within his or her scope of practice for PACE participants. Primary Care Providers initiate referrals for care outside their scope of practice that may include consultations and specialist care, and assure the continuity of medically or dentally appropriate care.

(39) Quality Improvement — Quality improvement is the effort to improve the level of performance of a key process or processes in health and long term 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. Quality of care reflects the degree to which health services for individuals and populations increases the likelihood of desired health outcomes and is consistent with current professional knowledge.

(40) Representative — A person who can assist the PACE participant in making administrative related decisions such as, but not limited to, completing an enrollment application, filing grievances, and requesting disenrollment. A representative may be, in the following order of priority, a person who is designated as the PACE participant's health care representative, a court-appointed guardian, a spouse, other family member as designated by the PACE participant, the Individual Service Plan Team (for individuals with intellectual or developmental disabilities), or a Department/AAA case manager or other Department designee. This definition does not apply to health care decisions unless the representative has legal authority to make such decisions.

(41) Seniors and People with Disabilities — Aging and People with Disabilities as defined in this rule.

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(42) Service Area — The geographic area defined by Federal Information Processing Standards (FIPS) codes, or other criteria determined by the Department, in which the PACE program has agreed to provide services under the Oregon PACE program regulations and the Federal PACE regulations 42 CFR Part 460. The service area is defined in the PACE contract with the Department.

(43) Service Plan — An individualized, written plan that addresses all relevant aspects of a participant's health and socialization needs that is developed by the Interdisciplinary Team with the involvement of the participant and the participant's representative. A service plan is based on the findings of the participant's assessments and defines specific service and treatment goals and objectives, proposed interventions, and the measurable outcomes to be achieved. A service plan is reviewed at least every four months or as indicated by a change in the participant's condition.

(44) Triage — Evaluations conducted to determine whether or not an emergency condition exists, and to direct the DMAP member to the most appropriate setting for medically appropriate care.

(45) Urgent Care Services — Covered services required to prevent a serious deterioration of a PACE participant's health that results from an unforeseen illness or an injury and for dental services necessary to treat such conditions as lost fillings or crowns. Services that may be foreseen by the individual are not considered urgent services.

(46) Valid Claim:

(a) An invoice received by the PACE program for payment of covered health care services rendered to an eligible PACE participant that:

(A) May be processed without obtaining additional information from the provider of the service or from a third party; and

(B) Has been received within the time limitations prescribed in these rules.

(b) A "valid claim" is synonymous with the federal definition of a "clean claim" as defined in 42 CFR 447.45(b).

(47) Valid Pre-Authorization — A request, received by the PACE program for approval of covered health care services provided by a non-participating provider to an eligible individual, that may be processed without obtaining additional information from the provider of the service or from a third party.

Stat. Auth.: ORS 410.090

Stats. Implemented: ORS 410.070

Hist.: SDDS 5-2000, f. 12-29-00 cert. ef. 1-1-01; SPD 2-2005, f. & cert. ef. 1-4-05; SPD 14-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 44-2013, f. 12-13-13, cert. ef. 12-15-13

411-045-0050

Enrollment

(1) ELIGIBILITY: To be eligible to enroll in a PACE program a person must:

(a) Reside in the PACE program's approved service area upon enrollment;

(b) Be 55 years of age or older;

(c) Be able to be maintained in a community-based setting at the time of enrollment without jeopardizing his or her health or safety or the health and safety of others;

(d) Be determined by the local Department/AAA agency to need the level of care required under Oregon's State Medicaid Plan for coverage of nursing facility services in accordance with the rules in OAR chapter 411, division 15 (Long-Term Care Service Priorities for Individuals Served);

(e) Be Medicaid eligible or be willing to pay private fees; and

(f) Be willing to abide by the provision that requires enrollees to receive all health and long term care services exclusively from the PACE program and its contracted or referred providers.

(2) The criteria for determining that an individual is unable to live safely in the community and thereby may be denied enrollment is as follows:

(a) The individual demonstrates imminent danger to self or others in accordance with the definition in OAR 411-015-0005;

(b) There is evidence in the individual's clinical record that shows he or she has been repeatedly placed in appropriate care settings and, despite medically appropriate treatment, placement has resulted in frequent hospitalizations or failed placements;

(c) At the time of application, the individual is determined to be eligible for enhanced care services or long term care at Oregon State Hospital by either the enhanced care Services Coordinator or the OSH Geropsychiatric Outreach Team;

(d) At the time of application, the individual has a physician documented condition that meets the criteria for Medicare skilled care and does not appear to be able to be discharged to the community within the next 30 days; or

(e) At the time of application, the applicant lives in his or her own home and wishes to remain there but requires 24-hour care to remain safely in their home.

(3) If either the PACE program or the local Department/AAA case manager has concerns about the safety of a potential enrollee, a case conference may be convened to review the case with outside consultants as needed for further evaluation.

(4) ENROLLMENT/SCREENING AND INTAKE:

(a) Department/AAA staff processes an application for Medicaid services and determines the level of care required under Oregon's State Medicaid Plan for coverage of nursing facility services. Department/AAA staff follows the appropriate PACE enrollment protocols as outlined in the Department/AAA Policy Manuals.

(b) Department/AAA staff conducts initial screening and intake, including providing assistance in completing the application and obtaining relevant information.

(c) The Department provides for the calculation of any applicable spend-down liability and for post-eligibility treatment of income for Medicaid participants in the same manner as the Department treats spend-down liability and post-eligibility income for individuals receiving Medicaid home and community-based services (OAR 461-160-0620).

(d) The Department/AAA staff forwards intake information of potential enrollees to the PACE program staff who assesses the applicant's appropriateness for enrollment in the PACE program in accordance with these rules and the requirements of 42 CFR 460.152. Potential enrollees may be denied enrollment by the PACE program if the PACE program determines the individual is not able to be maintained in a community-based setting without jeopardizing his or her health or safety or the health and safety of others.

(e) If the potential enrollee or his or her representative is in disagreement with the PACE program's decision not to enroll the person, he or she may file an appeal with the Department.

(f) All letters to applicants regarding denial of enrollment by the PACE program must include the reason for the denial and the applicants appeal rights. This letter along with documentation of pertinent information related to the decision must be forwarded to the Department for review.

Stat. Auth.: ORS 410.090

Stats. Implemented: ORS 410.070

Hist.: SDDS 5-2000, f. 12-29-00 cert. ef. 1-1-01; SPD 2-2005, f. & cert. ef. 1-4-05; SPD 14-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 44-2013, f. 12-13-13, cert. ef. 12-15-13

411-048-0150

Purpose

(1) The rules in OAR chapter 411, division 48 establish standards and procedures for Medicaid enrolled providers who provide long term care community nursing services. Long term care community nursing services provide ongoing registered nurse (RN) services to eligible individuals who are receiving Medicaid home and community-based services in a home-based or foster home setting.

(2) Long term care community nursing services provide:

(a) Evaluation and identification of supports that help an individual maintain maximum functioning and minimize health risks, while promoting the individual's autonomy and self management of healthcare;

(b) Teaching an individual's caregiver or family that is necessary to assure the individual's health and safety in a home-based or foster home setting;

(c) Delegation of nursing tasks to an individual's caregiver; and

(d) Case managers and health professionals with the information needed to maintain the individual's health, safety, and community living situation while honoring the individual's autonomy and choices.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Hist.: SPD 8-2013, f. & cert. ef. 4-15-13; SPD 14-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 44-2013, f. 12-13-13, cert. ef. 12-15-13

411-048-0160

Definitions

Unless the context indicates otherwise, the following definitions apply to the rules in OAR chapter 411, division 48:

(1) "AAA" means the Area Agency on Aging designated by the Department that is responsible for providing a comprehensive and coordinated system of services to older adults and adults with disabilities in a designated planning and service area.

(2) "Abuse" means:

(a) Abuse of a child;

(A) As defined in ORS 419B.005; and

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(B) As defined in OAR 407-045-0260, when a child resides in a foster home licensed by the Department to provide residential services to a child with intellectual or developmental disabilities.

(b) Abuse of an adult or older adult:

(A) As defined in ORS 124.050-095 and 430.735-765; and

(B) As defined in OAR 407-045-0260 for individuals 18 years or older with intellectual or developmental disabilities that reside in a Department licensed adult foster home; or

(C) As defined in OAR 411-020-0002 for older adults and adults with a physical disability who are 18 years of age or older that reside in a Department licensed adult foster home.

(3) "Acute Care Nursing" means nursing services provided on an intermittent or time limited basis such as those provided by a hospice agency as defined in ORS 443.850, or a home health agency as defined in 443.005. Acute care nursing may include direct service and is designed to address a specific task of nursing or a short term health condition.

(4) "Business Day" means the day that the "Local Office" is open for business.

(5) "Care Coordination" means the email, faxes, phone calls, meetings and other types of information exchange, consultation, and advocacy provided by a registered nurse on behalf of an individual that is necessary for the registered nurse to conduct assessments, complete medication reviews, provide for individual safety needs, and implement an individual's Nursing Service Plan.

(6) "Caregiver" means any person responsible for providing services to an eligible individual in a home-based or foster home setting. A caregiver may include an unlicensed person defined as a designated caregiver in OAR chapter 851, division 48 (Standards for Provision of Nursing Care by a Designated Caregiver).

(7) "Case Manager" means a person employed by the Department, Community Developmental Disability Program, or Area Agency on Aging who assesses the service needs of an applicant, determines eligibility, and offers service choices to the eligible individual. The case manager authorizes and implements an individual's plan for services and monitors the services delivered.

(8) "CDDP" means the Community Developmental Disability Program responsible for plan authorization, delivery, and monitoring of services for individuals with intellectual or developmental disabilities according to OAR chapter 411, division 320.

(9) "Community Nursing Services" means "long term care community nursing services" as defined in this rule.

(10) "Delegation" means the standards and processes described in OAR chapter 851, division 47 (Standards for Community Based Care Registered Nurse Delegation).

(11) "Department" means the Department of Human Services or the Department's designee.

(12) "Department Approved Form" means forms used by registered nurses and case managers to support these rules. The Department maintains these documents on the Department's website (<http://www.oregon.gov/dhs/spd/pages/provtools/nursing/forms.aspx>). Printed copies may be obtained by contacting the Department of Human Services, ATTN: Rule Coordinator, 500 Summer Street NE, E10, Salem, OR 97301.

(13) "Direct Hands-on Nursing" means a registered nurse provides treatment or therapies directly to an individual instead of teaching or delegating the tasks of nursing to the individual's caregiver. Payment for direct hands-on nursing services is not reimbursed unless an exception has been granted by the Department as described in OAR 411-048-0170.

(14) "Documentation" means a written record of all services provided to, and for, an individual and an individual's caregiver that is maintained by the registered nurse as described in OAR 411-048-0200.

(15) "Enrolled Medicaid Provider" means an entity or individual that meets and completes all the requirements in these rules, OAR 407-120-0300 (Medicaid Provider Enrollment and Claiming), and OAR chapter 410, division 120 (Medicaid General Rules) as applicable.

(16) "Foster Home" means any Department licensed or certified family home in which residential services are provided as described in:

(a) OAR chapter 411, division 050 for adult foster homes for older adults and adults with physical disabilities;

(b) OAR chapter 411, division 346 for foster homes for children with intellectual or developmental disabilities; and

(c) OAR chapter 411, division 360 for adult foster homes for individuals with intellectual or developmental disabilities.

(17) "Healthcare Provider" means a licensed provider providing services such as but not limited to home health, hospice, mental health, primary

care, specialty care, durable medical equipment, pharmacy, or hospitalization to an eligible individual.

(18) "Home" means a non-licensed setting where an individual is receiving Medicaid home and community-based services.

(19) "Home and Community-Based Services" mean the services approved and funded by the Centers for Medicare and Medicaid Services for eligible individuals who are aged and physically disabled and for eligible individuals with intellectual disabilities and developmental disabilities in accordance with Title XIX of the Social Security Act.

(20) "Home Health Agency" has the meaning given that term in ORS 443.005.

(21) "Individual" means a person eligible for community nursing services under these rules.

(22) "In-Home Care Agency" has the meaning given that term in ORS 443.305.

(23) "Local Office" means the Department office, Area Agency on Aging, or Community Developmental Disability Program responsible for Medicaid services including case management, referral, authorization, and oversight of long term care community nursing services in the region where the individual lives and where the community nursing services are delivered.

(24) "Long Term Care Community Nursing Services" mean the nursing services provided under these rules to individuals living in a home-based or foster home setting where the monthly Medicaid home and community-based services rate does not include nursing services. Long term care community nursing services are a distinct set of services that focus on an individual's chronic and ongoing health and activity of daily living needs. Long term care community nursing services include an assessment, monitoring, delegation, teaching, and coordination of services that addresses an individual's health and safety needs in a Nursing Service Plan that supports individual choice and autonomy. The requirements in these rules are provided in addition to any nursing related requirements stipulated in the licensing rules governing the individual's place of residence.

(25) "Medication Review" means a review focused on an individual's medication regime that includes examination of the prescriber's orders and related administration records, consultation with a pharmacist or the prescriber, clarification of PRN (as needed) parameters, and the development of a teaching plan based upon the needs of the individual or the individual's caregiver. In an unlicensed setting, the medication review may include observation and teaching related to administration methods and storage systems.

(26) "Nursing Assessment" means one of the following assessments selected by the registered nurse based on an individual's need and situation:

(a) A "nursing assessment" as defined in OAR 851-047-0010 (Standards for Community Based Care Registered Nurse Delegation); or

(b) A "comprehensive assessment" or "focused assessment" as defined in OAR 851-045-0030 (Standards and Scope of Practice for the Licensed Practical Nurse and Registered Nurse).

(27) "Nursing Service Plan" means the plan that is developed by a registered nurse based on an individual's initial nursing assessment, reassessment, or updates made to a nursing assessment as a result of monitoring visits.

(a) The Nursing Service Plan is specific to the individual and identifies the individual's diagnoses and health needs, the caregiver's teaching needs, and any care coordination, teaching, or delegation activities.

(b) The Nursing Service Plan is separate from the case manager's service plan, the foster home provider's service plan, and any service plans developed by other health professionals.

(c) Nursing service plans must meet the standards in OAR chapter 851, division 045 (Standards and Scope of Practice for the Licensed Practical Nurse and Registered Nurse).

(28) "OSBN" means the Oregon State Board of Nursing. OSBN is the agency responsible for regulating nursing practice and education for the purpose of protecting the public's health, safety, and well-being.

(29) "Rate Schedule" means the communication tool issued by the Department to transmit rate changes to partners, subcontractors, and stakeholders. The Department maintains this document on the Department's website (<http://www.oregon.gov/dhs/spd/provtools/rateschedule.pdf>). Printed copies may be obtained by contacting the Department of Human Services, ATTN: Rule Coordinator, 500 Summer Street NE, E10, Salem, OR 97301.

(30) "RN" means a registered nurse licensed by the Oregon State Board of Nursing. An RN providing long term care community nursing services under these rules is either an independent contractor who is an

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enrolled Medicaid provider or an employee of an organization that is an enrolled Medicaid provider.

(3) "These Rules" mean the rules in OAR chapter 411, division 48.
Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 410.070
Hist.: SPD 8-2013, f. & cert. ef. 4-15-13; SPD 14-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 44-2013, f. 12-13-13, cert. ef. 12-15-13

411-048-0170

Eligibility and Limitations

Eligibility and Limitations

(1) ELIGIBILITY. Community nursing services may be provided by an RN to an individual if the individual meets the following requirements:

(a) The individual must be determined eligible for Medicaid home and community-based services provided through the Department;

(b) The individual must be receiving services through one of the following:

(A) In-home supports for children with intellectual or developmental disabilities as described in OAR chapter 411, division 308;

(B) Adult foster homes for individuals with intellectual or developmental disabilities as described in OAR chapter 411, division 360;

(C) Foster homes for children with intellectual or developmental disabilities as described in OAR chapter 411, division 346;

(D) Comprehensive in home support for adults with intellectual or developmental disabilities as described in OAR chapter 411, division 330;

(E) Adult foster homes for older adults and adults with physical disabilities as described in OAR chapter 411, division 050;

(F) Independent Choices Program participants as described in OAR chapter 411, division 030;

(G) State Plan personal care participants as described in OAR chapter 411, division 034;

(H) 1915C Nursing Facility Waiver; or

(I) State Plan K Community First Choice;

(c) The individual must live in a home or a foster home as defined in OAR 411-048-0160;

(d) The individual must be referred by their case manager for long term care community nursing services. Individuals may request long term community nursing services through their case manager.

(2) LIMITATIONS.

(a) Long term care community nursing services may not be provided to:

(A) A resident of a nursing facility, assisted living facility, residential care facility, 24-hour developmental disability group home, or intermediate care facility for individuals with intellectual or developmental disabilities;

(B) An individual enrolled in a brokerage or other support services not funded by Medicaid home and community-based services; or

(C) An individual enrolled in a program or residing in a setting where nursing services are provided under a monthly service rate.

(b) Case managers may not prior authorize long term care community nursing services that duplicate nursing services provided by Medicare or other Medicaid programs.

(c) Long term care community nursing services do not include nursing activities used for administrative functions such as protective service investigations, pre-admission screenings, eligibility determinations, licensing inspections, case manager assessments, or corrective action activities. This limitation does not include authorized care coordination as defined in OAR 411-048-0160.

(d) Long term care community nursing services do not include reimbursement for direct hands-on nursing as defined in OAR 411-048-0160.

(3) EXCEPTIONS. An exception to sections (2)(c) and (2)(d) of this rule may be requested as described in OAR 411-048-0250.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Hist.: SPD 8-2013, f. & cert. ef. 4-15-13; SPD 14-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 44-2013, f. 12-13-13, cert. ef. 12-15-13

411-065-0000

Purpose

The purpose of these rules is to establish standards for specialized living service contracts. The standards provide an enhanced continuum of quality care in a home-like environment for specific target groups who are eligible for a live-in attendant, but because of special needs, are unable to live independently or receive services in other community-based care facilities and who would otherwise require nursing facility care. Services provided to residents in the Specialized Living Services Program are Medicaid home and community-based services, which may include specific services

required because of physical, intellectual, or behavioral limitations in meeting self-care needs.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Hist.: SSD 5-1982, f. 5-12-82, ef. 5-15-82; SSD 19-1991, f. & cert. ef. 10-10-91; SPD 14-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 44-2013, f. 12-13-13, cert. ef. 12-15-13

411-070-0033

Post Hospital Extended Care Benefit

(1) The post hospital extended care benefit (OAR 410-120-1210(4)) is an Oregon Health Plan benefit that consists of a stay of up to 20 days in a nursing facility to allow discharge from hospitals.

(2) The post hospital extended care benefit must be prior authorized by pre-admission screening for individuals not enrolled in managed care.

(3) To be eligible for the post hospital extended care benefit, the individual must meet all of the following:

(a) Be receiving Oregon Health Plan Plus or Standard, Fee-for-Service benefits;

(b) Not be Medicare eligible;

(c) Have a medically-necessary, qualifying hospital stay consisting of:

(A) A DMAP-paid admission to an acute-care hospital bed, not including a hold bed, observation bed, or emergency room bed.

(B) The stay must consist of three or more consecutive days, not counting the day of discharge.

(d) Transfer to a nursing facility within 30 days of discharge from the hospital;

(e) Need skilled nursing or rehabilitation services on a daily basis for a hospitalized condition meeting Medicare skilled criteria that may be provided only in a nursing facility meaning:

(A) The individual is at risk of further injury from falls, dehydration, or nutrition because of insufficient supervision or assistance at home;

(B) The individual's condition requires daily transportation to a hospital or rehabilitation facility by ambulance; or

(C) It is too far to travel to provide daily nursing or rehabilitation services in the individual's home.

(4) The individual may qualify for another 20 day post-hospital extended care benefit only if the individual has been out of a hospital and has not received skilled nursing care for 60 consecutive days in a row and meets all the criteria in this rule.

(5) Individuals eligible for the 20 day post-hospital extended care benefit are not eligible for long term care nursing facility or Medicaid home and community-based services unless the individual meets the eligibility criteria in OAR 411-015-0100 or 411-320-0080.

Stat. Auth.: ORS 410.070 & 414.065

Stats. Implemented: 410.070 & 414.065

Hist.: SPD 4-2005, f. & cert. ef. 4-19-05; SPD 15-2009, f. 11-30-09, cert. ef. 12-1-09; SPD 14-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 44-2013, f. 12-13-13, cert. ef. 12-15-13

Rule Caption: Long-Term Care Service Priorities

Adm. Order No.: SPD 45-2013

Filed with Sec. of State: 12-13-2013

Certified to be Effective: 12-15-13

Notice Publication Date: 11-1-2013

Rules Amended: 411-015-0005, 411-015-0008, 411-015-0015, 411-015-0100

Rules Repealed: 411-015-0008(T), 411-015-0015(T), 411-015-0100(T), 411-015-0005(T)

Subject: The Department of Human Services (Department) is permanently amending the rules for long-term care service priorities in OAR chapter 411, division 015.

The permanent rules:

- Adopt the changes made by temporary rule that became effective on July 1, 2013;

- Clarify that natural supports are voluntary in nature, may not be assumed, and must have the skills and abilities to perform the services needed;

- Remove references to waived services as appropriate, and as appropriate, replace the references with references to Medicaid home and community-based services in order to recognize services available through Medicaid waivers or under the Medicaid State Plan; and

- Reflect new Department terminology and correct formatting and punctuation.

Rules Coordinator: Christina Hartman—(503) 945-6398

ADMINISTRATIVE RULES

411-015-0005

Definitions

Unless the context indicates otherwise, the following definitions apply to the rules in OAR chapter 411, division 015:

- (1) "AAA" means "Area Agency on Aging" as defined in this rule.
- (2) "Adult" means any person at least 18 years of age.
- (3) "All Phases" means each part of an activity.
- (4) "Alternative Service Resources" means other possible resources for the provision of services to meet an individual's needs. Alternative service resources includes but is not limited to natural supports, risk intervention services, Older Americans Act programs, or other community supports. Alternative service resources are not paid by Medicaid.
- (5) "Architectural Modifications" means any service leading to the alteration of the structure of a dwelling to meet the specific service needs of an eligible individual.
- (6) "Area Agency on Aging (AAA)" means the Department designated agency charged with the responsibility to provide a comprehensive and coordinated system of services to older adults and adults with disabilities in a planning and service area. The term Area Agency on Aging (AAA) is inclusive of both Type A and Type B Area Agencies on Aging as defined in ORS 410.040 to 410.300.
- (7) "Assistance Types" needed for activities of daily living and instrumental activities of daily living include but are not limited to the following terms:
 - (a) "Cueing" means giving verbal or visual clues during an activity to help an individual complete the activity without hands-on assistance.
 - (b) "Hands-on" means a provider physically performs all or parts of an activity because an individual is unable to do so.
 - (c) "Monitoring" means a provider must observe an individual to determine if intervention is needed.
 - (d) "Reassurance" means to offer an individual encouragement and support.
 - (e) "Redirection" means to divert an individual to another more appropriate activity.
 - (f) "Set-up" means getting personal effects, supplies, or equipment ready so that an individual may perform an activity.
 - (g) "Stand-by" means a provider is at the side of an individual ready to step in and take over the task if the individual is unable to complete the task independently.
 - (h) "Support" means to enhance the environment to enable an individual to be as independent as possible.
- (8) "Assistive Devices" means any category of durable medical equipment, mechanical apparatus, electrical appliance, or instrument of technology used to assist and enhance an individual's independence in performing any activity of daily living.
- (9) "Behavioral Care Plan" means a documented set of procedures, reviewed by the Department or AAA representative, which describes interventions for use by a provider to prevent, mitigate, or respond to behavioral symptoms that negatively impact the health and safety of an individual or others in a home or community-based services setting. The preferences of an individual are included in developing a Behavioral Care Plan.
- (10) "Business Days and Hours" means Monday through Friday and excludes Saturdays, Sundays, and state or federal holidays. Hours are from 8:00 AM to 5:00 PM.
- (11) "CA/PS" means "Client Assessment and Planning System" as defined in this rule.
- (12) "Care Setting" means a Medicaid contracted facility at which a Medicaid eligible individual resides and receives services. Care settings are adult foster homes, residential care facilities, assisted living facilities, specialized living contracted residences, and nursing facilities.
- (13) "Case Manager" means an employee of the Department or Area Agency on Aging who assesses the service needs of individuals, determines eligibility, and offers service choices to eligible individuals. The case manager authorizes and implements an individual's service plan and monitors the services delivered as described in OAR chapter 411, division 028.
- (14) "Client" means "individual" as defined in this rule.
- (15) "Client Assessment and Planning System (CA/PS)":
 - (a) Is a single entry data system used for:
 - (A) Completing a comprehensive and holistic assessment;
 - (B) Surveying an individual's physical, mental, and social functioning; and
 - (C) Identifying risk factors, individual choices and preferences, and the status of service needs.
 - (b) The CA/PS documents the level of need and calculates an individual's service priority level in accordance with these rules, calculates the

service payment rates, and accommodates individual participation in service planning.

(16) "Cost Effective" means being responsible and accountable with Department resources by offering less costly alternatives when providing choices that adequately meet an individual's service needs. Cost effective choices consist of all available service options, the utilization of assistive devices or architectural modifications, natural supports, and alternative service resources. Less costly alternatives may include resources not paid for by the Department.

(17) "Department" means the Department of Human Services (DHS).

(18) "Disability" means a physical, cognitive, or emotional impairment which, for an individual, constitutes or results in a functional limitation in one or more of the activities of daily living defined in OAR 411-015-0006.

(19) "Extraordinary Circumstances" means:

(a) An individual being assessed is working full time during business hours; or

(b) A family member, whose presence is requested by an individual being assessed, is traveling from outside the area and is available for only a limited period of time that does not include business days and hours.

(20) "Functional Impairment" means an individual's pattern of mental and physical limitations that restricts the individual's ability to perform activities of daily living and instrumental activities of daily living without the assistance of another person.

(21) "Independent" means an individual does not meet the definition of "assist" or "full assist" when assessing an activity of daily living as described in OAR 411-015-0006 or when assessing an instrumental activity of daily living as described in 411-015-0007.

(22) "Individual" means an older adult or an adult with a disability applying for or eligible for services.

(23) "Medicaid Home and Community-Based Services" means the services approved and funded by the Centers for Medicare and Medicaid Services for eligible individuals in accordance with Title XIX of the Social Security Act.

(24) "Mental or Emotional Disorder" means:

(a) A schizophrenic, mood, paranoid, panic, or other anxiety disorder;

(b) Somatoform, personality, dissociative, factitious, eating, sleeping, impulse control, or adjustment disorder; or

(c) Other psychotic disorder as defined by the American Psychiatric Association in the Diagnostic and Statistical Manual.

(25) "Natural Support" means resources and supports (e.g. relatives, friends, neighbors, significant others, roommates, or the community) who are willing to voluntarily provide services to an individual without the expectation of compensation. Natural supports are identified in collaboration with the individual and the potential "natural support". The natural support is required to have the skills, knowledge, and ability to provide the needed services and supports.

(26) "Older Adult" means any person at least 65 years of age.

(27) "Service Priority Level (SPL)" means the order in which Department and Area Agency on Aging staff identify individuals eligible for a nursing facility level of care, Oregon Project Independence, or Medicaid home and community-based services. A lower service priority level number indicates greater or more severe functional impairment. The number is synonymous with the service priority level.

(28) "SPL" means "service priority level" as defined in this rule.

(29) "Substance Abuse Related Disorders" means disorders related to the taking of a drug or toxin of abuse (including alcohol).

(a) Substance abuse related disorders include:

(A) Substance dependency and substance abuse;

(B) Alcohol dependency and alcohol abuse; and

(C) Substance induced disorders and alcohol induced disorders as defined by the American Psychiatric Association in the Diagnostic and Statistical Manual.

(b) Substance abuse related disorders are not considered physical disabilities. Dementia or other long term physical or health impairments resulting from substance abuse may be considered physical disabilities.

(30) "These Rules" means the rules in OAR chapter 411, division 015.

(31) "Without Supports" means an individual lacks the assistance of another person, a care setting and staff, or an alternative service resource as defined in this rule.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.060, 410.070 & 414.065

Hist.: SSD 3-1985, f. & ef. 4-1-85; SSD 5-1986, f. & ef. 4-14-86; SSD 9-1986, f. & ef. 7-1-86; SSD 12-1987, f. 12-31-87, cert. ef. 1-1-88; SSD 12-1991(Temp), f. 6-28-91, cert. ef. 7-1-91; SSD 21-1991, f. 12-31-91, cert. ef. 1-1-92, Renumbered from former 411-015-0000(2)(a) - (l); SDDS 11-2002(Temp), f. 12-5-02, cert. ef. 12-6-02 thru 6-3-03; SPD 12-

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2003, f. 5-30-03, cert. ef. 6-4-03; SPD 16-2003(Temp), f. & cert. ef. 10-27-03 thru 4-23-04; SPD 8-2004, f. & cert. ef. 4-27-04; SPD 19-2005, f. & cert. ef. 12-29-05; SPD 19-2006, f. 5-26-06, cert. ef. 6-1-06; SPD 14-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 45-2013, f. 12-13-13, cert. ef. 12-15-13

411-015-0008

Assessments

(1) ASSESSMENT.

(a) The assessment process:

(A) Identifies an individual's ability to perform activities of daily living and instrumental activities of daily living (self-management tasks);

(B) Determines an individual's ability to address health and safety concerns; and

(C) Includes an individual's preferences to meet service needs.

(b) A case manager must conduct an assessment in accordance with the standards of practices established by the Department.

(c) A case manager must assess an individual's abilities regardless of architectural modifications, assistive devices, or services provided in a care setting, alternative service resources, or other community providers.

(d) The time frame reference for evaluation is how an individual functioned during the 30 days prior to the assessment date, with consideration of how the individual is likely to function in the 30 days following the assessment date.

(A) In order to be eligible, an individual must demonstrate the need for the assistance of another person within the assessment time frame and expect the need to be on-going beyond the assessment time frame.

(B) The time frame for assessing the cognition/behavior activity of daily living may be extended as described in OAR 411-015-0006.

(e) The assessment must be conducted with a standardized assessment tool approved by the Department by a case manager or other qualified Department or AAA representative no less than annually or when requested by the individual.

(f) The initial assessment must be conducted face to face in an individual's home or care setting.

(g) Annual re-assessments must be conducted face to face in an individual's home or care setting unless there is a compelling reason to meet elsewhere and the individual requests an alternative location. Case managers must visit an individual's home or care setting to complete the re-assessment and identify service plan needs, as well as safety and risk concerns.

(A) Individuals must be sent a notice of the need for re-assessment a minimum of 14 days in advance.

(B) Re-assessments based on a change in an individual's condition or service needs are exempt from the 14-day advance notice requirement.

(h) An individual being assessed may request the presence of natural supports at any assessment.

(i) Assessment times must be scheduled within business days and hours unless extraordinary circumstances necessitate an alternate time. If an alternate time is necessary, an individual must request the after hours appointment and coordinate a mutually acceptable appointment time with the local Department or AAA office.

(j) An individual or the individual's representative has the responsibility to participate in and provide information necessary to complete assessments and re-assessments within the time frame requested by the Department.

(A) Failure to participate in or provide requested assessment or re-assessment information within the application time frame results in a denial of service eligibility.

(B) The Department may allow additional time if circumstances beyond the control of the individual or the individual's representative prevent timely participation or timely submission of information.

(2) SERVICE PLAN:

(a) An individual being assessed, others identified by the individual, and a case manager must consider the service options as well as assistive devices, architectural modifications, and other alternative service resources as defined in OAR 411-015-0005 to meet an individual's service needs identified in the assessment process.

(b) A case manager is responsible for:

(A) Determining eligibility for specific services;

(B) Presenting service options, resources, and alternatives to an individual to assist the individual in making informed choices and decisions;

(C) Identifying goals, preferences, and risks; and

(D) Assessing the cost effectiveness of an individual's service plan.

(c) A case manager must monitor the service plan and make adjustments as needed.

(d) An eligible individual, or the individual's representative, is responsible for choosing and assisting in developing less costly service alternatives.

(e) The service plan payment must be considered full payment for the Medicaid home and community-based services rendered. Under no circumstances may any provider demand or receive additional payment for Medicaid home and community-based services from an eligible individual or any other source.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Hist.: SPD 19-2006, f. 5-26-06, cert. ef. 6-1-06; SPD 14-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 45-2013, f. 12-13-13, cert. ef. 12-15-13

411-015-0015

Current Limitations

(1) The Department has the authority to establish by administrative rule service eligibility within which to manage the Department's limited resources. The Department is currently able to serve:

(a) Individuals determined eligible for OSIPM who are assessed as meeting at least one of the service priority levels (1) through (13) as described in OAR 411-015-0010.

(b) Individuals eligible for Oregon Project Independence funded services if the individuals meet at least one of the service priority levels (1) through (18) of OAR 411-015-0010.

(c) Individuals needing risk intervention services in areas designated to provide such services. Individuals with the lowest service priority level number under OAR 411-015-0010 are served first.

(2) Individuals 65 years of age or older determined eligible for developmental disability services or having a primary diagnosis of a mental or emotional disorder are eligible for nursing facility or Medicaid home and community-based services if the individual meets section (1) of this rule and the individual is not in need of specialized mental health treatment services or other specialized Department residential program interventions as identified through the mental health assessment process or PASRR process described in OAR 411-070-0043.

(3) Individuals less than 65 years of age determined eligible for developmental disability services or having a primary diagnosis of a mental or emotional disorder are not eligible for Department nursing facility services unless determined appropriate through the PASRR process described in OAR 411-070-0043.

(4) Individuals less than 65 years of age determined to be eligible for developmental disability services are not eligible for Medicaid home and community-based services administered by the Department's Aging and People with Disabilities. Eligibility for Medicaid home and community-based services for individuals with intellectual or developmental disabilities is determined by the Department's Office of Developmental Disability Services or designee.

(5) Individuals less than 65 years of age who have a diagnosis of mental or emotional disorder or substance abuse related disorder are not eligible for Medicaid home and community-based services administered by the Department's Aging and People with Disabilities unless:

(a) The individual has a medical non-psychiatric diagnosis or physical disability; and

(b) The individual's need for services is based on his or her medical, non-psychiatric diagnosis, or physical disability; and

(c) The individual provides supporting documentation demonstrating that his or her need for services is based on the medical, non-psychiatric diagnosis, or physical disability. The Department authorizes documentation sources through approved and published policy transmittals.

(6) Medicaid home and community-based services are not intended to replace a natural support system as defined by OAR 411-015-0005. Paid support is provided if a natural support is unwilling or unable to provide identified services.

(7) Individuals with excess income must contribute to the cost of service pursuant to OAR 461-160-0610 and 461-160-0620.

Stat. Auth.: ORS 410.070 & 411.070

Stats. Implemented: ORS 410.070

Hist.: SSD 3-1985, f. & ef. 4-1-85; SSD 5-1986, f. & ef. 4-14-86; SSD 9-1986, f. & ef. 7-1-86; SSD 12-1987, f. 12-31-87, cert. ef. 1-1-88; SSD 12-1991(Temp), f. 6-28-91, cert. ef. 7-1-91; SSD 21-1991, f. 12-31-91, cert. ef. 1-1-92, Renumbered from former 411-015-0000(4); SSD 1-1993, f. 3-19-93, cert. ef. 4-1-93; SSSD 11-2002(Temp), f. 12-5-02, cert. ef. 12-6-02 thru 6-3-03; SPD 1-2003(Temp), f. 1-7-03, cert. ef. 2-1-03 thru 6-3-03; SPD 3-2003(Temp), f. 2-14-03, cert. ef. 2-18-03 thru 6-3-03; SPD 5-2003(Temp), f. & cert. ef. 3-12-03 thru 6-3-03; SPD 6-2003(Temp), f. & cert. ef. 3-20-03 thru 6-3-03; SPD 12-2003, f. 5-30-03, cert. ef. 6-4-03; SPD 16-2003(Temp), f. & cert. ef. 10-27-03 thru 4-23-04; SPD 5-2004(Temp), f. & cert. ef. 3-23-04 thru 4-27-04; SPD 8-2004, f. & cert. ef. 4-27-04; SPD 20-2004(Temp), f. & cert. ef. 7-7-04; SPD 29-2004(Temp), f. & cert. ef. 8-6-04 thru 1-3-05; SPD 1-2005, f. & cert. ef. 1-4-05; SPD 8-2006, f. 1-26-06, cert. ef. 2-1-06; SPD 19-2006, f. 5-26-06, cert. ef. 6-1-06; SPD 14-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 45-2013, f. 12-13-13, cert. ef. 12-15-13

ADMINISTRATIVE RULES

411-015-0100

Eligibility for Nursing Facility or Medicaid Home and Community-Based Services

(1) To be eligible for nursing facility services or Medicaid home and community-based services, a person must:

- (a) Be age 18 or older; and
- (b) Be eligible for OSIPM; and

(c) Meet the functional impairment level within the service priority levels currently served by the Department as outlined in OAR 411-015-0010 and the requirements in 411-015-0015.

(2) To be eligible for services paid through the Spousal Pay Program, an individual must meet the requirements listed above in section (1) of this rule, and in addition, the requirements in OAR 411-030-0080.

(3) Individuals who are age 17 or younger and reside in a nursing facility are eligible for nursing facility services only and are not eligible to receive Medicaid home and community-based services administered by the Department's Aging and People with Disabilities.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.060, 410.070 & 414.065

Hist.: SSD 7-1991(Temp), f. & cert. ef. 4-1-91; SSD 13-1991, f. 6-28-91, cert. ef. 7-1-91; SDSD 11-2002(Temp), f. 12-5-02, cert. ef. 12-6-02 thru 6-3-03; SPD 1-2003(Temp), f. 1-7-03, cert. ef. 2-1-03 thru 6-3-03; SPD 12-2003, f. 5-30-03, cert. ef. 6-4-03; SPD 17-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 4-28-04; SPD 8-2004, f. & cert. ef. 4-27-04; SPD 29-2004(Temp), f. & cert. ef. 8-6-04 thru 1-3-05; SPD 1-2005, f. & cert. ef. 1-4-05; SPD 19-2005, f. & cert. ef. 12-29-05; SPD 19-2006, f. 5-26-06, cert. ef. 6-1-06; SPD 14-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 45-2013, f. 12-13-13, cert. ef. 12-15-13

Rule Caption: Case Management Services for Older Adults and Adults with Disabilities

Adm. Order No.: SPD 46-2013

Filed with Sec. of State: 12-13-2013

Certified to be Effective: 12-15-13

Notice Publication Date: 11-1-2013

Rules Adopted: 411-028-0000, 411-028-0010, 411-028-0020, 411-028-0030, 411-028-0040, 411-028-0050

Rules Repealed: 411-028-0000(T), 411-028-0010(T), 411-028-0020(T), 411-028-0030(T), 411-028-0040(T), 411-028-0050(T)

Subject: The Department of Human Services (Department) is permanently adopting rules for case management services for older adults and adults with disabilities in OAR chapter 411, division 028 to make permanent the temporary rules that became effective on July 1, 2013. The permanent rules articulate who may provide case management services and to whom and how often case management services will be provided.

Rules Coordinator: Christina Hartman—(503) 945-6398

411-028-0000

Purpose

(1) The rules in OAR chapter 411, division 028 ensure case management services support the independence, empowerment, dignity, and human potential of older adult individuals and adult individuals with disabilities with the purpose of helping the individuals reside in their own home or in a community-based setting.

(2) Case management services are a component of an individual's comprehensive, person-centered plan for services.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Hist.: SPD 15-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 46-2013, f. 12-13-13, cert. ef. 12-15-13

411-028-0010

Definitions

Unless the context indicates otherwise, the following definitions apply to the rules in OAR chapter 411, division 028:

(1) "Adult" means any person at least 18 years of age.

(2) "Adult Protective Services" mean the services provided in response to the need for protection from abuse described in OAR chapter 411, division 20, OAR chapter 407, division 45, and OAR chapter 943, division 45.

(3) "Case Management" means the functions described in OAR 411-028-0020 performed by a case manager, adult protective services investigator, or higher level management staff.

(4) "Case Manager" means a Department employee or an employee of the Department's designee that meets the minimum qualifications in OAR 411-028-0040 who is responsible for service eligibility, assessment of need, offering service choices to eligible individuals, service planning,

service authorization and implementation, and evaluation of the effectiveness of Medicaid home and community-based services.

(5) "Collateral Contact" means contact by a case manager with others who may provide information regarding an individual's health, safety, functional needs, social needs, or effectiveness of the individual's plan for services. Collateral contact may include family members, service providers, medical providers, neighbors, pharmacy staff, friends, or other professionals involved in the service coordination of an individual receiving Medicaid home and community-based services.

(6) "Department" means the Department of Human Services.

(7) "Designee" means an organization that the Department contracts with or has an interagency agreement with for the purposes of providing case management services.

(8) "Disability" means a physical, cognitive, or emotional impairment which, for an individual, constitutes or results in a functional limitation in one or more of the activities of daily living defined in OAR 411-015-0006.

(9) "Individual" means an older adult or an adult with a disability applying for or determined eligible for Medicaid home and community-based services.

(10) "Medicaid Home and Community-Based Services" mean the services for older adults and adults with disabilities approved for Oregon by the Centers for Medicare and Medicaid Services.

(11) "Older Adult" means any person at least 65 years of age.

(12) "OSIP-M" means Oregon Supplemental Income Program-Medical as defined in OAR 461-101-0010. OSIPM is Oregon Medicaid insurance coverage for individuals who meet eligibility criteria as described in OAR chapter 461.

(13) "Representative" is a person either appointed by an individual to participate in service planning on the individual's behalf or a person with longstanding involvement in assuring the individual's health, safety, and welfare.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Hist.: SPD 15-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 46-2013, f. 12-13-13, cert. ef. 12-15-13

411-028-0020

Scope of Case Management Services

(1) DIRECT CASE MANAGEMENT SERVICES. Direct case management services are provided by a case manager, adult protective services investigator, or higher level staff, who communicates directly with an individual or the individual's representative. Direct case management services may occur by phone call, face-to-face contact, or email. Direct case management services do not include contact with collateral contacts unless the collateral contact is the individual's authorized representative. Direct case management services include:

(a) An assessment as described in OAR 411-015-0008;

(b) Service Plan development and review as described in OAR 411-015-0008;

(c) Service options choice counseling as described in OAR 411-030-0050;

(d) Risk assessment and monitoring:

(A) Identifying and documenting risks;

(B) Working with an individual to eliminate or reduce risks;

(C) Developing and implementing a Risk Mitigation Plan;

(D) Monitoring risks over time; and

(E) Making adjustments to an individual's Service Plan as needed.

(e) Diversion activities. Assisting an individual with finding alternatives to a nursing facility admission;

(f) Adult protective services investigation including all protective service activity directly provided to an individual;

(g) Other program coordination. Helping an individual navigate or coordinate with other social, health, and assistance programs;

(h) Crisis response and intervention. Assisting an individual with problem resolution; and

(i) Service provision issues. Assisting an individual with problem solving to resolve issues that occur with providers, services, or hours that don't meet the individual's needs.

(2) INDIRECT CASE MANAGEMENT SERVICES. Indirect case management services are services provided by a case manager, adult protective services investigator, or higher level staff, in which direct contact with an individual is not occurring. Indirect case management services include:

(a) Monitoring Service Plan implementation. Reviewing implementation of an individual's Service Plan by reviewing and comparing authorized and billed services to ensure that adequate services are being provided;

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(b) Service options choice counseling. Assisting an individual's caregiver, family member, or other support person with understanding all available Medicaid home and community-based service options;

(c) Risk monitoring. Working with a collateral contact to review an individual's risks, eliminating or reducing risks, and developing and implementing a Risk Mitigation Plan. Adjustments to an individual's Service Plan based on risk monitoring activities are classified as direct case management;

(d) Diversion activities. Finding alternatives to a nursing facility admission. Diversion activities do not include transition activities to help an individual move from a nursing facility.

(e) Adult protective services referral including collateral contact and investigative work;

(f) Other program coordination. Helping collateral contacts navigate or coordinate with other social, health, and assistance programs;

(g) Service provision issues. Assisting with problem solving issues that occur with providers, services, or hours that do not meet an individual's needs; and

(h) Other case management activities not included in any criteria in this section of the rule.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Hist.: SPD 15-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 46-2013, f. 12-13-13, cert. ef. 12-15-13

411-028-0030

Eligibility for Case Management Services

To be eligible for case management services a person must:

(1) Be 18 years of age or older;

(2) Be eligible for OSIP-M; and

(3) Meet the functional impairment level within the service priority levels currently served by the Department as outlined in OAR 411-015-0010 and OAR 411-015-0015.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Hist.: SPD 15-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 46-2013, f. 12-13-13, cert. ef. 12-15-13

411-028-0040

Qualified Case Manager

Staff working for the Department or the Department's designee must meet the following requirements to provide case management services:

(1) A bachelor's degree in a behavioral science, social science, or a closely related field; or

(2) A bachelor's degree in any field and one year of human services related experience that may include providing assistance to people and groups with issues such as economical disadvantages, employment barriers and shortages, abuse and neglect, substance abuse, aging, disabilities, prevention, health, cultural competencies, or inadequate housing; or

(3) An associate's degree in a behavioral science, social science, or a closely related field and two years of human services related experience that may include providing assistance to people and groups with issues such as economical disadvantages, employment barriers and shortages, abuse and neglect, substance abuse, aging, disabilities, prevention, health, cultural competencies, or inadequate housing; or

(4) Three years of human services related experience that may include providing assistance to people and groups with issues such as economical disadvantages, employment barriers and shortages, abuse and neglect, substance abuse, aging, disabilities, prevention, health, cultural competencies, or inadequate housing.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Hist.: SPD 15-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 46-2013, f. 12-13-13, cert. ef. 12-15-13

411-028-0050

Frequency of Case Management Services

A case manager who meets the requirements in OAR 411-028-0040 must provide the following case management services to an eligible individual receiving Medicaid home and community-based services:

(1) A direct case management service as described in OAR 411-028-0020 must be provided to an eligible individual no less than once in each calendar quarter.

(2) An indirect case management service must be provided in every calendar month a direct case management service was not provided.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Hist.: SPD 15-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 46-2013, f. 12-13-13, cert. ef. 12-15-13

Rule Caption: Homecare Workers Enrolled in the Consumer-Employed Provider Program

Adm. Order No.: SPD 47-2013

Filed with Sec. of State: 12-13-2013

Certified to be Effective: 12-15-13

Notice Publication Date: 11-1-2013

Rules Amended: 411-031-0020, 411-031-0040, 411-031-0050

Rules Repealed: 411-031-0020(T), 411-031-0040(T)

Subject: The Department of Human Services (Department) is permanently amending the rules in OAR chapter 411, division 031 relating to homecare workers enrolled in the Consumer-Employed Provider Program.

The permanent rules:

- Adopt the changes made by temporary rule that became effective on July 1, 2013;

- Amend the definition of fiscal improprieties to protect a homecare worker employed by a relative from an allegation of fiscal improprieties;

- Remove references to waived services as appropriate, and as appropriate, replace the references with references to Medicaid home and community-based services in order to recognize services available through Medicaid waivers or under the Medicaid State Plan;

- Allow the Department to decide on a case-by-case basis whether to request a proposed order, final order, or proposed and final order when making referrals to the Office of Administrative Hearings when a homecare worker requests an administrative hearing based on the termination of his or her provider enrollment; and

- Reflect new Department terminology and correct formatting and punctuation.

Rules Coordinator: Christina Hartman—(503) 945-6398

411-031-0020

Definitions

Unless the context indicates otherwise, the following definitions apply to the rules in OAR chapter 411, division 31:

(1) "AAA" means "Area Agency on Aging" as defined in this rule.

(2) "Abuse" means abuse as defined by OAR 411-020-0002, 407-045-0260, and 943-045-0260.

(3) "Activities of Daily Living (ADL)" mean those personal, functional activities required by an individual for continued well-being, which are essential for the individual's health and safety. Activities include eating, dressing/grooming, bathing/personal hygiene, mobility (ambulation and transfer), elimination (toileting, bowel, and bladder management), and cognition/behavior as defined in OAR 411-015-0006.

(4) "ADL" means "activities of daily living" as defined in this rule.

(5) "Adult" means any person at least 18 years of age.

(6) "Adult Protective Services" mean the services provided in response to the need for protection from abuse described in OAR chapter 411, division 20, OAR chapter 407, division 45, and OAR chapter 943, division 45.

(7) "Area Agency on Aging (AAA)" means the Department designated agency charged with the responsibility to provide a comprehensive and coordinated system of services to older adults and adults with disabilities in a planning and service area. The terms AAA and Area Agency on Aging are inclusive of both Type A and Type B Area Agencies on Aging as defined in ORS 410.040 and described in 410.210 to 410.300.

(8) "Burden of Proof" means the existence or nonexistence of a fact is established by a preponderance of evidence.

(9) "Career Homecare Worker" means a homecare worker with an unrestricted provider enrollment. A career homecare worker has a provider enrollment that allows the homecare worker to provide services to any eligible in-home services consumer. At any given time, a career homecare worker may choose not to be referred for work.

(10) "Case Manager" means an employee of the Department or Area Agency on Aging who assesses the service needs of individuals, determines eligibility, and offers service choices to eligible individuals. The case manager authorizes and implements an individual's service plan and monitors the services delivered as described in OAR chapter 411, division 28.

(11) "Collective Bargaining Agreement" means the ratified Collective Bargaining Agreement between the Home Care Commission and the Service Employees International Union, Local 503. The Collective Bargaining Agreement is maintained on the Department's website:

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(<http://www.dhs.state.or.us/spd/tools/cm/homecare/index.htm>). Printed copies may be obtained by calling (503) 945-6398 or writing the Department of Human Services, Aging and People with Disabilities, ATTN: Rules Coordinator, 500 Summer Street NE, E-10, Salem, Oregon 97301.

(12) "Companionship Services" mean those services designated by the Department of Labor as meeting the personal needs of a consumer. Companionship services are exempt from federal and state minimum wage laws.

(13) "Consumer" or "Consumer-Employer" means an individual eligible for in-home services.

(14) "Consumer-Employed Provider Program" refers to the program wherein a provider is directly employed by a consumer to provide either hourly or live-in in-home services. In some aspects of the employer and employee relationship, the Department acts as an agent for the consumer-employer. These functions are clearly described in OAR 411-031-0040.

(15) "Department" means the Department of Human Services.

(16) "Disability" means a physical, cognitive, or emotional impairment which, for an individual, constitutes or results in a functional limitation in one or more of the activities of daily living defined in OAR 411-015-0006.

(17) "Evidence" means testimony, writings, material objects, or other things presented to the senses that are offered to prove the existence or nonexistence of a fact.

(18) "Fiscal Improprieties" means a homecare worker committed financial misconduct involving a consumer's money, property, or benefits.

(a) Fiscal improprieties include but are not limited to financial exploitation, borrowing money from a consumer, taking a consumer's property or money, having a consumer purchase items for the homecare worker, forging a consumer's signature, falsifying payment records, claiming payment for hours not worked, or similar acts intentionally committed for financial gain.

(b) Fiscal improprieties do not include the exchange of money, gifts, or property between a homecare worker and a consumer-employer with whom the homecare worker is related unless an allegation of financial exploitation, as defined in OAR 411-020-0002 or 407-045-0260, has been substantiated based on an adult protective services investigation.

(19) "Homecare Worker" means a provider, as described in OAR 411-031-0040, that is directly employed by a consumer to provide either hourly or live-in services to the consumer.

(a) The term homecare worker includes:

(A) A consumer-employed provider in the Spousal Pay and Oregon Project Independence Programs;

(B) A consumer-employed provider that provides state plan personal care services; and

(C) A relative providing Medicaid in-home services to a consumer living in the relative's home.

(b) The term homecare worker does not include an Independent Choices Program provider or a personal support worker enrolled through Developmental Disability Services or the Addictions and Mental Health Division.

(20) "Hourly Services" mean the in-home services, including activities of daily living and instrumental activities of daily living, that are provided at regularly scheduled times.

(21) "IADL" means "instrumental activities of daily living" as defined in this rule.

(22) "Imminent Danger" means there is reasonable cause to believe an individual's life or physical, emotional, or financial well-being is in danger if no intervention is immediately initiated.

(23) "Individual" means an older adult or an adult with a disability applying for or eligible for services.

(24) "In-Home Services" mean the activities of daily living and instrumental activities of daily living that assist an individual to stay in his or her own home or the home of a relative.

(25) "Instrumental Activities of Daily Living (IADL)" mean those activities, other than activities of daily living, required by an individual to continue independent living. The definitions and parameters for assessing needs in IADL are identified in OAR 411-015-0007.

(26) "Lack of Ability or Willingness to Maintain Consumer-Employer Confidentiality" means a homecare worker is unable or unwilling to keep personal information about a consumer-employer private.

(27) "Lack of Skills, Knowledge, and Ability to Adequately or Safely Perform the Required Work" means a homecare worker does not possess the skills to perform services needed by consumers of the Department. The homecare worker may not be physically, mentally, or emotionally capable of providing services to consumers. The homecare worker's lack of skills

may put consumers at risk because the homecare worker fails to perform, or learn to perform, the duties needed to adequately meet the needs of the consumers.

(28) "Live-In Services" mean the Consumer-Employed Provider Program services provided when a consumer requires activities of daily living, instrumental activities of daily living, and twenty-four hour availability. Time spent by any live-in homecare worker doing instrumental activities of daily living and twenty-four hour availability are exempt from federal and state minimum wage and overtime requirements.

(29) "Older Adult" means any person at least 65 years of age.

(30) "Office of Administrative Hearings" means the panel described in ORS 183.605 to 183.690 established within the Employment Department to conduct contested case proceedings and other such duties on behalf of designated state agencies.

(31) "Oregon Project Independence" means the program of in-home services described in OAR chapter 411, division 032.

(32) "Preponderance of the Evidence" means that one party's evidence is more convincing than the other party's.

(33) "Provider" means the person who renders the services.

(34) "Provider Enrollment" means a homecare worker's authorization to work as a provider employed by a consumer for the purpose of receiving payment for authorized services provided to consumers of the Department. Provider enrollment includes the issuance of a Medicaid provider number.

(35) "Provider Number" means an identifying number issued to each homecare worker who is enrolled as a provider through the Department.

(36) "Relative" means a person, excluding an individual's spouse, who is related to the individual by blood, marriage, or adoption.

(37) "Restricted Homecare Worker" means the Department or Area Agency on Aging has placed restrictions on a homecare worker's provider enrollment as described in OAR 411-031-0040.

(38) "Self-Management Tasks" means "instrumental activities of daily living" as defined in this rule.

(39) "Services are not Provided as Required" means a homecare worker does not provide services to a consumer as described in the consumer's service plan authorized by the Department.

(40) "These Rules" mean the rules in OAR chapter 411, division 031.

(41) "Twenty-Four Hour Availability" means the availability and responsibility of a homecare worker to meet the activity of daily living and instrumental activity of daily living needs of a consumer as required by the consumer over a twenty-four hour period. Twenty-four hour availability services are provided by a live-in homecare worker and are exempt from federal and state minimum wage and overtime requirements.

(42) "Unacceptable Background Check" means a check that produces information related to a person's background that precludes the person from being a homecare worker for the following reasons:

(a) The person applying to be a homecare worker has been disqualified under OAR 407-007-0275;

(b) A homecare worker enrolled in the Consumer-Employed Provider Program for the first time, or after any break in enrollment, after July 28, 2009 has been disqualified under OAR 407-007-0275; or

(c) A background check and fitness determination has been conducted resulting in a "denied" status, as defined in OAR 407-007-0210.

(43) "Unacceptable Conduct at Work" means a homecare worker has repeatedly engaged in one or more of the following behaviors:

(a) Delay in arrival to work or absence from work not prior-scheduled with a consumer that is either unsatisfactory to a consumer or neglects the consumer's service needs; or

(b) Inviting unwelcome guests or pets into a consumer's home, resulting in the consumer's dissatisfaction or a homecare worker's inattention to the consumer's required service needs.

(44) "Violation of a Drug-Free Workplace" means there was a substantiated complaint against a homecare worker for:

(a) Being intoxicated by alcohol, inhalants, prescription drugs, or other drugs, including over-the-counter medications, while responsible for the care of a consumer, while in the consumer's home, or while transporting the consumer; or

(b) Manufacturing, possessing, selling, offering to sell, trading, or using illegal drugs while providing authorized services to a consumer or while in the consumer's home.

(45) "Violation of Protective Service and Abuse Rules" means, based on a substantiated allegation of abuse, a homecare worker was found to have violated the protective service and abuse rules described in OAR chapter 411, division 20, OAR chapter 407, division 45, or OAR chapter 943, division 45.

Stat. Auth.: ORS 409.050, 410.070 & 410.090

Stats. Implemented: ORS 410.010, 410.020 & 410.070

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Hist.: SPD 17-2004, f. 5-28-04, cert. ef. 6-1-04; SPD 40-2004(Temp), f. 12-30-04, cert. ef. 1-1-05 thru 6-30-05; SPD 10-2005, f. & cert. ef. 7-1-05; SPD 15-2005(Temp), f. & cert. ef. 11-16-05 thru 5-15-06; SPD 15-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 28-2006(Temp), f. 10-18-06, cert. ef. 10-23-06 thru 4-20-07; SPD 4-2007, f. 4-12-07, cert. ef. 4-17-07; SPD 3-2010, f. 5-26-10, cert. ef. 5-30-10; SPD 4-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 12-28-10; SPD 26-2010, f. 11-29-10, cert. ef. 12-1-10; SPD 13-2012(Temp), f. & cert. ef. 9-26-12 thru 3-25-13; SPD 4-2013, f. 3-25-13, cert. ef. 3-26-13; SDP 18-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 47-2013, f. 12-13-13, cert. ef. 12-15-13

411-031-0040

Consumer-Employed Provider Program

The Consumer-Employed Provider Program contains systems and payment structures to employ both hourly and live-in providers. The live-in structure assumes a provider is required for activities of daily living (ADLs), instrumental activities of daily living (IADLs), and twenty-four hour availability. The hourly structure assumes a provider is required for ADLs and IADLs during specific substantial periods. Except as indicated, all of the following criteria apply to both hourly and live-in providers:

(1) **EMPLOYMENT RELATIONSHIP.** The relationship between a provider and a consumer is that of employee and employer.

(2) **CONSUMER-EMPLOYER JOB DESCRIPTIONS.** A consumer-employer is responsible for creating and maintaining a job description for a potential provider in coordination with the services authorized by the consumer's case manager.

(3) **HOMECARE WORKER LIABILITIES.** The only benefits available to homecare workers are those negotiated in the Collective Bargaining Agreement and as provided in Oregon Revised Statute. This Agreement does not include participation in the Public Employees Retirement System or the Oregon Public Service Retirement Plan. Homecare workers are not state employees.

(4) **CONSUMER-EMPLOYER ABSENCES.** When a consumer-employer is absent from his or her home due to an illness or medical treatment and is expected to return to the home within a 30 day period, the consumer's live-in provider may be retained to ensure the live-in provider's presence upon the consumer's return or to maintain the consumer's home for up to 30 days at the rate of pay immediately preceding the consumer's absence.

(5) **SELECTION OF HOMECARE WORKER.** A consumer-employer carries primary responsibility for locating, interviewing, screening, and hiring his or her own employees. The consumer-employer has the right to employ any person who successfully meets the provider enrollment standards described in section (8) of this rule. The Department/AAA office determines whether a potential homecare worker meets the enrollment standards needed to provide services authorized and paid for by the Department.

(6) **EMPLOYMENT AGREEMENT.** A consumer-employer retains the full right to establish an employer-employee relationship with a person at any time after the person's Bureau of Citizenship and Immigration Services papers have been completed and identification photocopied. Payment for services is not guaranteed until the Department has verified that a person meets the provider enrollment standards described in section (8) of this rule and notified both the employer and homecare worker in writing that payment by the Department is authorized.

(7) **TERMS OF EMPLOYMENT.** A consumer-employer must establish terms of an employment relationship with an employee at the time of hire. The terms of employment may include dismissal or resignation notice, work scheduling, absence reporting, and any sleeping arrangements or meals provided for live-in or hourly employees. Termination and the grounds for termination of employment are determined by a consumer-employer. A consumer-employer has the right to terminate an employment relationship with a homecare worker at any time and for any reason.

(8) PROVIDER ENROLLMENT.

(a) **ENROLLMENT STANDARDS.** A homecare worker must meet all of the following standards to be enrolled with the Department's Consumer-Employed Provider Program:

(A) The homecare worker must maintain a drug-free work place.

(B) The homecare worker must complete the background check process described in OAR 407-007-0200 to 407-007-0370 with an outcome of approved or approved with restrictions. The Department/AAA may allow a homecare worker to work on a preliminary basis in accordance with 407-007-0315 if the homecare worker meets the other provider enrollment standards described in this section of the rule.

(C) The homecare worker must have the skills, knowledge, and ability to perform, or to learn to perform, the required work.

(D) The homecare worker's U.S. employment authorization must be verified.

(E) The homecare worker must be 18 years of age or older. The Department may approve a restricted enrollment, as described in section (8)(d) of this rule, for a homecare worker who is at least 16 years of age.

(F) The homecare worker must complete an orientation as described in section (8)(e) of this rule.

(G) The homecare worker must have a tax identification number or social security number that matches the homecare worker's legal name, as verified by the Internal Revenue Service or Social Security Administration.

(b) The Department/AAA may deny an application for provider enrollment in the Consumer-Employed Provider Program when:

(A) The applicant has a history of violating protective service and abuse rules;

(B) The applicant has committed fiscal improprieties;

(C) The applicant does not have the skills, knowledge, or ability to adequately or safely provide services;

(D) The applicant has an unacceptable background check;

(E) The applicant is not 18 years of age;

(F) The applicant has been excluded by the Health and Human Services, Office of Inspector General, from participation in Medicaid, Medicare, and all other Federal Health Care Programs;

(G) The Department/AAA has information that enrolling the applicant as a homecare worker may put vulnerable consumers at risk; or

(H) The applicant's tax identification number or social security number does not match the applicant's legal name, as verified by the Internal Revenue Service or Social Security Administration.

(c) BACKGROUND CHECKS.

(A) When a homecare worker is approved without restrictions following a background check fitness determination, the approval must meet the homecare worker provider enrollment requirement statewide whether the qualified entity is a state-operated Department office or an AAA operated by a county, council of governments, or a non-profit organization.

(B) Background check approval is effective for two years unless:

(i) Based on possible criminal activity or other allegations against a homecare worker, a new fitness determination is conducted resulting in a change in approval status; or

(ii) Approval has ended because the Department has inactivated or terminated a homecare worker's provider enrollment for one or more reasons described in this rule or OAR 411-031-0050.

(C) Prior background check approval for another Department provider type is inadequate to meet background check requirements for homecare worker enrollment.

(D) Background rechecks are conducted at least every other year from the date a homecare worker is enrolled. The Department/AAA may conduct a recheck more frequently based on additional information discovered about a homecare worker, such as possible criminal activity or other allegations.

(d) RESTRICTED PROVIDER ENROLLMENT.

(A) The Department/AAA may enroll an applicant as a restricted homecare worker. A restricted homecare worker may only provide services to a specific consumer.

(i) Unless disqualified under OAR 407-007-0275, the Department/AAA may approve a homecare worker with a prior criminal record under a restricted enrollment to provide services to a specific consumer who is a family member, neighbor, or friend after conducting a weighing test as described in 407-007-0200 to 407-007-0370.

(ii) Based on an applicant's lack of skills, knowledge, or abilities, the Department/AAA may approve the applicant as a restricted homecare worker to provide services to a specific consumer who is a family member, neighbor, or friend.

(iii) Based on an exception to the age requirements for provider enrollment approved by the Department as described in subsection (a)(E) of this section, a homecare worker who is at least 16 years of age may be approved as a restricted homecare worker.

(B) To remove restricted homecare worker status and be designated as a career homecare worker, the restricted homecare worker must complete a new application and background check and be approved by the Department/AAA.

(e) **HOMECARE WORKER ORIENTATION.** Homecare workers must participate in an orientation arranged through a Department/AAA office. The orientation must occur within the first 30 days after the homecare worker becomes enrolled in the Consumer-Employed Provider Program and prior to beginning work for any specific Department/AAA consumers. When completion of an orientation is not possible within those timelines, orientation must be completed within 90 days of being enrolled. If a homecare worker fails to complete an orientation within 90 days of

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provider enrollment, the homecare worker's provider number is inactivated and any authorization for payment of services is discontinued.

(f) **INACTIVATED PROVIDER ENROLLMENT.** A homecare worker's provider enrollment may be inactivated when:

(A) The homecare worker has not provided any paid services to any consumer in the last 12 months;

(B) The homecare worker's background check results in a closed case pursuant to OAR 407-007-0325;

(C) The homecare worker informs the Department/AAA the homecare worker is no longer providing services in Oregon;

(D) The homecare worker fails to participate in an orientation arranged through a Department/AAA office within 90 days of provider enrollment;

(E) The homecare worker, who at the time is not providing any paid services to consumers, is being investigated by Adult Protective Services for suspected abuse that poses imminent danger to current or future consumers; or

(F) The homecare worker's provider payments, all or in part, have been suspended based on a credible allegation of fraud pursuant to federal law under 42 CFR 455.23.

(9) PAID LEAVE.

(a) **LIVE-IN HOMECARE WORKERS.** Irrespective of the number of consumers served, the Department authorizes one twenty-four hour period of leave each month when a live-in homecare worker or spousal pay provider is the only live-in provider during the course of a month. For any part of a month worked, the live-in homecare worker receives a proportional share of the twenty-four hour period of leave authorization. A prorated share of the twenty-four hours is allocated proportionately to each live-in when there is more than one live-in provider per consumer.

(A) **ACCUMULATION AND USAGE FOR LIVE-IN PROVIDERS.** A live-in homecare worker may not accumulate more than 144 hours of accrued leave. A consumer-employer, homecare worker, and case manager must coordinate the timely use of accrued hours. Live-in homecare workers must take vacation leave in twenty-four hour increments or in hourly increments of at least one but not more than twelve hours. A live-in homecare worker must take accrued leave while employed as a live-in.

(B) **THE RIGHT TO RETAIN LIVE-IN PAID LEAVE.** A live-in homecare worker retains the right to access earned paid leave when terminating employment with one employer, so long as the homecare worker is employed with another employer as a live-in within one year of separation.

(C) **TRANSFERABILITY OF LIVE-IN PAID LEAVE.** A live-in homecare worker who converts to hourly or separates from live-in service and returns as an hourly homecare worker within one year from the last day of live-in services is credited with their unused hours of leave up to a maximum of 32 hours.

(D) CASH OUT OF PAID LEAVE.

(i) The Department pays live-in homecare workers 50 percent of all unused paid leave accrued as of January 31 of each year. The balance of paid leave is reduced 50 percent with the cash out.

(ii) Vouchers requesting payment of paid leave received after January 31 may only be paid up to the amount of remaining unused paid leave.

(iii) A live-in homecare worker providing live-in services seven days per week for one consumer-employer may submit a request for payment of 100 percent of unused paid leave if --

(I) The live-in homecare worker's consumer-employer is no longer eligible for in-home services described in OAR chapter 411, division 030; and

(II) The live-in homecare worker does not have alternative residential housing.

(iv) If a request for payment of 100 percent of unused paid leave based on subparagraph (D)(iii)(I) and (II) of this subsection is granted, the homecare's paid leave balance is reduced to zero.

(b) HOURLY HOMECARE WORKERS.

(A) On July 1st of each year, active homecare workers who worked 80 authorized and paid hours in any one of the three months that immediately precede July (April, May, June) are credited with one 16 hour block of paid leave to use during the current fiscal biennium (July 1 through June 30) in which the paid leave was accrued.

(B) On February 1st of each year, active homecare workers who worked 80 authorized and paid hours in any one of the three months that immediately precede February (November, December, January) are credited with one 16 hour block of paid leave.

(C) One 16 hour block of paid leave is credited to each eligible homecare worker, irrespective of the number of consumers the homecare worker serves. Such leave may not be cumulative from biennium to biennium.

(D) UTILIZATION OF HOURLY PAID LEAVE.

(i) Time off must be utilized in one eight hour block subject to authorization. If a homecare worker's normal workday is less than eight hours, the time off may be utilized in blocks equivalent to the homecare worker's normal workday. Any remaining hours that are less than a normally scheduled workday may be taken as a single block.

(ii) Hourly homecare workers may take unused paid leave when the homecare worker's employer is temporarily unavailable for the homecare worker to provide services. In all other situations, a homecare worker who is not working during a month is not eligible to use paid time off in that month.

(E) **LIMITATIONS OF HOURLY PAID LEAVE.** Homecare workers may not be compensated for paid leave unless the time off work is actually taken except as noted in subsection (b)(G) of this section.

(F) **TRANSFERABILITY OF HOURLY PAID LEAVE.** An hourly homecare worker who transfers to work as a live-in homecare worker (within the biennium that the hourly leave is earned) maintains the balance of hourly paid leave and begins accruing live-in paid leave.

(G) CASH OUT OF PAID LEAVE.

(i) The Department pays hourly providers for all unused paid leave accrued as of January 31 of each year. The balance of paid leave is reduced to zero with the cash out.

(ii) Vouchers requesting payment of paid leave received after January 31 may not be paid if paid leave has already been cashed out.

(10) DEPARTMENT FISCAL AND ACCOUNTABILITY RESPONSIBILITY.

(a) **DIRECT SERVICE PAYMENTS.** The Department makes payment to a homecare worker on behalf of a consumer for all in-home services. The payment is considered full payment for the Medicaid home and community-based services rendered. Under no circumstances is a homecare worker to demand or receive additional payment for Medicaid home and community-based services from a consumer or any other source. Additional payment to homecare workers for the same home and community-based services covered by Medicaid is prohibited.

(b) **TIMELY SUBMISSION OF CLAIMS.** In accordance with OAR 410-120-1300, all claims for services must be submitted within 12 months of the date of service.

(c) ANCILLARY CONTRIBUTIONS.

(A) **FEDERAL INSURANCE CONTRIBUTIONS ACT (FICA).** Acting on behalf of a consumer-employer, the Department applies applicable FICA regulations; and

(i) Withholds a homecare worker-employee contribution from payments; and

(ii) Submits the consumer-employer contribution and the amounts withheld from the homecare worker-employee to the Social Security Administration.

(B) **BENEFIT FUND ASSESSMENT.** The Workers' Benefit Fund pays for programs that provide direct benefits to injured workers and the workers' beneficiaries and assist employers in helping injured workers return to work. The Department of Consumer and Business Services sets the Workers' Benefit Fund assessment rate for each calendar year. The Department calculates the hours rounded up to the nearest whole hour and deducts an amount rounded up to the nearest cent. Acting on behalf of the consumer-employer, the Department:

(i) Deducts a homecare worker-employees' share of the Benefit Fund assessment rate for each hour or partial hour worked by each paid homecare worker;

(ii) Collects the consumer-employer's share of the Benefit Fund assessment for each hour or partial hour of paid services received; and

(iii) Submits the consumer-employer's and homecare worker-employee's contributions to the Workers' Benefit Fund.

(C) The Department pays the consumer-employer's share of the unemployment tax.

(d) **ANCILLARY WITHHOLDINGS.** For the purpose of this subsection of the rule, "labor organization" means any organization that represents employees in employment relations.

(A) The Department deducts a specified amount from the homecare worker-employee's monthly salary or wages for payment to a labor organization.

(B) In order to receive payment, a labor organization must enter into a written agreement with the Department to pay the actual administrative costs of the deductions.

(C) The Department pays the deducted amount to the designated labor organization monthly.

(e) STATE AND FEDERAL INCOME TAX WITHHOLDING.

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(A) The Department withholds state and federal income taxes on all payments to homecare workers, as indicated in the Collective Bargaining Agreement.

(B) A homecare worker must complete and return a current Internal Revenue Service W-4 form to the Department/AAA's local office. The Department applies standard income tax withholding practices in accordance with 26 CFR 31.

(11) REIMBURSEMENT FOR COMMUNITY TRANSPORTATION.

(a) A homecare worker is reimbursed at the mileage reimbursement rate established in the Collective Bargaining Agreement when the homecare worker uses his or her own personal motor vehicle for community transportation, if prior authorized by a consumer's case manager. If unscheduled transportation needs arise during non-office hours, the homecare worker must provide an explanation as to the need for the transportation and the transportation must be approved by the consumer's case manager prior to reimbursement.

(b) Medical transportation through the Division of Medical Assistance Programs (DMAP), volunteer transportation, and other transportation services included in a consumer's service plan is considered a prior resource.

(c) The Department is not responsible for vehicle damage or personal injury sustained when a homecare worker uses his or her own personal motor vehicle for DMAP or community transportation, except as may be covered by workers' compensation.

(12) BENEFITS. Workers' compensation and health insurance are available to eligible homecare workers as described in the Collective Bargaining Agreement. In order to receive homecare worker services, a consumer-employer must consent and provide written authorization to the Department for the provision of workers' compensation insurance for the consumer-employer's employee.

(13) OVERPAYMENTS. An overpayment is any payment made to a homecare worker by the Department that is more than the homecare worker is authorized to receive.

(a) Overpayments are categorized as follows:

(A) ADMINISTRATIVE ERROR OVERPAYMENT. The Department failed to authorize, compute, or process the correct amount of in-home service hours or wage rate.

(B) PROVIDER ERROR OVERPAYMENT. The Department overpays the homecare worker due to a misunderstanding or unintentional error.

(C) FRAUD OVERPAYMENT. "Fraud" means taking actions that may result in receiving a benefit in excess of the correct amount, whether by intentional deception, misrepresentation, or failure to account for payments or money received. "Fraud" also means spending payments or money the homecare worker was not entitled to and any act that constitutes fraud under applicable federal or state law (including 42 CFR 455.2). The Department determines, based on a preponderance of the evidence, when fraud has resulted in an overpayment. The Department of Justice, Medicaid Fraud Control Unit determines when to pursue a Medicaid fraud allegation for prosecution.

(b) Overpayments are recovered as follows:

(A) Overpayments are collected prior to garnishments, such as child support, Internal Revenue Service back taxes, or educational loans.

(B) Administrative or provider error overpayments are collected at no more than 5 percent of the homecare worker's gross wages.

(C) The Department determines when a fraud overpayment has occurred and the manner and amount to be recovered.

(D) When a person is no longer employed as a homecare worker, any remaining overpayment is deducted from the person's final check. The person is responsible for repaying an overpayment in full when the person's final check is insufficient to cover the remaining overpayment.

Stat. Auth.: ORS 409.050, 410.070 & 410.090

Stats. Implemented: ORS 410.010, 410.020, 410.070, 410.612 & 410.614

Hist.: SPD 17-2004, f. 5-28-04, cert. ef. 6-1-04; SPD 40-2004(Temp), f. 12-30-04, cert. ef. 1-1-05 thru 6-30-05; SPD 10-2005, f. & cert. ef. 7-1-05; SPD 15-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 28-2006(Temp), f. 10-18-06, cert. ef. 10-23-06 thru 4-20-07; SPD 4-2007, f. 4-12-07, cert. ef. 4-17-07; SPD 18-2007(Temp), f. 10-30-07, cert. ef. 11-1-07 thru 4-29-08; SPD 6-2008, f. 4-28-08, cert. ef. 4-29-08; SPD 16-2009(Temp), f. & cert. ef. 12-1-09 thru 5-30-10; SPD 3-2010, f. 5-26-10, cert. ef. 5-30-10; SPD 4-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 12-28-10; SPD 26-2010, f. 11-29-10, cert. ef. 12-1-10; SPD 13-2012(Temp), f. & cert. ef. 9-26-12 thru 3-25-13; SPD 4-2013, f. 3-25-13, cert. ef. 3-26-13; SDP 18-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 47-2013, f. 12-13-13, cert. ef. 12-15-13

411-031-0050

Termination, Administrative Review, and Hearing Rights

(1) EXCLUSIONS TO APPEAL AND HEARING RIGHTS. The following are excluded from the administrative review and hearing rights process described in this rule:

(a) Terminations based on a background check. The homecare worker has the right to a hearing in accordance with OAR 407-007-0200 to 407-007-0370.

(b) Homecare workers that have not worked in the last 12 months. The provider enrollment may become inactivated but may not be terminated. To activate the provider enrollment number, the homecare worker must complete an application and background check.

(c) Homecare workers that fail to complete a background recheck.

(d) Homecare workers that are denied a provider enrollment number at the time of initial application.

(e) Homecare workers not currently providing services to any consumers whose provider enrollment is inactivated while an Adult Protective Services investigation is being completed.

(f) Homecare workers who have been excluded by Health and Human Services, Office of Inspector General, from participation in Medicaid, Medicare, and all other federal programs.

(2) VIOLATIONS RESULTING IN TERMINATION OF PROVIDER ENROLLMENT. The Department may terminate the homecare worker's provider enrollment when a homecare worker:

(a) Violates the requirement to maintain a drug-free work place;

(b) Has an unacceptable background check;

(c) Lacks the skills, knowledge, and ability to adequately or safely perform the required work;

(d) Violates the protective service and abuse rules in OAR chapter 411, division 20, OAR chapter 407, division 45, and OAR chapter 943, division 45;

(e) Commits fiscal improprieties;

(f) Fails to provide services as required;

(g) Lacks the ability or willingness to maintain consumer-employer confidentiality. Unless given specific permission by the consumer-employer or the consumer-employer's legal representative, the homecare worker may not share any personal information about the consumer including medical, social service, financial, public assistance, legal, or interpersonal details;

(h) Engages in unacceptable conduct at work;

(i) Has been excluded by the Health and Human Services, Office of Inspector General, from participation in Medicaid, Medicare, and all other federal health care programs; or

(j) Fails to provide a tax identification number or social security number that matches the homecare worker's legal name, as verified by the Internal Revenue Service or Social Security Administration.

(3) IMMEDIATE TERMINATION. The Department/AAA may immediately terminate a provider enrollment on the date the violation is discovered, prior to the outcome of the administrative review, when an alleged violation presents imminent danger to current or future consumers. The homecare worker may file an appeal of this decision directly to the Department - Central Office. The homecare worker must file any appeal within 10 business days from the date of the notice.

(4) TERMINATION PENDING APPEAL. When a violation does not present imminent danger to current or future consumers, the provider enrollment may not be terminated during the first 10 business days of the administrative review appeal period. The homecare worker must file any appeal within 10 business days from the date of the notice. If the homecare worker appeals in writing prior to the deadline for appeal, the enrollment may not be terminated until the conclusion of the administrative review.

(5) TERMINATION IF NO APPEAL FILED. The decision of the reviewer becomes final if the homecare worker does not appeal within 10 business days from the date of the notice of the decision. Once the time period for appeal has expired, the provider enrollment is terminated by the reviewer or designee.

(6) BURDEN OF PROOF. The Department has the burden of proving the allegations of the complaint by a preponderance of the evidence. Evidence submitted for the administrative hearing is governed by OAR 137-003-0050.

(7) ADMINISTRATIVE REVIEW PROCESS. The administrative review process allows an opportunity for the Department/AAA program manager or the Department - Central Office to review and reconsider the decision to terminate the homecare worker's provider enrollment. The appeal may include the provision of new information or other actions that may result in the Department/AAA changing its decision.

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(a) A written notice is issued by the Department/AAA when the Department decides to terminate a homecare worker's provider enrollment. The written notice includes:

(A) An explanation of the reason for termination of the provider enrollment;

(B) The alleged violation as listed in section (2) of this rule; and

(C) The homecare worker's appeal rights, including the right to union representation, and where to file the appeal.

(D) For terminations based on substantiated protective services allegations, the notice may only contain the limited information allowed by law. In accordance with ORS 124.075, 124.085, 124.090, and OAR 411-020-0030, complainants, witnesses, the name of the alleged victim, and protected health information may not be disclosed.

(b) **INFORMAL CONFERENCE.** At the first level of appeal, an informal conference (described in OAR 461-025-0325) if requested by the homecare worker, is scheduled with the homecare worker and any union representative. The Department/AAA program manager, or designee, meets with the homecare worker, reviews the facts, and explains why the decision was made. The informal conference may be held by telephone.

(c) The homecare worker must specify in the request for review the issues or decisions being appealed and the reason for the appeal. The appropriate party, as stated in the notice, must receive the request for review within 10 business days of the date of the decision affecting the homecare worker. If the homecare worker decides to file an appeal, they must file their appeal in the following order:

(A) **ADMINISTRATIVE REVIEW.**

(i) Program manager (or designee) at the local Department/AAA office. This is the first level of review for terminations pending appeal described in section (4) of this rule.

(ii) Department Central Office. This is the second level of appeal for terminations pending appeal described in section (4) of this rule. This is the only level of review for immediate terminations described in section (3) of this rule.

(B) **OFFICE OF ADMINISTRATIVE HEARINGS.**

(i) A homecare worker may file a request for a hearing with the local office if all levels of administrative review have been exhausted and the homecare worker continues to dispute the Department's decision. The local office files the request with the Office of Administrative Hearings as described in OAR chapter 137, division 003. The request for the hearing must be filed with the local office within 30 calendar days of the date of the written notice from the Department — Central Office.

(ii) When the Department refers a contested case under these rules to the Office of Administrative Hearings, the Department indicates on the referral whether the Department is authorizing a proposed order, a proposed and final order, or a final order.

(iii) No additional hearing rights have been granted to homecare workers by this rule other than the right to a hearing on the Department's decision to terminate the homecare worker's provider enrollment.

(d) A written response of the outcome of the administrative review is sent to the homecare worker within 10 business days of the review date.

(e) If the administrative review determines that the decision to immediately terminate the provider enrollment was unjustified, the reviewer or designee must have the provider enrollment restored to active status and any earned benefits such as paid leave reinstated. The written response must notify the homecare worker that the provider enrollment is restored.

(8) **REQUEST FOR EXTENSION TO DEADLINE.** The Department/AAA or the homecare worker may request an extension of the 10-day deadline described in subsection (7)(e) above for circumstances beyond their control, if further information needs to be gathered to make a decision, or there is difficulty in scheduling a meeting between the parties.

Stat. Auth.: ORS 409.050, 410.070 & 410.090

Stats. Implemented: ORS 410.070

Hist.: SPD 17-2004, f. 5-28-04, cert. ef. 6-1-04; SPD 40-2004(Temp), f. 12-30-04, cert. ef. 1-1-05 thru 6-30-05; Administrative correction 7-20-05; SPD 15-2005(Temp), f. & cert. ef. 11-16-05 thru 5-15-06; SPD 15-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 3-2010, f. 5-26-10, cert. ef. 5-30-10; SPD 4-2013, f. 3-25-13, cert. ef. 3-26-13; SPD 47-2013, f. 12-13-13, cert. ef. 12-15-13

Rule Caption: State Plan Personal Care Services

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Rules Repealed: 411-034-0000(T), 411-034-0010(T), 411-034-0020(T), 411-034-0030(T), 411-034-0035(T), 411-034-0040(T), 411-034-0050(T), 411-034-0055(T), 411-034-0070(T), 411-034-0090(T)

Subject: The Department of Human Services (Department) is permanently amending the State Plan personal care services rules in OAR chapter 411, division 034.

The permanent rules:

- Adopt the changes made by temporary rule that became effective on July 1, 2013;

- Modify the authorization of State Plan personal care service hours to allow individuals with needs that exceed the current 20 hour per month payment limitation to request an exception for additional hours;

- Correctly reflect personal support workers as providers of State Plan personal care services;

- Update the definitions to provide consistency with terms used for services for older adults, adults with disabilities, and individuals with intellectual or developmental disabilities;

- Clarify provider qualifications, enrollment, employee-employer relationship, termination, and appeal rights;

- Remove references to waived services as appropriate, and as appropriate, replace the references with references to Medicaid home and community-based services in order to recognize services available through Medicaid waivers or under the Medicaid State Plan; and

- Reflect new Department terminology and correct formatting and punctuation.

Rules Coordinator: Christina Hartman—(503) 945-6398

411-034-0000

Purpose

The rules in OAR chapter 411, division 34 ensure State Plan personal care services support and augment independence, empowerment, dignity, and human potential through the provision of flexible, efficient, and suitable services to individuals eligible for State Plan personal care services. State Plan personal care services are intended to supplement an individual's own personal abilities and resources.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 410.020, 410.070 & 410.710

Hist.: SSD 2-1996, f. 3-13-96, cert. ef. 3-15-96; SPD 35-2004, f. 11-30-04, cert. ef. 12-1-04; SPD 16-2007, f. 10-4-07, cert. ef. 10-5-07; SPD 15-2010(Temp), f. & cert. ef. 6-30-10 thru 12-27-10; SPD 18-2010(Temp), f. & cert. ef. 7-29-10 thru 12-27-10; Administrative correction 1-25-11; SDP 19-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 48-2013, f. 12-13-13, cert. ef. 12-15-13

411-034-0010

Definitions

Unless the context indicates otherwise, the following definitions apply to the rules in OAR chapter 411, division 034:

(1) "AAA" means "Area Agency on Aging" as defined in this rule.

(2) "Adult" means any person at least 18 years of age.

(3) "Area Agency on Aging (AAA)" means the Department designated agency charged with the responsibility to provide a comprehensive and coordinated system of services to older adults and adults with disabilities in a planning and service area. The terms AAA and Area Agency on Aging are inclusive of both Type A and Type B Area Agencies on Aging as defined in ORS 410.040 and described in 410.210 to 410.300.

(4) "Assistance" means an individual requires help from another person with the personal care or supportive services described in OAR 411-034-0020. Assistance may include cueing, hands-on, monitoring, reassurance, redirection, set-up, standby, or support as defined in 411-015-0005. Assistance may also require verbal reminding to complete one of the tasks described in 411-034-0020.

(5) "Assistive Devices" means any category of durable medical equipment, mechanical apparatus, electrical appliance, or instrument of technology used to assist and enhance an individual's independence in performing any task described in OAR 411-034-0020.

(6) "Assistive Supports" means the aid of service animals, general household items, or furniture used to assist and enhance an individual's independence in performing any task described in OAR 411-034-0020.

(7) "Background Check" means a criminal records check and abuse check as defined in OAR 407-007-0210.

(8) "Case Management" means the functions performed by a case manager, services coordinator, personal agent, or manager. Case manage-

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ment includes determining service eligibility, developing a plan of authorized services, and monitoring the effectiveness of services.

(9) “Case Manager” means a Department employee or an employee of the Department’s designee, services coordinator, or personal agent who assesses the service needs of individuals, determines eligibility, and offers service choices to eligible individuals. A case manager authorizes and implements an individual’s plan for services and monitors the services delivered.

(10) “Central Office” means the main office of the Department, Division, or Designee.

(11) “Child” means an individual who is less than 18 years of age.

(12) “Community Developmental Disability Program (CDDP)” means the Department’s designee that is responsible for plan authorization, delivery, and monitoring of services for individuals with intellectual or developmental disabilities according to OAR chapter 411, division 320.

(13) “Contracted In-Home Care Agency” means an incorporated entity or equivalent, licensed in accordance with OAR chapter 333, division 536 that provides hourly contracted in-home services to individuals receiving services through the Department or Area Agency on Aging.

(14) “Cost Effective” means being responsible and accountable with Department resources by offering less costly alternatives when providing choices that adequately meet an individual’s service needs. Cost effective choices consist of all available service options, the utilization of assistive devices or assistive supports, natural supports, architectural modifications, and alternative service resources (defined in OAR 411-015-0005). Less costly alternatives may include resources not paid for by the Department.

(15) “Delegated Nursing Task” means a registered nurse (RN) authorizes an unlicensed person (defined in OAR 851-047-0010) to provide a nursing task normally requiring the education and license of an RN. In accordance with OAR 851-047-0000, 851-047-0010, and 851-047-0030, the RN’s written authorization of a delegated nursing task includes assessing a specific eligible individual, evaluating an unlicensed person’s ability to perform a specific nursing task, teaching the nursing task, and supervising and re-evaluating the individual and the unlicensed person at regular intervals.

(16) “Department” means the Department of Human Services.

(17) “Designee” means an organization with which the Department contracts or has an interagency agreement.

(18) “Developmental Disability” as defined in OAR 411-320-0020 and described in 411-320-0080.

(19) “Disability” means a physical, cognitive, or emotional impairment which, for an individual, constitutes or results in a functional limitation in one or more of the activities of daily living defined in OAR 411-015-0006.

(20) “Division” means:

(a) Oregon Health Authority, Addictions and Mental Health Division (AMHD);

(b) Department of Human Services, Aging and People with Disabilities Division (APD);

(c) Area Agencies on Aging (AAA);

(d) Department of Human Services, Self-Sufficiency Programs (SSP);

(e) Department of Human Services, Office of Developmental Disability Services (ODDS);

(f) Community Developmental Disability Programs (CDDP); and

(g) Support Services Brokerages.

(21) “Fiscal Improprieties” means a homecare or personal support worker committed financial misconduct involving an individual’s money, property, or benefits.

(a) Fiscal improprieties include but are not limited to financial exploitation, borrowing money from an individual, taking an individual’s property or money, having an individual purchase items for the homecare or personal support worker, forging an individual’s signature, falsifying payment records, claiming payment for hours not worked, or similar acts intentionally committed for financial gain.

(b) Fiscal improprieties do not include the exchange of money, gifts, or property between a homecare or personal support worker whose employer is a relative unless an allegation of financial exploitation, as defined in OAR 411-020-0002 or 407-045-0260, has been substantiated based on an adult protective services investigation.

(22) “Guardian” means a parent for an individual less than 18 years of age or a person or agency appointed and authorized by the courts to make decisions about services for an individual.

(23) “Homecare Worker” means a provider as described in OAR 411-031-0040, that is directly employed by an individual to provide either hourly or live-in services to the individual.

(a) The term homecare worker includes:

(A) A consumer-employed provider in the Spousal Pay and Oregon Project Independence Programs;

(B) A consumer-employed provider that provides State Plan personal care services; and

(C) A relative providing Medicaid in-home services to an individual living in the relative’s home.

(b) The term homecare worker does not include an Independent Choices Program provider or a personal support worker enrolled through Developmental Disability Services or the Addictions and Mental Health Division.

(24) “Individual” means the person applying for or determined eligible for State Plan personal care services.

(25) “Intellectual Disability” as defined in OAR 411-320-0020 and described in OAR 411-320-0080.

(26) “Lacks the Skills, Knowledge, and Ability to Adequately or Safely Perform the Required Work” means a homecare or personal support worker does not possess the skills to perform services needed by individuals receiving services from the Department. The homecare or personal support worker may not be physically, mentally, or emotionally capable of providing services to individuals. The homecare or personal support worker’s lack of skills may put individuals at risk because the homecare or personal support worker fails to perform, or learn to perform, the duties needed to adequately meet the needs of the individuals.

(27) “Legal Representative” means:

(a) For a child, the parent or step-parent unless a court appoints another person or agency to act as the guardian; and

(b) For an adult:

(A) A spouse;

(B) A family member who has legal custody or legal guardianship according to ORS 125.005, 125.300, 125.315, and 125.310;

(C) An attorney at law who has been retained by or for an individual; or

(D) A person or agency authorized by the courts to make decisions about services for an individual.

(28) “Long Term Care Community Nursing” means the nursing services described in OAR chapter 411, division 048.

(29) “Natural Support” means resources and supports (e.g. relatives, friends, significant others, neighbors, roommates, or the community) who are willing to voluntarily provide services to an individual without the expectation of compensation. Natural supports are identified in collaboration with the individual and the potential “natural support”. The natural support is required to have the skills, knowledge, and ability to provide the needed services and supports.

(30) “Older Adult” means any person at least 65 years of age.

(31) “Ostomy” means assistance that an individual needs with a colostomy, urostomy, or ileostomy tube or opening used for elimination.

(32) “Personal Agent” means a person who is a case manager for the provision of case management services, works directly with individuals and the individuals’ legal or designated representatives and families to provide or arrange for support services as described in OAR chapter 411, division 340, meets the qualifications set forth in 411-340-0150, and is a trained employee of a support services brokerage or a person who has been engaged under contract to the brokerage to allow the brokerage to meet responsibilities in geographic areas where personal agent resources are severely limited.

(33) “Personal Care” means the functional activities described in OAR 411-034-0020 that an individual requires for continued well-being.

(34) “Personal Support Worker” means:

(a) A provider:

(A) Who is hired by an individual with an intellectual or developmental disability or the individual’s representative;

(B) Who receives money from the Department for the purpose of providing services to the individual in the individual’s home or community; and

(C) Whose compensation is provided in whole or in part through the Department or community developmental disability program.

(b) This definition of personal support worker is intended to reflect the term as defined in ORS 410.600.

(35) “Provider” or “Qualified Provider” means a homecare worker or personal support worker that meets the qualifications in OAR 411-034-0050 that performs State Plan personal care services.

(36) “Provider Enrollment” means a homecare worker’s or personal support worker’s authorization to work as a provider employed by an eligible individual, representative, or legal representative for the purpose of

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receiving payment for services authorized by the Department. Provider enrollment includes the issuance of a Medicaid provider number.

(37) "Provider Number" means an identifying number issued to each homecare or personal support worker who is enrolled as a provider through the Department.

(38) "Relative" means a person, excluding an individual's spouse, who is related to the individual by blood, marriage, or adoption.

(39) "Representative" means:

(a) A person appointed by an individual or legal representative to participate in service planning on the individual's behalf that is either the individual's guardian or natural support with longstanding involvement in assuring the individual's health, safety and welfare; and

(b) For the purpose of obtaining State Plan personal care services through a homecare or personal support worker, the person selected by an individual or the individual's legal representative to act on the individual's behalf to provide the employer responsibilities described in OAR 411-034-0040.

(40) "Respite" means services for the relief of a person normally providing supports to an individual unable to care for him or herself.

(41) "Service Need" means the assistance with personal care and supportive services needed by an individual receiving Department services.

(42) "Service Plan" or "Service Authorization" means an individual's written plan for services that identifies:

(a) The individual's qualified provider who is to deliver the authorized services;

(b) The date when the provision of services is to begin; and

(c) The maximum monthly hours of personal care and supportive services authorized by the Department or the Department's designee.

(43) "Services Coordinator" means an employee of a community developmental disability program or other agency that contracts with the county or Department, who is selected to plan, procure, coordinate, and monitor an individual's plan for services, and to act as a proponent for individuals with intellectual or developmental disabilities.

(44) "State Plan Personal Care Services" means the assistance with personal care and supportive services described in OAR 411-034-0020 provided to an individual by a homecare worker or personal support worker. The assistance may include cueing, hands-on, monitoring, reassurance, redirection, set-up, standby, or support as defined in 411-015-0005. The assistance may also require verbal reminding to complete one of the personal care tasks described in 411-034-0020.

(45) "Sub-Acute Care Facility" means a care center or facility that provides short-term rehabilitation and complex medical services to an individual with a condition that does not require acute hospital care but prevents the individual from being discharged to his or her home.

(46) "Support Services Brokerage" means an entity, or distinct operating unit within an existing entity, that uses the principles of self-determination to perform the functions associated with planning and implementation of support services for individuals with intellectual or developmental disabilities.

(47) "These Rules" mean the rules in OAR chapter 411, division 34. Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.020, 410.070, 410.710 & 411.675

Hist.: SSD 2-1996, f. 3-13-96, cert. ef. 3-15-96; SPD 35-2004, f. 11-30-04, cert. ef. 12-1-04; SPD 16-2007, f. 10-4-07, cert. ef. 10-5-07; SPD 31-2010, f. 12-29-10, cert. ef. 1-1-11; SPD 19-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 48-2013, f. 12-13-13, cert. ef. 12-15-13

411-034-0020

State Plan Personal Care Services

(1) State Plan personal care services are essential services that enable an individual to move into or remain in his or her own home. State Plan personal care services are provided in accordance with an individual's authorized plan for services by a provider meeting the requirements in OAR 411-034-0050.

(a) To receive State Plan personal care services, an individual must demonstrate the need for assistance with personal care and supportive services and meet the eligibility criteria described in OAR 411-034-0030.

(b) State Plan personal care services are provided directly to an eligible individual and are not meant to provide respite or other services to an individual's natural support system. State Plan personal care services may not be implemented for the purpose of benefiting an individual's family members or the individual's household in general.

(c) State Plan personal care services are limited to 20 hours per month per eligible individual.

(d) To meet an extraordinary personal care need, an individual, representative or legal representative may request an exception to the 20 hour per month limitation. An exception must be requested through the Central

Office of the Division serving the individual. The Division has up to 45 days upon receipt of an exception request to determine whether an individual's assessed personal care needs warrant exceeding the 20 hour per month limitation.

(2) Personal care services include:

(a) Basic personal hygiene — providing or assisting an individual with such needs as bathing (tub, bed bath, shower), washing hair, grooming, shaving, nail care, foot care, dressing, skin care, mouth care, and oral hygiene;

(b) Toileting, bowel, or bladder care — assisting to and from bathroom, on and off toilet, commode, bedpan, urinal, or other assistive device used for toileting, changing incontinence supplies, following a toileting schedule, cleansing an individual or adjusting clothing related to toileting, emptying a catheter drainage bag or assistive device, ostomy care, and bowel care;

(c) Mobility, transfers, or repositioning — assisting an individual with ambulation or transfers with or without assistive devices, turning an individual or adjusting padding for physical comfort or pressure relief, and encouraging or assisting with range-of-motion exercises;

(d) Nutrition — preparing meals and special diets, assisting with adequate fluid intake or adequate nutrition, assisting with food intake (feeding), monitoring to prevent choking or aspiration, assisting with special utensils, cutting food, and placing food, dishes, and utensils within reach for eating;

(e) Medication or oxygen management — assisting with ordering, organizing, and administering oxygen or prescribed medications (including pills, drops, ointments, creams, injections, inhalers, and suppositories), monitoring for choking while taking medications, assisting with the administration of oxygen, maintaining clean oxygen equipment, and monitoring for adequate oxygen supply;

(f) Delegated nursing tasks as defined in OAR 411-034-0010.

(3) When any of the services listed in section (2) of this rule are essential to the health, safety, and welfare of an individual and the individual is receiving personal care paid by the Department, the following supportive services may also be provided:

(a) Housekeeping tasks necessary to maintain the eligible individual in a healthy and safe environment, including cleaning surfaces and floors, making the individual's bed, cleaning dishes, taking out the garbage, dusting, and gathering and washing soiled clothing and linens. Only the housekeeping activities related to the eligible individual's needs may be considered in housekeeping;

(b) Arranging for necessary medical appointments including help scheduling appointments and arranging medical transportation services (described in OAR chapter 410, division 136) and assistance with mobility and transfers or cognition in getting to and from appointments or to an office within a medical clinic or center;

(c) Observing the individual's health status and reporting any significant changes to physicians, health care professionals, or other appropriate persons;

(d) First aid and handling of emergencies, including responding to medical incidents related to conditions such as seizures, spasms, or uncontrollable movements where assistance is needed by another person and responding to an individual's call for help during an emergent situation or for unscheduled needs requiring immediate response; and

(e) Cognitive assistance or emotional support provided to an individual by another person due to confusion, dementia, behavioral symptoms, or mental or emotional disorders. Cognitive assistance or emotional support includes helping the individual cope with change and assisting the individual with decision-making, reassurance, orientation, memory, or other cognitive symptoms.

(4) Payment may not be made for any of the following excluded services:

(a) Shopping;

(b) Community transportation;

(c) Money management;

(d) Mileage reimbursement;

(e) Social companionship;

(f) Day care, adult day services (described in OAR chapter 411, division 066), respite, or baby-sitting services;

(g) Medicaid home delivered meals (described in OAR chapter 411, division 040);

(h) Care, grooming, or feeding of pets or other animals; or

(i) Yard work, gardening, or home repair.

Stat. Auth.: ORS 409.050 & 410.070

ADMINISTRATIVE RULES

Stats. Implemented: ORS 409.010, 410.020, 410.070 & 410.608
Hist.: SSD 2-1996, f. 3-13-96, cert. ef. 3-15-96; SPD 35-2004, f. 11-30-04, cert. ef. 12-1-04;
SPD 9-2005, f. & cert. ef. 7-1-05; SPD 16-2007, f. 10-4-07, cert. ef. 10-5-07; SPD 31-2010,
f. 12-29-10, cert. ef. 1-1-11; SDP 19-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD
48-2013, f. 12-13-13, cert. ef. 12-15-13

411-034-0030

Eligibility for State Plan Personal Care Services

(1) To be eligible for State Plan personal care services, an individual must:

(a) Require assistance (defined in OAR 411-034-0010) from a qualified provider with one or more of the personal care tasks described in 411-034-0020; and

(b) Be a current service recipient of at least one of the following programs defined in OAR 461-101-0010:

- (A) EXT — Extended Medical Assistance;
- (B) MAA — Medical Assistance Assumed;
- (C) MAF — Medical Assistance to Families;
- (D) OHP — Oregon Health Plan;
- (E) OSIP-M — Oregon Supplemental Income Program — Medical

(OSIPM);

- (F) TANF — Temporary Assistance to Needy Families; or
- (G) REF — Refugee Assistance.

(2) An individual is not eligible to receive State Plan personal care services if:

(a) The individual is receiving assistance with activities of daily living (as described in OAR 411-015-0006) from a licensed 24-hour residential services program (such as an adult foster home, assisted living facility, group home, or residential care facility);

(b) The individual is in a prison, hospital, sub-acute care facility, nursing facility, or other medical institution;

(c) The individual's service needs are met through the individual's natural support system; or

(d) The individual receives services under other Medicaid home and community-based service options.

(3) Payment for State Plan personal care services is not intended to replace the resources available to an individual from the individual's natural support system (defined in OAR 411-034-0010).

(4) State Plan personal care services are not intended to replace routine care commonly needed by an infant or child typically provided by the infant's or child's parent.

(5) State Plan personal care services may not be used to replace other governmental services.

(6) The Department, Division, or Designee has the authority to close the eligibility and authorization for State Plan personal care services if an individual fails to:

(a) Employ a provider that meets the requirements in OAR 411-034-0050; or

(b) Receive personal care from a qualified provider paid by the Department for 30 continuous calendar days or longer.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 409.010, 410.020, 410.070, 410.608 & 410.710

Hist.: SSD 2-1996, f. 3-13-96, cert. ef. 3-15-96; SPD 35-2004, f. 11-30-04, cert. ef. 12-1-04;
SPD 9-2005, f. & cert. ef. 7-1-05; SPD 16-2007, f. 10-4-07, cert. ef. 10-5-07; SDP 19-
2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 48-2013, f. 12-13-13, cert. ef. 12-15-
13

411-034-0035

Applying for State Plan Personal Care Services

(1) Individuals eligible for state plan personal care services as described in OAR 309-016-0690 must apply through the local community mental health program or agency contracted with AMHD. An individual applying for State Plan personal care services that is not eligible for or receiving services through ODDS or APD is referred to the appropriate AMHD office.

(2) An individual with an intellectual or developmental disability eligible for or receiving services through the Department's Office of Developmental Disabilities Services (ODDS), a Community Developmental Disability Program (CDDP), or Support Services Brokerage must apply for State Plan personal care services through the local CDDP or the local support services brokerage.

(3) An older adult or an adult with a disability eligible for or receiving case management services from the Department's Aging and People With Disabilities (APD) or Area Agency on Aging (AAA) must apply for State Plan personal care services through the local APD or AAA office.

(4) Individuals receiving benefits through the Department's Self-Sufficiency Programs (SSP) must apply for State Plan personal care services through the local APD or AAA office. APD/AAA is responsible for

service assessment and for any planning and payment authorization for State Plan personal care services, if the applicant is determined eligible.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 410.020, 410.070, 410.608, 410.710 & 411.116

Hist.: SPD 35-2004, f. 11-30-04, cert. ef. 12-1-04; SPD 16-2007, f. 10-4-07, cert. ef. 10-5-07; SPD 31-2010, f. 12-29-10, cert. ef. 1-1-11; SDP 19-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 48-2013, f. 12-13-13, cert. ef. 12-15-13

411-034-0040

Employer-Employee Relationship

(1) EMPLOYER — EMPLOYEE RELATIONSHIP. The relationship between a provider and an eligible individual or the individual's representative is that of employee and employer.

(2) JOB DESCRIPTION. As an employer, it is the responsibility of an individual or the individual's representative to create and maintain a job description for a potential provider that is in coordination with the individual's plan for services.

(3) PROVIDER BENEFITS. The only benefits available to homecare and personal support workers are those negotiated in a collective bargaining agreement and as provided in statute. The collective bargaining agreement does not include participation in the Public Employees Retirement System or the Oregon Public Service Retirement Plan. Homecare and personal support workers are not state or Division employees.

(4) EMPLOYER RESPONSIBILITIES. For an individual to be eligible for State Plan personal care services, the individual or the individual's representative must demonstrate the ability to:

(a) Locate, screen, and hire a provider meeting the requirements in OAR 411-034-0050;

(b) Supervise and train a provider;

(c) Schedule work, leave, and coverage;

(d) Track the hours worked and verify the authorized hours completed by a provider;

(e) Recognize, discuss, and attempt to correct any performance deficiencies with the provider and provide appropriate, progressive, disciplinary action as needed; and

(f) Discharge an unsatisfactory provider.

(5) An eligible individual exercises control as the employer and directs the provider in the provision of the services.

(6) The Department makes payment for State Plan personal care services to the provider on an individual's behalf. Payment for services is not guaranteed until the Department, Division, or Designee has verified that an individual's provider meets the qualifications in OAR 411-034-0050.

(7) In order to receive State Plan personal care services from a personal support worker or homecare worker, an individual must be able to:

(a) Meet all of the employer responsibilities described in section (4) of this rule; or

(b) Designate a representative to meet the employer responsibilities described in section (4) of this rule.

(8) TERMINATION OF PROVIDER EMPLOYMENT. Termination and the grounds for termination of employment are determined by an individual or the individual's representative. An individual has the right to terminate an employment relationship with a provider at any time and for any reason. An individual or the individual's representative must establish an employment agreement at the time of hire. The employment agreement may include grounds for dismissal, notice of resignation, work scheduling, and absence reporting.

(9) After appropriate intervention, an individual unable to meet the employer responsibilities in section (4) of this rule may be determined ineligible for State Plan personal care services.

(a) Contracted in-home care agency services are offered when an individual is ineligible for State Plan personal care services. Other community-based or nursing facility services are offered to an individual if the individual meets the eligibility criteria for community-based or nursing facility services.

(b) An individual determined ineligible for State Plan personal care services may request State Plan personal care services at the individual's next annual re-assessment. Improvements in health and cognitive functioning may be factors in demonstrating the individual's ability to meet the employer responsibilities described in section (4) of this rule. The waiting period may be shortened if an individual is able to demonstrate the ability to meet the employer responsibilities sooner than the individual's next annual re-assessment.

(10) REPRESENTATIVE:

(a) An individual or an individual's legal representative may designate a representative to act on the individual's behalf to meet the employer responsibilities in section (4) of this rule. An individual's legal representative may be designated as the individual's representative.

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(b) The Department, Division, or Designee may deny an individual's request for a representative if the representative has:

(A) A history of a substantiated abuse of an adult as described in OAR chapter 411, division 20, OAR chapter 407, division 45, or OAR chapter 943, division 45;

(B) A history of founded abuse of a child as described in ORS 419B.005;

(C) Participated in billing excessive or fraudulent charges; or

(D) Failed to meet the employer responsibilities in section (4) of this rule, including previous termination as a result of failing to meet the employer responsibilities in section (4) of this rule.

(c) An individual is given the option to select another representative if the Department, Division, or Designee suspends, terminates, or denies an individual's request for a representative for the reasons described in subsection (b) of this section.

(d) An individual with a guardian must have a representative for service planning purposes. A guardian may designate themselves the individual's representative.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 410.020, 410.070, 410.608, 410.710 & 411.159

Hist.: SPD 35-2004, f. 11-30-04, cert. ef. 12-1-04; SPD 16-2007, f. 10-4-07, cert. ef. 10-5-07; SDP 19-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 48-2013, f. 12-13-13, cert. ef. 12-15-13

411-034-0050

Provider Qualifications for Enrollment

(1) A qualified provider is a person who, in the judgment of the Department, Division, or Designee, demonstrates by background, skills, and abilities the skills, knowledge, and ability to perform, or to learn to perform, the required work.

(a) A qualified provider must maintain a drug-free work place.

(b) A qualified provider must complete the background check process described in OAR 407-007-0200 to 407-007-0370 with an outcome of approved or approved with restrictions. The Department, Division, or the Designee may allow a provider to work on a preliminary basis in accordance with 407-007-0315 if the provider meets the other qualifications described in this rule.

(c) A qualified provider paid by the Department may not be an individual's legal representative.

(d) A qualified provider must be authorized to work in the United States in accordance with U.S. Department of Homeland Security, Bureau of Citizenship and Immigration rules.

(e) A qualified provider must be 18 years of age or older. A homecare worker enrolled in the Consumer-Employed Provider Program who is at least 16 years of age may be approved for restricted enrollment as a qualified provider as described in OAR 411-031-0040.

(f) A qualified provider may be employed through a contracted in-home care agency or enrolled as a homecare worker or personal support worker under a provider number. Rates for services are established by the Department.

(g) Providers that provide State Plan personal care services:

(A) Enrolled in the Consumer-Employed Provider Program must meet all of the standards in OAR chapter 411, division 31.

(B) As personal support workers must meet the provider enrollment and termination criteria described in OAR 411-031-0040.

(2) BACKGROUND RECHECKS:

(a) Background rechecks are conducted at least every other year from the date a provider is enrolled. The Department, Division, or Designee may conduct a recheck more frequently based on additional information discovered about a provider, such as possible criminal activity or other allegations.

(b) Prior background check approval for another Department provider type is inadequate to meet background check requirements for homecare or personal support workers.

(c) Provider enrollment may be inactivated when a provider fails to comply with the background recheck process. Once a provider's enrollment is inactivated, the provider must reapply and meet the standards described in this rule to reactivate his or her provider enrollment.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 409.010, 410.020, 410.070 & 410.608

Hist.: SSD 2-1996, f. 3-13-96, cert. ef. 3-15-96; SPD 35-2004, f. 11-30-04, cert. ef. 12-1-04; SPD 16-2007, f. 10-4-07, cert. ef. 10-5-07; SDP 19-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 48-2013, f. 12-13-13, cert. ef. 12-15-13

411-034-0055

Provider Termination

(1) The Department, Division, or Designee may deny or terminate a homecare worker's provider enrollment and provider number as described

in OAR 411-031-0050. The termination, administrative review, and hearings rights for homecare workers is described in 411-031-0050.

(2) The Department, Division, or Designee may deny or terminate a personal support worker's provider enrollment and provider number when the personal support worker:

(a) Has been appointed the legal guardian of an individual;

(b) Has a background check that results in a closed case pursuant to OAR 407-007-0325;

(c) Lacks the skills, knowledge, or ability to perform, or learn to perform, the required work;

(d) Violates the protective service and abuse rules in OAR chapter 411, division 20, OAR chapter 407, division 45, and OAR chapter 943, division 45;

(e) Commits fiscal improprieties;

(f) Fails to provide the authorized services required by an eligible individual;

(g) Has been repeatedly late in arriving to work or has absences from work not authorized in advance by an individual;

(h) Has been intoxicated by alcohol or drugs while providing authorized services to an individual or while in the individual's home;

(i) Has manufactured or distributed drugs while providing authorized services to an individual or while in the individual's home; or

(j) Has been excluded as a provider by the U.S. Department of Health and Human Services, Office of Inspector General, from participation in Medicaid, Medicare, or any other federal health care programs.

(3) A personal support worker may contest the Department's, Division's, or Designee's decision to terminate the personal support worker's provider enrollment and provider number.

(a) A designated employee from the Department, Division, or Designee reviews the termination and notifies the personal support worker of his or her decision.

(b) A personal support worker may file a request for a hearing with the Department's, Division's, or Designee's local office if all levels of administrative review have been exhausted and the provider continues to dispute the Department's, Division's, or Designee's decision. The local office files the request for a hearing with the Office of Administrative Hearings as described in OAR chapter 137, division 3. The request for a hearing must be filed within 30 calendar days of the date of the written notice from the Department, Division, or Designee.

(c) When a contested case under these rules is referred to the Office of Administrative Hearings, the referral must indicate whether the Department is authorizing a proposed order, a proposed and final order, or a final order.

(d) No additional hearing rights have been granted to a personal support worker by this rule other than the right to a hearing on the Department's, Division's, or Designee's decision to terminate provider enrollment.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 409.010, 410.020, 410.070, & 411.675

Hist.: SPD 35-2004, f. 11-30-04, cert. ef. 12-1-04; SPD 9-2005, f. & cert. ef. 7-1-05; SPD 16-2007, f. 10-4-07, cert. ef. 10-5-07; SDP 19-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 48-2013, f. 12-13-13, cert. ef. 12-15-13

411-034-0070

State Plan Personal Care Service Assessment, Authorization, and Monitoring

(1) CASE MANAGER RESPONSIBILITIES.

(a) ASSESSMENT AND REASSESSMENT.

(A) A case manager must meet in person with an individual to assess the individual's ability to perform the personal care tasks listed in OAR 411-034-0020.

(B) An individual's natural supports may participate in the assessment if requested by the individual.

(C) A case manager must assess an individual's service needs, identify the resources meeting any, some, or all of the individual's needs, and determine if the individual is eligible for State Plan personal care services or other services.

(D) A case manager must meet with an individual in person at least once every 365 days to review the individual's service needs.

(b) SERVICE PLANNING.

(A) A case manager must prepare a service plan identifying the tasks for which an individual requires assistance and the monthly number of authorized service hours. The case manager must document an individual's natural supports that currently meet some or all of the individual's assistance needs.

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(B) The service plan must describe the tasks to be performed by a qualified provider and must authorize the maximum monthly hours that may be reimbursed for those services.

(C) When developing service plans, a case manager must consider the cost effectiveness of services that adequately meet the individual's service needs.

(D) Payment for State Plan personal care services must be prior authorized by a case manager and based on the service needs of an individual as documented in the individual's written service plan.

(c) ONGOING MONITORING AND AUTHORIZATION.

(A) When there is an indication that an individual's personal care needs have changed, a case manager must conduct an in person re-assessment with the individual (and any of the individual's natural supports if requested by the individual).

(B) Following annual re-assessments and those conducted after a change in an individual's personal care needs, a case manager must review service eligibility, the cost effectiveness of the individual's service plan, and whether the services provided are meeting the identified service needs of the individual. The case manager may adjust the hours or services in the individual's service plan and must authorize a new service plan, if appropriate, based on the individual's current service needs.

(d) ONGOING CASE MANAGEMENT. A case manager must provide ongoing coordination of State Plan personal care services, including authorizing changes in providers and service hours, addressing risks, and monitoring and providing information and referral to an individual when indicated.

(2) LONG TERM CARE (LTC) COMMUNITY NURSING SERVICES. A LTC community nurse is a licensed, registered nurse (RN) who has been approved under a contract or provider agreement with the Department, Division, or Designee to provide nursing assessment for indicators identified in subsection (a) of this section and may provide on-going nursing services as identified in subsection (b) of this section to certain individuals served by the Department, Division, or Designee. Individuals receiving LTC community nursing services are primarily older adults and adults with disabilities.

(a) A case manager may refer a LTC community nurse where available, for nursing assessment and monitoring when it appears an individual needs assistance to manage health support needs and may need delegated nursing tasks, nurse assessment and consultation, teaching, or services requiring RN monitoring. Indicators of the need for LTC community nurse assessment and monitoring include:

(A) Complex health problem or multiple diagnoses resulting in the need for assistance with health care coordination;

(B) Medical instability, as demonstrated by frequent emergency care, physician visits, or hospitalizations;

(C) Behavioral symptoms or changes in behavior or cognition;

(D) Nutrition, weight, or dehydration issues;

(E) Skin breakdown or risk for skin breakdown;

(F) Pain issues;

(G) Medication safety issues or concerns;

(H) A history of recent, frequent falls; or

(I) A provider may benefit from teaching or training about the health support needs of an eligible individual.

(b) Following the completion of an initial nursing assessment in an individual's home by a LTC community nurse, the provision of ongoing LTC community nursing services must be prior-authorized by a case manager and may include:

(A) Ongoing health monitoring and teaching for an eligible individual specific to the individual's identified needs;

(B) Medication education for an eligible individual and the individual's provider;

(C) Instructing or training a provider or natural support to address an individual's health needs;

(D) Consultation with other health care professionals serving an individual and advocating for the individual's medical and restorative needs in a non-facility setting; or

(E) Delegation of nursing tasks defined in OAR 411-034-0010 to a non-facility provider.

(c) LTC Community nursing services must be provided as described in OAR chapter 411, division 048.

(3) UNAUTHORIZED SERVICE SETTINGS AND PROVIDERS.

(a) The Department, Division, or Designee may not authorize services within an eligible individual's home when --

(A) The individual's home has dangerous conditions that jeopardize the health or safety of the individual and necessary safeguards cannot be taken to improve the setting;

(B) The services cannot be provided safely or adequately by a provider;

(C) The individual's home has dangerous conditions that jeopardize the health or safety of the provider and necessary safeguards cannot be taken to minimize the dangers; or

(D) The eligible individual does not have the ability to make an informed decision, does not have a designated representative to make decisions on his or her behalf, and necessary safeguards cannot be provided to protect the safety, health, and welfare of the individual.

(b) A case manager must present an individual or the individual's representative with information on service alternatives and provide assistance to assess other choices when a provider or service setting selected by the individual or the individual's representative is not authorized.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 409.010, 410.020, 410.070, 410.608 & 410.710

Hist.: SSD 2-1996, f. 3-13-96, cert. ef. 3-15-96; SPD 35-2004, f. 11-30-04, cert. ef. 12-1-04; SPD 9-2005, f. & cert. ef. 7-1-05; SPD 16-2007, f. 10-4-07, cert. ef. 10-5-07; SDP 19-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 48-2013, f. 12-13-13, cert. ef. 12-15-13

411-034-0090

Payment Limitations

(1) The number of State Plan personal care service hours authorized for an individual per calendar month is based on projected amounts of time to perform specific personal care and supportive services to the eligible individual. The total of these hours are limited to 20 hours per individual per month. Individuals whose assessed service needs exceed the 20 hour limit may receive approval for additional hours through the exception process described in OAR 411-034-0020. State Plan personal care service hours are authorized in accordance with an individual's service plan and may be scheduled throughout the month to meet the service needs of the individual.

(2) Authorized LTC community nurse assessment and monitoring services are not included in the monthly maximum hours for State Plan personal care services described in section (1) of this rule.

(3) The Department does not guarantee payment for State Plan personal care services until all acceptable provider enrollment standards have been verified and both the employer and provider have been formally notified in writing that payment by the Department is authorized.

(4) In accordance with OAR 410-120-1300, all provider claims for payment must be submitted within 12 months of the date of service.

(5) Payment may not be claimed by a provider until the hours authorized for the payment period have been completed, as directed by an eligible individual or the individual's representative.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 410.020, 410.070, 410.710, 411.159 & 411.675

Hist.: SSD 2-1996, f. 3-13-96, cert. ef. 3-15-96; SPD 35-2004, f. 11-30-04, cert. ef. 12-1-04; SPD 16-2007, f. 10-4-07, cert. ef. 10-5-07; SDP 19-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 48-2013, f. 12-13-13, cert. ef. 12-15-13

Department of State Lands

Chapter 141

Rule Caption: Amend the General Authorization for Recreational Placer Mining to Partially Implement SB 838 (2013)

Adm. Order No.: DSL 4-2013

Filed with Sec. of State: 12-13-2013

Certified to be Effective: 1-1-14

Notice Publication Date: 10-1-2013

Rules Amended: 141-089-0640, 141-089-0645, 141-089-0820, 141-089-0825, 141-089-0830, 141-089-0835

Subject: SB 838 (2013 Or Laws, c. 783, section 5(2)), passed by the 2013 Oregon Legislature, pertains to motorized mining and the state's Removal-Fill Law.

The legislation requires new restrictions for motorized mining in waters of the state. The restrictions include a minimum 500-foot distance between motorized dredge operations, motorized mining operating hours between 9 a.m. and 5 p.m., and a prohibition against leaving motorized equipment unattended in the waterway. The restrictions do not apply to any mining for which an operating permit has been issued under ORS 517.702 to 517.989.

The new legislation also puts a limit of 850 on the number of authorizations and permits issued by the Department at any time for

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the 2014 and 2015 operating seasons. The bill states that the Department shall give priority, to the greatest extent practicable, to those persons who held permits or authorizations for the longest period of time before January 1, 2014.

The operating restrictions and limit on the number of permits and authorizations apply to any river and tributaries thereof, of which any portion contains essential indigenous anadromous salmonid habitat (ESH), or naturally reproducing populations of bull trout. A map depicting these areas will be posted on the Department Web site at www.statelandsonline.us.

Authorizations for the 2014 and 2015 operating seasons will require a revision to the Department of State Lands' General Authorization for Recreational Placer Mining within Essential Salmonid Habitat (OAR 141-089-0820 through -0835). Rule revisions include the new operating restrictions and the method by which the Department will implement the limit on the number of authorizations and permits.

Rules Coordinator: Tiana Teeters—(503) 986-5239

141-089-0640

Pre-Construction Notification

Except as provided in OAR 141-089-0820 to 141-089-0835:

(1) Project Notification Required. A complete project notification must be submitted to the Department at least 30 calendar days before starting the project. A complete notification is one that contains all the information required on the form provided by the Department and all required attachments.

(2) Review of the Notification. Within 30 calendar days of receipt, the Department will review the notification for completeness and eligibility, make one of the following determinations and notify the responsible party that:

(a) The notification is complete and the project is eligible under the GA;

(b) The notification is incomplete and the person must supply certain specified missing, inaccurate or insufficient information. The person may amend and resubmit the notification within 120 calendar days of the notice for reconsideration, unless instructed by the Department to do otherwise. Submission of an amended notification starts a new 30-day review period; or

(c) The project is ineligible for certain specified reasons. The person may then either revise the project and submit for reconsideration within 120 days of the notification or apply for an individual permit under OAR 141-085. Submission of an amended notification commences a new 30-day review period.

(3) Timeframe for Resubmittal of Incomplete or Ineligible Notifications. If a revised notification or application is not resubmitted within 120 calendar days of an incompleteness or ineligible determination, the Department will presume that the responsible party does not intend to provide revisions to the notification and may administratively close the file. If the Department closes the file under these circumstances, the Department will retain the application fee. If the Department receives a subsequent notification or application for the same or similar project after a file has been closed, the responsible party must pay any applicable fees for the new notification at time of submission.

(4) Project Implementation. The person submitting the notification may begin the project:

(a) Immediately upon receipt of a determination by the Department under OAR 141-089-0640(2)(a) that the project is eligible; or

(b) Thirty (30) calendar days after Department received the notification, unless the Department issued a determination under OAR 141-089-0640(2)(b) or (c).

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990

Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990

Hist.: DSL 2-2011, f. & cert. ef. 3-1-11; DSL 3-2012, f. 9-28-12, cert. ef. 9-29-12; DSL 4-2013, f. 12-13-13, cert. ef. 1-1-14

141-089-0645

Expiration of Project Eligibility

Except as provided in OAR 141-089-0820 to 141-089-0835:

(1) A notification confirmed as eligible under a GA will be valid for three years or until the project is complete, whichever occurs first; and

(2) Requests for renewals or extensions will not be granted.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990

Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990

Hist.: DSL 2-2011, f. & cert. ef. 3-1-11; DSL 4-2013, f. 12-13-13, cert. ef. 1-1-14

141-089-0820

Purpose

(1) These rules set forth conditions under which a person may, without an individual removal-fill permit from the Department, fill, remove and move material in waters of this state for the purpose of recreational placer mining within areas designated as Essential Indigenous Anadromous Salmonid Habitat (ESH) that is not designated as State Scenic Waterway (SSW).

(2) These rules also establish how the Department will limit the number of authorizations issued under OAR 141-089-0820 to 141-089-0830 and the number of permits issued for motorized placer mining under OAR chapter 141, division 85, to a total of 850 authorizations and permits as required by 2013 OR Laws, c. 783, s. 5(4).

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990

Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990

Hist.: DSL 2-2011, f. & cert. ef. 3-1-11; DSL 4-2013, f. 12-13-13, cert. ef. 1-1-14

141-089-0825

Eligibility Requirements

(1) Purpose. The activity is for the specific purpose of recreational placer mining.

(2) Limited Number. Notwithstanding OAR 141-089-0640, the Department shall limit the total number of authorizations and permits for motorized mining in any river and tributary thereof, of which any portion contains ESH or naturally reproducing populations of bull trout, to 850 annually using the following process:

(a) For eligible notifications that are received between January 1 and February 28 of each year, priority will be given to persons who have held a general authorization for recreational placer mining or an individual permit for motorized placer mining from the Department of State Lands, or a 700PM permit from the Department of Environmental Quality, for the longest period of time between 2006 and 2013. The Department will assign one point for each year a person has held an authorization or permit from either agency between 2006 and 2013, for a possible total of up to eight points.

(b) The persons that receive the highest number of points will receive authorizations or permits. If there are more persons that have the same number of points compared to the number of permits or authorizations available, permits or authorizations will be awarded through random selection.

(c) If fewer than 850 eligible notifications are received between January 1 and February 28, and there is a balance of permits or authorizations to distribute, priority will be given according to date of notification.

(d) Individual permit applications for motorized placer mining received between January 1 and February 28, will be included in the process described in (a) through (b) above, and those received after February 28, will be included in the process described in (c) above.

(e) The Department will notify persons of the issuance or denial of an authorization by April 30 of each year. The notice is served when deposited in the United States Mail. Individual permit applications for motorized placer mining will be processed using standard procedures, including timelines, except as provided in (a) above.

(3) Threshold. The activity will remove, fill or move cumulatively less than twenty-five (25) cubic yards of material annually from or within the bed and banks of streams that are designated as ESH.

(4) Expiration of Recreational Placer Mining Authorizations. Authorizations issued under the Recreational Placer Mining GA expire on December 31 of each year.

(5) Renewal. Renewal of the authorization will require submission of a completed Recreational Placer Mining Report for the previous year to the Department by February 28.

(6) Transfer of Authorization is not Allowed. An authorization cannot be transferred to another person.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990

Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990

Hist.: DSL 2-2011, f. & cert. ef. 3-1-11; DSL 3-2012, f. 9-28-12, cert. ef. 9-29-12; DSL 4-2013, f. 12-13-13, cert. ef. 1-1-14

141-089-0830

Authorized Activities

Recreational Placer Mining in ESH. Recreational placer mining means to search or explore for samples of gold, silver or other precious metals by removing, filling or moving material from or within the bed of a stream, using non-motorized equipment or a motorized surface dredge having an intake nozzle with an inside diameter not exceeding four inches and a muffler meeting or exceeding factory-installed noise reduction standards, not to exceed 25 cubic yards annually.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990

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Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 2-2011, f. & cert. ef. 3-1-11; DSL 4-2013, f. 12-13-13, cert. ef. 1-1-14

141-089-0835

Activity-Specific Conditions

Proposed projects eligible for this General Authorization must adhere to the general conditions in OAR 141-089-0650, unless otherwise specified in these rules. The following activity-specific conditions also apply:

(1) **Prevent Fish Stranding.** Upon completion of the activity at any given location, the responsible party must level all piles and fill all furrows, potholes and other depressions created by the activity. The activity is complete if the responsible party does not return to that location to conduct the activity within 24 hours.

(2) **Wet Perimeter.** The activity is confined to the wet perimeter. The wet perimeter is the area of the stream that is under water or is exposed as a non-vegetated, dry gravel-bar island surrounded on all sides by actively moving water at the time the activity occurs.

(3) **Disturbance of the Bank and Riparian Vegetation.** The activity must not disturb the bank. Undercutting or eroding banks and removal or disturbance of boulders, rooted vegetation or embedded woody material and other habitat structure from the bank is prohibited. Creation of new access routes that disturb or destroy woody riparian vegetation is not allowed.

(4) **Fish Passage.** The activity does not divert a waterway or obstruct fish passage.

(5) **Minimization of Impounded Water.** The activity may impound only the minimal area of water necessary to operate the dredge under the following conditions:

(a) The temporary dam does not extend across more than 75% of the wetted perimeter;

(b) The designs for the temporary dam are consistent with ODFW requirements set forth in ORS 509.580 through 509.901 and OAR 635-412-0005 through 635-412-0040;

(c) The impoundment structure is removed immediately upon completion of the mining activity. The activity is complete if the responsible party does not return to that location to conduct the activity within 24 hours.

(6) **No Disturbance of Stream Structure.** No movement of boulders, logs, stumps or other woody material from the bed is allowed, other than movement by hand and non-motorized equipment. The boulders and other stream structure must be returned to its original position upon completion of the mining activity. The activity is complete if the responsible party does not return to that location to conduct the activity within 24 hours.

(7) **Dredge Intake Nozzle Limited.** The suction dredge must have an intake nozzle that has an inside diameter not exceeding four inches.

(8) **Refueling.** All fuel and oil must be stored in an impermeable container and must be located at least 25 feet from the wet perimeter of the stream. For dredge locations where a 25 foot buffer is not possible, secondary containment is required.

(9) **Location of Operation.** The motorized dredge equipment must be operated at least 500 feet from other motorized dredge equipment, unless the Department of Environmental Quality determines that another distance is appropriate to protect water quality. This limitation does not apply if the mining is authorized by an operating permit issued under ORS 517.702 to 517.989.

(10) **Motorized Equipment Must Be Attended.** The motorized equipment may not be left unattended within the wetted perimeter of any waters of this state. A suction dredge is considered attended and may remain anchored in the water if it is moved close to the shore and the responsible party is present, nearby along the adjacent bank. This limitation does not apply if the mining is authorized by an operating permit issued under ORS 517.702 to 517.989.

(11) **Hours of Operation.** The motorized equipment may be operated only between the hours of 9 a.m. and 5 p.m. This limitation does not apply if the mining is authorized by an operating permit issued under ORS 517.702 to 517.989.

(12) **Annual Report Required.** The responsible party must maintain a monitoring log and record the date, location, nozzle diameter and amount of material disturbed for each day of operation. By February 28 of each year, the responsible party must submit to the Department an annual report, on a form provided by the Department, that states the estimated amount of material that was filled, removed or moved in each specific waterway during the preceding calendar year. If no jurisdictional activity was conducted, the report must be submitted reporting zero cubic yards for the year. Authorizations will not be renewed for the following calendar year if the annual report is not filed by February 28.

(13) **Responsible Party Must be Present.** Alternate persons may operate the suction dredge, provided the responsible party listed on the authorization is present at all times during suction dredge operation.

(14) **Limited to One Suction Device.** Only one suction dredge, one hose, and one nozzle may be operated at any given time under this authorization.

(15) **Wheeled or Tracked Equipment not Allowed.** Operation of motorized wheeled or tracked equipment, except for the suction dredge and life support systems, is prohibited below ordinary high water.

(16) **Operation Limited to Locations Listed.** The operation is limited to the locations listed on the authorization. Written requests to modify locations for this authorization will be reviewed within 14 days of the request, upon which time the Department may issue a revised authorization.

(17) **Obstructions to Navigation and Recreation Prohibited.** In no circumstance shall anchoring or operation of suction dredges interfere with navigation or cause a safety hazard to public recreation.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990

Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990

Hist.: DSL 2-2011, f. & cert. ef. 3-1-11; DSL 3-2012, f. 9-28-12, cert. ef. 9-29-12; DSL 4-2013, f. 12-13-13, cert. ef. 1-1-14

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

Rule Caption: Proof of Treatment Completion Required for Reinstatement of DUII Suspension

Adm. Order No.: DMV 16-2013

Filed with Sec. of State: 11-25-2013

Certified to be Effective: 11-25-13

Notice Publication Date: 10-1-2013

Rules Amended: 735-070-0085

Rules Repealed: 735-070-0085(T)

Subject: Section 2, Chapter 9, Oregon Laws 2012 requires a person to provide proof of completion of a treatment program before driving privileges may be reinstated for a suspension upon conviction for driving under the influence of intoxicants (DUII), unless DMV waives this requirement for good cause. Ch. 233, Oregon Laws 2013 (HB 2121) amends Section 2, Chapter 9, Oregon Laws 2012 to specify in statute the exemptions from the requirement for such proof and repeals the waiver for good cause. DMV has amended OAR 735-070-0085(3) to implement these statutory changes. DMV further amended this rule to specify that a DUII Treatment Completion Certificate, DMV form 735-6821, is the only form of proof of completion that will be accepted by DMV.

As HB 2121 contained an emergency clause, DMV adopted a temporary rule to implement the statutory requirements. The temporary amendments were effective on June 21, 2013 following approval by the Oregon Transportation Commission. DMV has now made these rule amendments permanent.

Rules Coordinator: Lauri Kunze—(503) 986-3171

735-070-0085

Proof of Treatment Completion Required for Reinstatement of DUII Suspension

(1) Except as provided in section (3) of this rule, a person whose driving privileges are suspended due to a conviction in an Oregon court of driving under the influence of intoxicants (DUII) must provide as proof that the person completed a treatment program to which the person was referred under ORS 813.021, a DUII Treatment Completion Certificate (Certificate), DMV Form 735-6821. The Certificate must be completed by an authorized representative of an Oregon DUII treatment program approved by the Director of the Oregon Health Authority (OHA) or by an authorized representative of OHA on behalf of an Oregon DUII treatment provider or an out-of-state DUII treatment provider.

(2) If the person has more than one suspension of driving privileges resulting from DUII convictions, the Certificate required under section (1) of this rule is sufficient for reinstatement of all DUII suspensions with arrest dates that were before the date treatment was completed. For purposes of this section, the Certificate must show the date treatment was completed.

(3) If the person does not provide the proof described in section (1) of this rule, DMV will not reinstate driving privileges following a suspension for DUII unless:

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(a) The person submits an order from the circuit court of the county in which the person was convicted showing that the person has taken sufficient steps to satisfy the requirement under ORS 813.021 to complete a treatment program;

(b) It has been 15 years or more since the person's last DUII conviction in an Oregon court; or

(c) The suspension of driving privileges resulted from a conviction in another jurisdiction for the statutory counterpart to ORS 813.010 (DUII).

Stat. Auth.: ORS 184.616, 184.619, 802.010, 809.380, 2012 OL Ch. 9 & 2013 OL Ch. 233
Stats. Implemented: 2012 OL Ch. 9 & 2013 OL Ch. 233
Hist.: DMV 5-1994, f. & cert. ef. 7-21-94; DMV 4-2012(Temp), f. & cert. ef. 3-26-12 thru 9-21-12; DMV 10-2012, f. & cert. ef. 7-19-12; DMV 10-2013(Temp), f. & cert. ef. 6-21-13 thru 12-17-13; DMV 16-2013, f. & cert. ef. 11-25-13

Rule Caption: Proof of Compliance with Financial Responsibility Requirements

Adm. Order No.: DMV 17-2013

Filed with Sec. of State: 11-25-2013

Certified to be Effective: 11-25-13

Notice Publication Date: 10-1-2013

Rules Amended: 735-050-0120

Rules Repealed: 735-050-0120(T)

Subject: OR Law 2013, Chapter 108 (HB 2107) amends ORS 742.447 to expand how an insurance company may provide proof of motor vehicle insurance by authorizing an insurance company to provide proof by either issuing a paper insurance card or by issuing the information on an insurance card electronically for display on the insured's electronic device. The insured must agree to receive the information electronically. DMV has amended OAR 735-050-0120 to add an electronic display of the insurance card as one of the means to provide proof of compliance with financial responsibility requirements. The amendments also clarify what constitutes proof of compliance with financial responsibility requirements for purposes of ORS 806.011 and ORS 806.012.

As HB 2107 contained an emergency clause this rule was amended on a temporary basis to align rule with law as soon as possible. The temporary amendments were effective on June 21, 2013 following approval by the Oregon Transportation Commission. DMV has now made these rule amendments permanent.

Rules Coordinator: Lauri Kunze—(503) 986-3171

735-050-0120

Proof of Compliance With Financial Responsibility Requirements

For purposes of ORS 806.011 and 806.012, any of the following constitutes proof of compliance with financial or future responsibility requirements that must be carried in the motor vehicle covered by such proof:

(1) A current motor vehicle insurance card issued by the insurer either as a paper card or electronically for display on a personal electronic device.

(2) An unexpired motor vehicle liability insurance policy for the particular vehicle that meets the standards set forth in ORS 806.080;

(3) An unexpired motor vehicle liability insurance binder issued by the insurance carrier or its authorized insurance producer (agent) for the particular vehicle that meets the standards set forth in ORS 806.080;

(4) A letter signed by a representative from an insurance carrier or its authorized agent, on the insurance carrier's or agent's letterhead, that verifies current insurance coverage;

(5) A certificate of self insurance issued by the Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) under ORS 806.130 naming the owner of the particular vehicle; or

(6) A displayed Oregon dealer plate unless the vehicle dealer is exempt from the requirement to file a certificate of insurance under ORS 822.033. If the vehicle dealer is exempt from the insurance requirements under 822.033, one of the proofs of compliance with financial responsibility requirements described in sections (1) to (5) of this rule must be carried in the vehicle displaying the Oregon dealer plate.

Stat. Auth.: ORS 184.616, 184.619, 806.011, 806.012 & 2013 OL Ch 108
Stats. Implemented: ORS 806.011, 806.012 & 2013 OL Ch 108
Hist.: DMV 3-1994, f. & cert. ef. 7-21-94; DMV 22-2002, f. 11-18-02, cert. ef. 1-1-03; DMV 14-2003, f. 10-24-03, cert. ef. 1-1-04; DMV 20-2003, f. 12-15-03 cert. ef. 1-1-04; DMV 23-2009, f. 12-22-09, cert. ef. 1-1-10; DMV 9-2013(Temp), f. & cert. ef. 6-21-13 thru 12-17-13; DMV 17-2013, f. & cert. ef. 11-25-13

Department of Transportation, Highway Division Chapter 734

Rule Caption: Allows fallen heroes to be honored under the Roadside Memorial Sign Program

Adm. Order No.: HWD 5-2013

Filed with Sec. of State: 11-25-2013

Certified to be Effective: 11-25-13

Notice Publication Date: 10-1-2013

Rules Amended: 734-026-0010, 734-026-0020, 734-026-0030

Subject: HB 2708 and HB 3494 enacted by the 2013 legislature direct the Department to install signs for certain individuals killed in action or who died as a result of wounds received in action while serving in the Armed Forces of the United States. The OARs were amended to allow for such signing.

Rules Coordinator: Lauri Kunze—(503) 986-3171

734-026-0010

Purpose and Scope

The purpose of the Roadside Memorial Sign program is to provide an opportunity for citizens of the State of Oregon, through individuals or organizations identified as "Applicant" in division 26 rules, to commemorate police officers killed in the line of duty or those who were killed in action or who died as a result of wounds received in action while serving in the Armed Forces of the United States with a sign installed along the State Highway System in accordance with Chapter 668, OL 2011, and to request a preferred location for such sign.

Stat. Auth.: ORS 184.616, 184.619, 2011 OL Ch. 668 & 2013 OL Ch. 381 & 391
Stat. Implemented: 2011 OL Ch. 668 & 2013 OL Ch. 381 & 391
Hist.: HWD 15-2011, f. 12-22-11, cert. ef. 1-1-12; HWD 5-2013, f. & cert. ef. 11-25-13

734-026-0020

Definitions

As used in division 26 rules, the following definitions shall apply:

(1) "Applicant" means the individual or organization seeking to commemorate a police officer killed in the line of duty or person killed in action or who died as a result of wounds received in action while serving in the Armed Forces of the United States, and named in and signing the application.

(2) "Department" means the Oregon Department of Transportation.

(3) "MUTCD" means the Manual on Uniform Traffic Control Devices as adopted in OAR 734-020-0005.

(4) "Region Traffic Engineer" means a professional engineer employed by the Department who by training and experience has comprehensive knowledge of the Department's traffic engineering standards, policies, and procedures.

(5) "Roadside Memorial Sign" means a sign including the name of the police officer killed in the line of duty or person killed in action or who died as a result of wounds received in action while serving in the Armed Forces of the United States and complying with the requirements of the MUTCD.

(6) "State Highway System" means the public way for vehicular travel that is under the jurisdiction of the Department. It also includes medians, highway shoulders, improvements appurtenant to the highway, such as support or tunnel structures, bicycle ways or sidewalks, and right of way used for the operation of the roadway.

(7) "State Traffic Engineer" means a professional engineer, or designated representative, employed by the Department in charge of the Department's traffic engineering standards, policies, and procedures.

(8) "Armed Forces of the United States" has the meaning given that term in ORS 348.282.

Stat. Auth.: ORS 184.616, 184.619, 2011 OL Ch. 668 & 2013 OL Ch. 381 & 391
Stat. Implemented: 2011 OL Ch. 668 & 2013 OL Ch. 381 & 391
Hist.: HWD 15-2011, f. 12-22-11, cert. ef. 1-1-12; HWD 5-2013, f. & cert. ef. 11-25-13

734-026-0030

General Requirements

(1) The Applicant shall submit a written request to the State Traffic Engineer containing the following information:

(a) Name, address, and telephone number of the Applicant;

(b) A brief description of the concurrent resolution adopted by the Legislative Assembly recognizing the police officer killed in the line of duty or the measure adopted by the Legislative Assembly recognizing the person killed in action or who died as a result of wounds received in action while serving in the Armed Forces of the United States;

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(c) The preferred location on the State Highway System for a Roadside Memorial Sign to commemorate the police officer killed in the line of duty or person killed in action or who died as a result of wounds received in action while serving in the Armed Forces of the United States; and

(d) Payment of the fee specified in OAR 734-026-0045.

(2) If the request meets the requirements of Chapter 668, OL 2011, or Ch. 381 or 391, OL 2013, and Division 26, the Applicant shall be granted placement of a single Roadside Memorial Sign on the State Highway System.

Stat. Auth.: ORS 184.616, 184.619, 2011 OL Ch. 668 & 2013 OL Ch. 381 & 391

Stat. Implemented: 2011 OL Ch. 668 & 2013 OL Ch. 381 & 391

Hist.: HWD 15-2011, f. 12-22-11, cert. ef. 1-1-12; HWD 5-2013, f. & cert. ef. 11-25-13

Rule Caption: Utility Facility Permit Fees

Adm. Order No.: HWD 6-2013

Filed with Sec. of State: 11-25-2013

Certified to be Effective: 11-25-13

Notice Publication Date: 10-1-2013

Rules Repealed: 734-055-0017

Subject: In 2001 the Department of Justice issued a Letter of Counsel which concluded that utility permitting activities by the Department of Transportation (ODOT) were not an appropriate use of constitutionally dedicated Highway Trust Funds (Article IX of the Oregon Constitution). Funding for the permitting activities was not available from any other source. Oregon Laws 2001, Chapter 820, Section 2 provided specifically for the utility permit fees collected to be used for the utility permit program. Oregon Laws 2001, Chapter 664, Section 2 allowed ODOT to establish a schedule for permit fees, provided the cost to issue and administer the permit could not legally be paid from Highway Trust Funds. Those fees were established in 2002 by OAR 734-055-0017.

In 2006 the Oregon Supreme Court affirmed the judgment of the Clackamas County Circuit Court that ODOT had no statutory authority to charge a utility permit fee because the cost to ODOT to issue and administer the permit to relocate utility facilities could legally be paid from Highway Trust Funds. In response to the court judgment, Oregon Laws 2001, Chapter 664, Section 2 was repealed by the 2006 Oregon Legislature. The Department discontinued assessing the utility facility permit fee at that time and the rule is now repealed in its entirety.

Rules Coordinator: Lauri Kunze—(503) 986-3171

Landscape Architect Board Chapter 804

Rule Caption: Updates to rules for initial registration and registration by reciprocity

Adm. Order No.: LAB 4-2013

Filed with Sec. of State: 12-12-2013

Certified to be Effective: 12-12-13

Notice Publication Date: 9-1-2013

Rules Amended: 804-022-0005, 804-022-0010

Subject: Amendments to the rules for initial registration and registration by reciprocity increase clarity for prospective Board registrants (i.e., applicants). The amendments also address an unintended disconnect between Board rules that set forth requirements for examination applicants to obtain approval of alternative paths to licensure (OAR 804-010-0010 and 804-010-0020) and Board registration rules (OAR 804-022-0005 and 804-022-0010). The amendments clarify that OSLAB does offer paths to registration for applicants without a Landscape Architect Accreditation Board (LAAB) accredited degree or any degree, regardless of whether such individuals obtained approval of alternative education and/or experience from OSLAB prior to taking national exams. To this end, the Board deleted existing rule language in full and replaced it with language that the Board finds to be more complete, clear, and better organized. The amendments were initially adopted by the Board as temporary rules and now are made permanent.

Rules Coordinator: Christine Valentine—(503) 589-0093

804-022-0005

Initial Landscape Architect Registration not by Reciprocity

(1) An individual may apply for registration as a Landscape Architect.

(2) The application must include the following:

(a) Completed and signed application form;

(b) Application Fee;

(c) Annual Registration Fee;

(d) Signed Statement of Understanding; and

(e) Sufficient information to demonstrate that the applicant meets Board standards for examination, education, and work experience under subsections (3), (4), or (5) of this rule.

(A) The applicant may submit a CLARB Council Record to demonstrate the examination, education, and work experience qualifications.

(i) Information presented on the CLARB Council Record is subject to verification by the Board.

(ii) The Board may request additional documentation or information from the applicant as the Board or its staff deem necessary for verification of the applicant's qualifications. An application is deemed incomplete until the applicant has provided all requested documentation and information.

(3) Standard Registration Path, LAAB Degree: Minimum of 8 years of landscape architecture experience is required for registration, with 5 years of experience granted for any LAAB degree and 3 years of work experience required under a licensed or registered landscape architect.

(a) Exams: Passage of the Landscape Architect Registration Examination (LARE) or the equivalent from previous versions of the national exam. The applicant must verify passage of all sections of the national exam.

(b) Education: A degree from a LAAB accredited university program. The applicant must provide an official transcript in the university sealed envelope to verify award of a LAAB degree. Any LAAB degree is granted 5 years of credit.

(c) Work Experience: A minimum of three years of work experience under the direct supervision of a licensed or registered Landscape Architect which was obtained after satisfying the requirements of OAR 804 Division 10 and (3)(b) of this rule. The applicant must provide a work history summary and work experience verification forms.

(A) Up to two years of the three years of experience may be supervised by a licensed or registered Engineer or Architect;

(4) Non LAAB Degree Path: Minimum of 8 years of landscape architecture experience is required for registration, with 5 years of experience for a degree and work experience with an additional 3 years of work experience required under a licensed or registered landscape architect.

(a) Exams: Passage of the Landscape Architect Registration Examination (LARE) or the equivalent from previous versions of the national exam. The applicant must verify passage of all sections of the national exam.

(b) Education and Equivalent Experience: In the absence of a degree from a LAAB accredited university program, 5 years of credit for education and experience combined as specified in OAR 804-010-0010. The applicant must provide an official transcript in the university sealed envelope to verify award of a degree. The applicant must also provide a work history summary and work experience verification forms.

(A) Experience used to satisfy the education requirement cannot be used towards the work experience requirement of (4)(c) of this rule.

(c) Work Experience: A minimum of three years of work experience under the direct supervision of a licensed or registered Landscape Architect which was obtained after satisfying the requirements of OAR 804 Division 10 and (4)(b) of this rule. The applicant must provide a work history summary and work experience verification forms.

(A) Up to two years of the three years of experience may be supervised by a licensed or registered Engineer or Architect;

(5) No Degree Path: Minimum of 11 years of landscape architecture experience is required for registration.

(a) Exams: The Board requires passage of the Landscape Architect Registration Examination (LARE) or the equivalent from previous versions of the national exam. The applicant must verify passage of all sections of the national exam.

(b) Experience In Lieu of Education: In the absence of any degree, 8 years of work experience under the supervision of a licensed or registered Landscape Architect. The applicant must provide a work history summary and work experience verification forms.

(A) Experience used to satisfy this requirement cannot be used towards the work experience requirement of (5)(c) of this rule.

(c) Work Experience: A minimum of three years of work experience under the direct supervision of a licensed or registered Landscape Architect

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which was obtained after satisfying the requirements of OAR 804 Division 10 and (5)(b) of this rule. The applicant must provide a work history summary and work experience verification forms.

(A) Up to two years of the three years of experience may be supervised by a licensed or registered Engineer or Architect;

(6) Upon acceptance by the Board, the applicant is required to complete an Oral Exam.

(7) The initial date of registration shall be the date of the meeting during which the Board approves the application for registration.

Stat. Auth.: ORS 183.335(5), 670.310, 671.325, 671.335, 671.415

Stats. Implemented: ORS 671.316, 671.325, 671.335

Hist.: LAB 1-2007, f. & cert. ef. 4-27-07; LAB 1-2012, f. 5-17-12, cert. ef. 6-1-12; LAB 3-2013(Temp), f. & cert. ef. 6-20-13 thru 12-17-13; LAB 4-2013, f. & cert. ef. 12-12-13

804-022-0010

Landscape Architect Registration by Reciprocity

(1) Any person not registered as a Landscape Architect in Oregon, but who currently holds a license or registration to practice as a Landscape Architect in another state or territory, may file an application for registration by reciprocity under ORS 671.345 and the requirements of this rule.

(2) An application must include the following:

(a) Completed and signed application form;

(b) Application Fee;

(c) Annual Registration Fee;

(d) Signed Statement of Understanding;

(e) Identification of all states in which licensure is currently held, with official verification from the licensing state and where exams were passed; and

(f) Sufficient information to demonstrate that the applicant meets Board standards for examination, education, and work experience under subsections (3), (4), or (5) of this rule.

(A) The applicant may submit a CLARB Council Record to demonstrate the examination, education, and work experience qualifications.

(i) Information presented on the CLARB Council Record is subject to verification by the Board.

(ii) The Board may request additional documentation or information from the applicant as the Board or its staff deem necessary for verification of the applicant's qualifications. An application is deemed incomplete until the applicant has provided all requested documentation and information.

(3) Standard Registration Path: Minimum of 8 years of landscape architecture experience is required for registration, with 5 years of experience granted for an LAAB degree and 3 years of work experience required under a licensed or registered landscape architect.

(a) Exams: Passage of the Landscape Architect Registration Examination (LARE) or the equivalent from previous versions of the national exam. The applicant must verify passage of all sections of the national exam.

(b) Education: A degree from a LAAB accredited university program. The applicant must provide an official transcript in the university sealed envelope to verify award of a LAAB degree. Any LAAB degree is granted 5 years of credit.

(c) Work Experience:

(A) A minimum of three years of work experience under the direct supervision of a licensed or registered Landscape Architect which was obtained after satisfying the education requirements of OAR 804 division 10 and (3)(b) of this rule. The applicant must provide a work history summary and work experience verification forms. Up to two years of the three years of experience may be supervised by a licensed or registered Engineer or Architect; or

(B) A minimum of 11 years of work experience as a Landscape Architect licensed or registered in another U.S. state or territory verified as follows:

(i) A minimum of three professional reference letters in a form acceptable to the Board signed by licensed or registered Landscape Architects, Engineers, or Architects and submitted to the Board; and

(ii) A resume of the applicant detailing the 11 years of verified work experience.

(4) Non LAAB Degree Path: Minimum of 8 years of landscape architecture experience is required for registration, with 5 years of experience for a degree and work experience with an additional 3 years of work experience required under a licensed or registered landscape architect.

(a) Exams: Passage of the Landscape Architect Registration Examination (LARE) or the equivalent from previous versions of the national exam. The applicant must verify passage of all sections of the national exam.

(b) Education and Equivalent Experience: In the absence of a degree from a LAAB accredited university program, 5 years of credit for education and experience combined as specified in OAR 804-010-0010. The applicant must provide an official transcript in the university sealed envelope to verify award of a degree. The applicant must also provide a work history summary and work experience verification forms.

(A) Experience used to satisfy the education requirement cannot be used towards the work experience requirement of (4)(c) except as provided in (4)(c)(B) of this rule.

(c) Work Experience:

(A) A minimum of three years of work experience under the direct supervision of a licensed or registered Landscape Architect which was obtained after satisfying the requirements of OAR 804 Division 10 and (4)(b) of this rule. The applicant must provide a work history summary and work experience verification forms. Up to two years of the three years of experience may be supervised by a licensed or registered Engineer or Architect; or

(B) A minimum of 11 years of work experience as a Landscape Architect licensed or registered in another U.S. state or territory verified as follows:

(i) A minimum of three professional reference letters in a form acceptable to the Board signed by licensed or registered Landscape Architects, Engineers, or Architects and submitted to the Board; and

(ii) A resume of the applicant detailing the 11 years of verified work experience.

(5) No Degree Path: Minimum of 11 years of landscape architecture experience is required for registration.

(a) Exams: Passage of the Landscape Architect Registration Examination (LARE) or the equivalent from previous versions of the national exam. The applicant must verify passage of all sections of the national exam.

(b) Experience in Lieu of Education: In the absence of any degree, 8 years of work experience under the supervision of a licensed or registered Landscape Architect or a minimum of 11 years of work experience as a Landscape Architect licensed or registered in another U.S. state or territory. The applicant must also provide a work history summary and work experience verification forms.

(A) Experience used to satisfy this requirement cannot be used towards the work experience requirement of (5)(c) except as provided in (5)(c)(B).

(c) Work Experience:

(A) A minimum of three years of work experience under the direct supervision of a licensed or registered Landscape Architect which was obtained after satisfying the requirements of OAR 804 division 10 and (5)(b) of this rule. The applicant must provide a work history summary and work experience verification forms. Up to two years of the three years of experience may be supervised by a licensed or registered Engineer or Architect; or

(B) A minimum of 11 years of work experience as a Landscape Architect licensed or registered in another U.S. state or territory verified as follows:

(i) A minimum of three professional reference letters in a form acceptable to the Board signed by licensed or registered Landscape Architects, Engineers, or Architects and submitted to the Board; and

(ii) A resume of the applicant detailing the 11 years of verified work experience.

(6) Registration may be granted without oral exam after all application materials are approved.

Stat. Auth.: ORS 183.335(5), 670.310, 671.325, 671.335, 671.415

Stats. Implemented: ORS 671.345

Hist.: LAB 1-1983, f. & ef. 2-1-83; LAB 1-1984, f. & ef. 1-5-84; LAB 2-1989, f. 7-1-89, cert. & ef. 6-23-89; LAB 2-1989, f. 6-23-89, cert. ef. 7-1-89; LAB 1-1993, f. & cert. ef. 7-1-93; LAB 2-1998, f. & cert. ef. 4-22-98; Renumbered from 804-010-0025, LAB 1-2007, f. & cert. ef. 4-27-07; LAB 1-2008, f. & cert. ef. 2-4-08; LAB 1-2012, f. 5-17-12, cert. ef. 6-1-12; LAB 3-2013(Temp), f. & cert. ef. 6-20-13 thru 12-17-13; LAB 4-2013, f. & cert. ef. 12-12-13

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Rule Caption: Inactive Status and Continuing Education Exemptions for military service, illness, or other circumstances

Adm. Order No.: LAB 5-2013

Filed with Sec. of State: 12-12-2013

Certified to be Effective: 12-12-13

Notice Publication Date: 9-1-2013

Rules Amended: 804-003-0000, 804-025-0010

Subject: The Board amended the definition of "in good standing" to clarify that a registrant must be in compliance with continuing education (CE) requirements to be eligible for inactive status under ORS

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671.376(4) as opposed to needing to have completed all CE for that renewal cycle. This change allows a registrant who has not completed all CE requirements and suddenly has the need for being exempt from those requirements under OAR 804-025-0010(1) to qualify to request inactive status under ORS 671.376(4) without having to first complete all professional development hours of CE for that renewal cycle. The Board also clarified in the continuing education requirements rule that the registrant may request

inactive status and specified parameters related to inactive status. These amendments were initially adopted as temporary rules and now are made permanent.

Rules Coordinator: Christine Valentine—(503) 589-0093

804-003-0000

Definitions

The definitions of terms used in ORS 671.310 to 671.459, and the rules of this chapter are:

(1) “Assumed or Fictitious Name” — A false name taken as one’s own.

(2) “Business entity” — A sole proprietor Landscape Architect operating under either the registrant name or an assumed business name or any corporation, limited liability company, partnership, or other entity or association of persons providing landscape architectural design or consulting services.

(3) “Deceit” — An attempt to portray as true or valid something that is untrue or invalid.

(4) “Delinquent” — A registrant who fails to renew his/her certificate on or before the renewal date.

(5) “Emeritus” — Retired but retaining an honorary title corresponding to that held immediately before retirement.

(6) “Employing” — Hiring a person, not an independent contractor, for compensation.

(7) “Fraud” — Intentional perversion of truth in order to induce another to part with something of value or to surrender a legal right.

(8) “Grossly Negligent” — Reckless and wanton disregard for exercising care and caution.

(9) “Impersonate” — To assume, without authority or with fraudulent intent, the identity of another person.

(10) “In good standing” — For purposes of ORS 671.376(4) and OAR 804-022-0025(1), ‘in good standing’ means that the registrant when making the request for inactive status has a current active unrestricted registration; is in compliance with all requirements for registration including, but not limited to, payment of all required fees and compliance with all continuing education requirements; and is not the subject of a pending board investigation or action or the subject of a board order.

(11) Late fee: a fee assessed when a payment is received after the date due.

(12) “Material Misrepresentation” — An untrue statement that is significant under the circumstances.

(13) “Renewal of Registration” — To annually maintain the current status of a valid registration or to bring a delinquent certificate of registration to current, valid status.

Stat. Auth.: ORS 183.335(5), 670.310, 671.415

Stats. Implemented: 671.310-459

Hist.: LAB 1-1984, f. & ef. 1-5-84; LAB 1-1985, f. & ef. 7-1-85; LAB 2-1986, f. & ef. 3-5-86; LAB 1-1989, f. 4-4-89, cert. ef. 4-7-89; LAB 1-2005, f. & cert. ef. 2-14-05; LAB 3-2006, f. & cert. ef. 8-14-06; LAB 1-2010, f. & cert. ef. 2-17-10; LAB 2-2010, f. & cert. ef. 10-19-10; LAB 2-2013(Temp), f. & cert. ef. 6-20-13 thru 12-17-13; LAB 5-2013, f. & cert. ef. 12-12-13

804-025-0010

Continuing Education Requirements

(1) Exemptions: A registrant may be exempt, upon board review and approval, from continuing education requirements in any of the following situations:

(a) A registrant is called to active duty in the armed forces of the United States for a period of time exceeding 120 consecutive days in a calendar year. This registrant may request an exemption from obtaining one-half of the required continuing education during that renewal period. Alternatively, the registrant may request to be placed on inactive status under ORS 671.376(4). If the registrant on inactive status requests to return to active practice, the registrant shall complete all professional development hours as required by 804-025-0015.

(b) A registrant experiences physical disability, illness, or other extenuating circumstances that prevents the registrant from practicing landscape architecture. The registrant shall provide supporting documentation for the

board’s review and approval of the medical exemption. Alternatively, the registrant may request to be placed on inactive status under ORS 671.376(4). If the registrant on inactive status elects to return to active practice, the registrant shall complete all professional development hours as required by 804-025-0015.

(c) A registrant on inactive status must return to active status within 5 years of being placed on inactive status or the registration will lapse and cannot be renewed.

(2) Records: each registrant shall maintain:

(a) A log showing the subject and type of activity claimed, the sponsoring organization, location, duration and instructor’s or speaker’s name.

(b) Documentation sufficient to prove completion of the activity claimed such as attendance verification records, completion certificates or other documents;

(c) Required log and documentation for at least four (4) years.

(3) Audit: Upon request, each registrant shall provide proof of satisfying the continuing education requirements. If the registrant fails to furnish the information as required by the board or if the information is not sufficient to satisfy the requirements, the license shall not be renewed.

(4) Disallowance: If the board disallows one or more continuing education activities claimed, the board may, at its discretion, allow the registrant up to 120 days after notification to substantiate the original claim or to complete other continuing education activities sufficient to meet the minimum requirements.

Stat. Auth.: ORS 183.335(5), 670.310, 671.376, 671.395, 671.415

Stat. Implemented: ORS 671.376, 671.395

Hist.: LAB 1-2005, f. & cert. ef. 2-14-05; LAB 4-2008, f. & cert. ef. 11-7-08; LAB 2-2013(Temp), f. & cert. ef. 6-20-13 thru 12-17-13; LAB 5-2013, f. & cert. ef. 12-12-13

Oregon Business Development Department

Chapter 123

Rule Caption: This filing amends the rules for the Industry Competitiveness Fund.

Adm. Order No.: OBDD 11-2013

Filed with Sec. of State: 11-26-2013

Certified to be Effective: 12-1-13

Notice Publication Date: 11-1-2013

Rules Adopted: 123-095-0035

Rules Amended: 123-095-0000, 123-095-0010, 123-095-0030, 123-095-0040

Rules Repealed: 123-095-0020, 123-095-0000(T), 123-095-0010(T), 123-095-0030(T), 123-095-0035(T), 123-095-0040(T)

Subject: These amendments expands entities eligible to receive grants and loans from the Industry Competitiveness Fund, clarifies criteria for approving awards and clarifies contract requirements.

Rules Coordinator: Mindee Sublette—(503) 986-0036

123-095-0000

Purpose and Objectives

The purpose of this division of administrative rules is to govern the use of funds in the Industry Competitiveness Fund established by ORS 285B.290.

Stat. Auth.: ORS 285A.075(5) & 285A.110

Stats. Implemented: ORS 285B.286 & 285B.290

Hist.: EDD 4-1992(Temp), f. & cert. ef. 3-18-92; EDD 1-1993, f. & cert. ef. 1-15-93; EDD 1-2000, f. & cert. ef. 1-13-00; OBDD 8-2013(Temp), f. & cert. ef. 10-4-13 thru 4-2-14; OBDD 11-2013, f. 11-26-13, cert. ef. 12-1-13

123-095-0010

Definitions

For the purposes of these rules, additional definitions may be found in Procedural Rules OAR 123-001. The following terms shall have the following meaning, unless the context clearly indicates otherwise:

(1) “Project” means an activity that contributes to the stability, growth, development, or competitiveness of a Traded Sector Industry, or group of Traded Sector Industries.

(2) “Traded Sector Industry” means an Oregon industry whose members sell their goods or services into markets for which national or international competition exists.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.286

Hist.: EDD 4-1992(Temp), f. & cert. ef. 3-18-92; EDD 1-1993, f. & cert. ef. 1-15-93; EDD 1-2000, f. & cert. ef. 1-13-00; OBDD 8-2013(Temp), f. & cert. ef. 10-4-13 thru 4-2-14; OBDD 11-2013, f. 11-26-13, cert. ef. 12-1-13

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123-095-0030

Eligible and Non-Eligible Activities

(1) Funds in the Industry Competitiveness Fund may be used by Department to:

(a) Provide grants or loans for Projects. Examples of a Project include, but are not limited to, the following activities:

(A) Assisting a Traded Sector Industry(ies) in establishing research and development consortia;

(B) Introducing new products into an existing market or developing new markets for a Traded Sector Industry(ies) or businesses within a Traded Sector Industry;

(C) Promoting the commercialization of new technologies for a Traded Sector Industry(ies);

(D) Increasing the skills of workers to meet the needs of a Traded Sector Industry(ies);

(E) Enhancing the capacity of a Traded Sector Industry(ies) to take advantage of electronic communications and information technologies; and

(F) Increasing the global competitiveness of a Traded Sector Industry(ies);

(G) Activities that are prerequisite to and will lead to the implementation of any of the above (such as preparing an application for federal grant funds for one or more of the above activities); and

(H) Assisting in organizing focus groups or other meetings and conducting research to identify issues and needs of a Traded Sector Industry(ies) and developing strategies to address those needs and issues; and

(b) Directly purchase goods and services which contribute to the stability, growth, development or competitiveness of a Traded Sector Industry(ies).

(2) Funds in the Industry Competitiveness Fund may not be used for:

(a) Any activity that requires continuing subsidies from the State of Oregon; or

(b) Ongoing administrative expenses.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.286 & 285B.290

Hist.: EDD 4-1992(Temp), f. & cert. ef. 3-18-92; EDD 1-1993, f. & cert. ef. 1-15-93; EDD 1-2000, f. & cert. ef. 1-13-00; OBDD 8-2013(Temp), f. & cert. ef. 10-4-13 thru 4-2-14; OBDD 11-2013, f. 11-26-13, cert. ef. 12-1-13

123-095-0035

Award Requirements

A Project which is financed through an Industry Competitiveness Fund grant or loan must meet the following criteria:

(1) Individual businesses in the Traded Sector Industry(ies) must be involved in planning the Project or Department must determine that the nature of the Project results in this involvement being unfeasible or in some other manner not applicable;

(2) The grant or loan from the Industry Competitiveness Fund must not represent more than 50% of the total cash cost of the Project;

(3) Private sector funds used to cover cash expenses for the Project must be at least equal to the amount of the grant or loan from the Industry Competitiveness Fund;

(4) Compliance with this division of administrative rule and ORS 285B.286 and 285B.290 does not entitle a Project to a grant or loan from the Industry Competitiveness Fund.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.286 & 285B.290

Hist.: OBDD 8-2013(Temp), f. & cert. ef. 10-4-13 thru 4-2-14; OBDD 11-2013, f. 11-26-13, cert. ef. 12-1-13

123-095-0040

Administration of Awards

(1) Upon approval of a grant or a loan for a Project, Department will enter into an agreement with the entity responsible for completing the Project. The agreement will, as applicable, include, but is not limited to, the following:

(a) A description of the Project;

(b) Procedures and conditions for disbursing the grant or loan moneys from the Industry Competitiveness Fund;

(c) A requirement that private sector funds used to cover cash expenses for the Project must be at least equal to the amount of the grant or loan from the Industry Competitiveness Fund;

(d) A requirement that the grant or loan from the Industry Competitiveness Fund may not exceed 50% of the total cash cost of the Project;

(e) A requirement that a sign be conspicuously displayed at the site of the Project or a statement included on written documents produced as a

result of the Project which indicates the Project is being funded with Oregon State Lottery Funds, administered by Department;

(f) Reporting requirement(s); and

(g) Other provisions deemed necessary by Department.

(2) Upon approval of using Industry Competitiveness Fund moneys in accordance with 123-095-0020(1)(b), Department will procure the goods and services in accordance with OAR 123 division 006, Procedures for Contracts Entered with the Business Development Department.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.286 & 285B.290

Hist.: EDD 4-1992(Temp), f. & cert. ef. 3-18-92; EDD 1-1993, f. & cert. ef. 1-15-93; EDD 1-2000, f. & cert. ef. 1-13-00; OBDD 8-2013(Temp), f. & cert. ef. 10-4-13 thru 4-2-14; OBDD 11-2013, f. 11-26-13, cert. ef. 12-1-13

Oregon Department of Education Chapter 581

Rule Caption: Establish an Oregon Minority Educator Pipeline Model Grant Program

Adm. Order No.: ODE 25-2013(Temp)

Filed with Sec. of State: 11-22-2013

Certified to be Effective: 11-22-13 thru 5-21-14

Notice Publication Date:

Rules Adopted: 581-018-0400, 581-018-0405, 581-018-0410, 581-018-0415, 581-018-0420, 581-018-0424

Subject: The rules establish an Oregon Minority Educator Pipeline Models Grant program, the purpose of which is to support stakeholders to collaborate to expand models for recruiting and retaining educators who are culturally and/or linguistically diverse. The targeted outcome is to increase the number of education professionals (PK-12) who are non-White, Hispanic, or whose native language is not English. Key areas of focus for pipeline models to consider include K-12 students, career changers, returning veterans, and graduates from postsecondary historically Black institutions.

Rules Coordinator: Cindy Hunt—(503) 947-5651

581-018-0400

Definitions

The following definitions apply to OAR 581-018-0400 to 581-018-0424:

(1) "Culturally and/or Linguistically Diverse" means individuals who are non-White, who are not native English speakers, and who are Hispanic.

(2) "Minority" means a person who is:

(a) A person having origins in any of the black racial groups of Africa but who is not Hispanic;

(b) A person of Hispanic culture or origin;

(c) A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands;

(d) An American Indian or Alaskan Native having origins in any of the original peoples of North America; or

(e) A person whose first language is not English.

(3) "Oregon Minority Educator Pipeline Models Grant" means the Grant established in OAR 581-018-0405 to implement section 1(3)(f), chapter 661, Oregon Laws 2013 (Enrolled House Bill 3233).

(4) "Pipeline Model" means the route through which future teachers are recruited, educated, hired, and retained in the education system.

(5) "Postsecondary Institution" means a:

(a) A community college operated under ORS chapter 341.

(b) The following public universities within the Oregon University System:

(A) University of Oregon.

(B) Oregon State University.

(C) Portland State University.

(D) Oregon Institute of Technology.

(E) Western Oregon University.

(F) Southern Oregon University.

(G) Eastern Oregon University.

(c) Oregon Health and Science University.

(d) An Oregon-based, generally accredited, not-for-profit institution of higher education.

(5) "Underrepresented" means populations in the United States who have been historically excluded from the same rights and privileges as the majority, White, culture. This applies to opportunity in education, business, and social aspects of society.

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(6) "Recruitment" means the active, purposeful process of establishing effective and efficient systems that attract individuals to the teaching profession.

(7) "Retention" means the active, purposeful process of establishing effective and efficient systems that maintain the targeted recruitment population in the teaching profession.

Stat. Auth.: Sect. 1, ch. 661, OL 2013 (Enrolled HB 3233)
Stats. Implemented: Sect. 1, ch. 661, OL 2013 (Enrolled HB 3233)
Hist.: ODE 25-2013(Temp), f. & cert. ef. 11-22-13 thru 5-21-14

581-018-0405 Establishment

(1) There is established the Oregon Minority Educator Pipeline Models Grant to support school districts and post-secondary institutions who are working to expand educator pipeline models that recruit and retain educators who are culturally and/or linguistically diverse. Subject to available funds, the grants will be awarded for two years based on a detailed description of proposed programming or services. This can include but is not limited to:

- (a) Planning phase.
- (b) Implementation phase.
- (c) Program evaluation phase.

(2) The purpose of the grant program is to provide funds to school districts and post-secondary institutions who can create collaborative processes around:

(a) Developing a statewide program with interested partners that provides free and/or low cost advising and academic supports to diverse educators;

(b) Formalizing partnerships with professional groups to leverage tutoring and internships;

(c) Volunteering experiences as a way of assisting future educators exploration of education related careers;

(d) Working with TeachOregon projects to develop, test, and expand improved job recruitment and retention practices that lead to a more diverse workforce in Oregon;

(e) Creating a high school cadet program or career pathway model for district employees to recruit future educators who are culturally and/or linguistically diverse;

(f) Allocating funding to provide financial support to future educators from underrepresented populations.

Stat. Auth.: Sect. 1, ch. 661, OL 2013 (Enrolled HB 3233)
Stats. Implemented: Sect. 1, ch. 661, OL 2013 (Enrolled HB 3233)
Hist.: ODE 25-2013(Temp), f. & cert. ef. 11-22-13 thru 5-21-14

581-018-0410 Eligibility

(1) To be eligible to receive the Oregon Minority Educator Pipeline Models Grant an applicant must be a:

- (a) School district;
- (b) Post-secondary institution;
- (c) Consortium of school districts, post-secondary institutions and other entities (each consortium must include at least one school district or post-secondary institution as a member).

(2) A single grant proposal may include more than one eligible applicant, but the fiscal agent must be one of the eligible applicants identified in subsection (1) of this rule.

Stat. Auth.: Sect. 1, ch. 661, OL 2013 (Enrolled HB 3233)
Stats. Implemented: Sect. 1, ch. 661, OL 2013 (Enrolled HB 3233)
Hist.: ODE 25-2013(Temp), f. & cert. ef. 11-22-13 thru 5-21-14

581-018-0415 Criteria

(1) The Oregon Department of Education shall establish a request for proposal solicitation and approval process to be conducted for the Oregon Minority Educator Pipeline Models Grant funds. All proposals must comply with the requirements of section 1, chapter 661, Oregon Laws 2013 (Enrolled House Bill 3233) and rules adopted to implement that section.

(2) Grants shall be awarded based on the following criteria:

(a) Whether the grant application identifies how the funds will be used to reach the targeted outcomes and intent of the Oregon Teacher Corps and the Oregon Minority Teacher Act.

(b) Whether the grant applicant demonstrates readiness, commitment, and support to expand models of recruitment and retention for culturally and/or linguistically diverse educators.

(3) The Department shall give priority to proposals that meet the minimum criteria and:

(a) Provide a sustainability plan to continue the program for at least two years after the grant funding has ended.

(b) The extent to which the applicant clearly documents its capacity to implement and carry out purposeful system for recruiting a diverse student population, providing financial support to future educators, and collaborating with key partners in the process.

(4) The Department of Education shall allocate funds for the grant program based on the evaluation of the grant application and the following considerations:

(a) Geographic location of the district to insure geographic diversity within the recipients of grant program funds throughout the state;

(b) Applicants who have documented evidence of creating and maintaining successful minority educator pipeline models;

(c) Applicants who have a high level of potential teacher candidates (applicant pool) from diverse cultural and linguistic backgrounds; and

(d) Give preference to applicants that have demonstrated success in creating strong partnerships with community organizations support outcomes.

Stat. Auth.: Sect. 1, ch. 661, OL 2013 (Enrolled HB 3233)
Stats. Implemented: Sect. 1, ch. 661, OL 2013 (Enrolled HB 3233)
Hist.: ODE 25-2013(Temp), f. & cert. ef. 11-22-13 thru 5-21-14

581-018-0420 Funding

(1) Each grantee may receive \$180,000 which shall be awarded during the following phases based on a detailed budget narrative and budget template:

- (a) Planning phase.
- (b) Implementation phase.
- (c) Evaluation phase.

(2) Grantees shall use funds received for the planning, implementation, and evaluation phases of the grant for activities outlined in the request for proposal.

(3) Grantees must be able to expend the funds for allowable purposes specified in the request for proposal within the grant timeline according to acceptable accounting procedures.

Stat. Auth.: Sect. 1, ch. 661, OL 2013 (Enrolled HB 3233)
Stats. Implemented: Sect. 1, ch. 661, OL 2013 (Enrolled HB 3233)
Hist.: ODE 25-2013(Temp), f. & cert. ef. 11-22-13 thru 5-21-14

581-018-0424 Reporting

The Oregon Department of Education shall provide to grant recipients a template for an interim and final grant report. Grantees are required to submit a final report prior to receiving their final request for funds.

Stat. Auth.: Sect. 1, ch. 661, OL 2013 (Enrolled HB 3233)
Stats. Implemented: Sect. 1, ch. 661, OL 2013 (Enrolled HB 3233)
Hist.: ODE 25-2013(Temp), f. & cert. ef. 11-22-13 thru 5-21-14

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Rule Caption: Oregon Minority Educators Retention Grant Program

Adm. Order No.: ODE 26-2013(Temp)

Filed with Sec. of State: 11-22-2013

Certified to be Effective: 11-22-13 thru 5-21-14

Notice Publication Date:

Rules Adopted: 581-018-0380, 581-018-0385, 581-018-0390, 581-018-0395, 581-018-0397, 581-018-0399

Subject: The rules establish an Oregon Minority Educator Retention Grant program as one of the methods to address the specific direction in HB 3233. Grants are competitive and award based. The targeted outcome is to increase the number of education professionals (PK-12) who are non-White, Hispanic, or whose native language is not English.

Rules Coordinator: Cindy Hunt—(503) 947-5651

581-018-0380 Definitions

The following definitions apply to OAR 581-018-0380 to 581-018-0399:

(1) "Culturally and/or Linguistically Diverse" means individuals who are non-White, who are not native English speakers, and who are Hispanic.

(2) "Culturally Responsive (ness)" means using the cultural knowledge, prior experiences, and performance styles of diverse individuals to make learning and experiences more appropriate and effective for them; it teaches to and through the strengths of these individuals. (Adapted from Gay, 2000).

(3) "Minority" means a person who is:

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- (a) A person having origins in any of the black racial groups of Africa but who is not Hispanic;
 - (b) A person of Hispanic culture or origin;
 - (c) A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands;
 - (d) An American Indian or Alaskan Native having origins in any of the original peoples of North America; or
 - (e) A person whose first language is not English.
- (4) "Oregon Minority Educator Retention Grant" means the Grant established in OAR 581-018-0285 to implement section 1(3)(f), chapter 661, Oregon Laws 2013 (Enrolled House Bill 3233).
- (5) "Retention" means the active, purposeful process of establishing effective and efficient systems that maintain the targeted recruitment population in the teaching profession.

Stat. Auth.: Sect. 1, ch. 661, OL 2013 (Enrolled HB 3233)
Stats. Implemented: Sect. 1, ch. 661, OL 2013 (Enrolled HB 3233)
Hist.: ODE 26-2013(Temp), f. & cert. ef. 11-22-13 thru 5-21-14

581-018-0385 Establishment

(1) There is established the Oregon Minority Educator Retention Grant to support school districts who are working to design and implement retention models for educators who are culturally and/or linguistically diverse. Subject to available funds, the grants will be awarded for two years based on a detailed description of proposed programming or services. This can include but is not limited to:

- (a) Planning phase.
- (b) Implementation phase.

(2) The purpose of the grant program is to provide funds to school districts who can create collaborative processes around:

(a) Developing a culturally responsive interviewing model adaptable to a variety of settings in the P-20 structure using the OEIB Equity Lens to frame the work.

(b) Collaborating with local community based organizations to develop programs and events to create a welcoming environment for culturally and/or linguistically diverse new hires.

(c) Develop strong mentoring programs with particular attention to the needs of teachers who are culturally and/or linguistically diverse.

(d) Implement systems at the district level to check-in with staff who are culturally and/or linguistically diverse on the success of retention efforts and related needs.

(e) Create professional learning communities that support the development of district-wide cultural responsiveness.

Stat. Auth.: Sect. 1, ch. 661, OL 2013 (Enrolled HB 3233)
Stats. Implemented: Sect. 1, ch. 661, OL 2013 (Enrolled HB 3233)
Hist.: ODE 26-2013(Temp), f. & cert. ef. 11-22-13 thru 5-21-14

581-018-0390 Eligibility

To be eligible to receive the Oregon Minority Educator Retention Grant an applicant must be

- (1) School districts.
- (2) Consortium of school districts and other entities (each consortium must include at least one school district as a member).
- (3) A single grant proposal may include more than one eligible applicant, but the fiscal agent must be a school district.

Stat. Auth.: Sect. 1, ch. 661, OL 2013 (Enrolled HB 3233)
Stats. Implemented: Sect. 1, ch. 661, OL 2013 (Enrolled HB 3233)
Hist.: ODE 26-2013(Temp), f. & cert. ef. 11-22-13 thru 5-21-14

581-018-0395 Criteria

(1) The Oregon Department of Education shall establish a request for proposal solicitation and approval process to be conducted for the Oregon Minority Educator Retention Grant funds. All proposals must comply with the requirements of section 1, chapter 661, Oregon Laws 2013 (Enrolled House Bill 3233) and rules adopted to implement that section.

(2) Grants shall be awarded based on the following criteria:

(a) Whether the grant application identifies how the funds will be used to reach the targeted outcomes and intent of the Oregon Teacher Corps and the Oregon Minority Teacher Act.

(b) Whether the grant applicant demonstrates readiness, commitment, and support to design and implement models of retention for culturally and/or linguistically diverse educators.

(3) The Department shall give priority to proposals that meet the minimum criteria and:

(a) Provide a sustainability plan to continue the program for at least two years after the grant funding has ended.

(b) Consider research-based best practice around minority educator retention models.

(4) The Department of Education shall allocate funds for the grant program based on the evaluation of the grant application and the following considerations:

(a) Geographic location of the district to insure geographic diversity within the recipients of grant program funds throughout the state;

(b) Organizations who have documented evidence of creating and maintaining successful minority educator retention models;

(c) Organizations who have a high level of potential teacher candidates (applicant pool) from diverse cultural and linguistic backgrounds; and

(d) Give preference to entities that have demonstrated success in creating strong partnerships with community organizations to support outcomes.

Stat. Auth.: Sect. 1, ch. 661, OL 2013 (Enrolled HB 3233)
Stats. Implemented: Sect. 1, ch. 661, OL 2013 (Enrolled HB 3233)
Hist.: ODE 26-2013(Temp), f. & cert. ef. 11-22-13 thru 5-21-14

581-018-0397 Funding

(1) Up to five school district grant awards will be given as follows: \$10,000 in Year One and \$25,000 in year two which shall be awarded during the following phases based on a detailed budget narrative and budget template:

- (a) Planning phase.
- (b) Implementation phase.
- (2) Grantees shall use \$10,000 awards for design grants and \$25,000 awards to plan, develop, and pilot district models.

(3) Grantees must be able to expend the funds for allowable purposes specified in the request for proposal within the grant timeline according to acceptable accounting procedures.

Stat. Auth.: Sect. 1, ch. 661, OL 2013 (Enrolled HB 3233)
Stats. Implemented: Sect. 1, ch. 661, OL 2013 (Enrolled HB 3233)
Hist.: ODE 26-2013(Temp), f. & cert. ef. 11-22-13 thru 5-21-14

581-018-0399 Reporting

The Oregon Department of Education shall provide to grant recipients a template for an interim and final grant report. Grantees are required to submit a final report prior to receiving their final request for funds.

Stat. Auth.: Sect. 1, ch. 661, OL 2013 (Enrolled HB 3233)
Stats. Implemented: Sect. 1, ch. 661, OL 2013 (Enrolled HB 3233)
Hist.: ODE 26-2013(Temp), f. & cert. ef. 11-22-13 thru 5-21-14

Rule Caption: Establishes Regional STEM Hubs, and CTE Programs and Activities Grants

Adm. Order No.: ODE 27-2013(Temp)

Filed with Sec. of State: 11-22-2013

Certified to be Effective: 11-22-13 thru 5-21-14

Notice Publication Date:

Rules Adopted: 581-017-0300, 581-017-0305, 581-017-0308, 581-017-0311, 581-017-0314, 581-017-0317, 581-017-0320, 581-017-0323, 581-017-0326, 581-017-0329, 581-017-0332

Subject: Under the Connecting to the World of Work Program, funds were designed for the purpose of distributing moneys to school districts, postsecondary institutions and student-focused nonprofit organizations to create or expand Regional STEM Hubs for the advancement of STEM education and providing science, technology, engineering, art and mathematics (STEAM) and career and technical education (CTE) programs and/or activities opportunities for all students in both formal and informal educational settings.

Rules Coordinator: Cindy Hunt—(503) 947-5651

581-017-0300 Definitions

The following definitions apply to 581-017-0300 TO 581-017-0332:

(1) "Achievement Gap" means the gap in achievement (state test scores in science and mathematics as well as postsecondary degree attainment in STEM) that often exists between students who are economically disadvantaged, students learning English as a second language, African American, Hispanic or Native American compared to their peers.

(2) "Authentic Problem-Based Learning" means using real world questions, problems, and tasks — often drawn from local community issues and industries — as the focus to drive the learning experiences, deepen understanding, and developing rich contextual connections across a variety of STEM and non-STEM disciplines.

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(3) “Career and Technical Education (CTE)” is a comprehensive educational program for students based on industry needs. CTE includes coursework in areas such as health care, engineering, and computer science.

(4) “Community Engagement” means a broad collaboration and participation between multiple sectors of the community for the mutually beneficial exchange of knowledge and resources to identify local needs and contribute to larger conversations on visioning planning which may include, but not limited to parent groups and advocacy groups, industry and STEM agencies, economic and workforce groups, student input, and educators.

(5) “Effective STEM Instruction” means the use of evidence-based practices that support interconnected, relevant STEM instruction as stated in definition number one.

(6) “Effective STEM Leadership” means identifying schools, school districts, postsecondary institutions, business & industry, student-focused nonprofits and community leadership to support implementing and improving STEM teaching and learning in addition to creating a culture that fosters STEM learning with evidence-based resources. Effective STEM leadership develops an understanding of what effective and interconnected STEM education looks like in the classroom and supports the development of learning environments that empower educators to implement innovative STEM education approaches.

(7) “Effective STEM Learning Environments” means supporting student interaction with STEM education during formal and informal settings in ways that promote deeper understanding of real-world complex concepts. Such learning environments need to engage all students in solving complex problems, using highly interactive learning opportunities that create new opportunities for STEM learning across the core curriculum.

(8) “Equity Lens” refers to the commitment and principles adopted by the Oregon Education Investment Board to address inequities of access, opportunity, interest, and attainment for underserved and underrepresented populations in all current and future strategic investments.

(9) “Postsecondary Institution” means a:

(a) A community college operated under ORS chapter 341.

(b) The following public universities within the Oregon University System:

(A) University of Oregon.

(B) Oregon State University.

(C) Portland State University.

(D) Oregon Institute of Technology.

(E) Western Oregon University.

(F) Southern Oregon University.

(G) Eastern Oregon University.

(c) Oregon Health and Science University.

(d) An Oregon-based, generally accredited, not-for-profit institution of higher education.

(10) “Regional STEM Hub” means a commitment of a group of key stakeholders from different sectors such as, but not limited to school districts, informal education providers, postsecondary institutions, business & industry, student-focused nonprofits, students, families, community members and policy makers to advance state and local educational goals related to science, technology, engineering, mathematics and career & technical education (CTE).

(11) “Statewide STEM Network” means a supportive collaboration between and across Regional STEM Hubs to share knowledge, expertise, insights, and leadership to assist other communities in their efforts to create similar STEM partnerships.

(12) “STEM Education” means an approach to teaching and lifelong learning that emphasizes the natural interconnectedness of the four separate STEM disciplines. Developing and deepening content knowledge and skills in science and mathematics is the foundation of STEM teaching and learning. The natural connections among science, mathematics and STEM are made explicit through collaboration between educators resulting in real and appropriate context built into instruction, curriculum, and assessment. The common element of problem solving is emphasized across all STEM disciplines allowing students to discover, explore, and apply critical thinking skills as they learn.

(13) “STEM Practitioners” refers to individuals engaged in STEM-related professions such as but not limited to, natural resources management, high-tech manufacturing and product development, information technology, industrial design, health sciences, software, scientific research, engineering, data analytics, etc.

(14) “Student-Focused Nonprofits” means an organization that meets all of the following requirements:

(a) Is established as a nonprofit organization under the laws of Oregon;

(b) Qualifies as an exempt organization under section 501(c)(3) of the Internal Revenue Code as defined in ORS 314.011; and

(c) Is focused on providing services to students who’s goals or mission are focused on impacting and improving outcomes in STEM education.

(15) “Underserved Students” are students whom systems have placed at risk because of their race, ethnicity, English language proficiency, socioeconomic status, gender, sexual orientation, differently abled, or geographic location.

(16) “Underrepresented Students” in STEM are from demographic groups who’s representation in STEM fields and industries does not mirror regional and national focus populations specifically, women, African American, Native American, Hispanic and Pacific Islander students which systems have provided insufficient or inadequate balance of opportunity.

Stat. Auth.: Sect. 1, ch. 661, OL 2013 (Enrolled HB 3233)

Stats. Implemented: Sect. 1, ch. 661, OL 2013 (Enrolled HB 3233)

Hist.: ODE 27-2013(Temp), f. & cert. ef. 11-22-13 thru 5-21-14

581-017-0305

Establishment of Regional STEM Hubs

(1) The Regional STEM Hub Grant is established as part of the Connecting to the World of Work Program.

(2) The purposes of these Regional STEM Hubs includes, but is not limited to:

(a) Engage school districts, post-secondary institutions, student-focused nonprofit organizations, business and industry around common outcomes related to increasing students’ proficiency, interest, and attainment in science, technology, engineering and mathematics along with career and technical education.

(b) Align STEM program activities and leverage State and local resources, both financial and human, around common student outcomes to advance the State 40/40/20 goals.

(c) Address ongoing access, opportunity, interest, and attainment gaps for underserved and underrepresented students in STEM consistent with the Equity Lens.

(d) Engage local communities to elevate the importance of STEM to the prosperity of individuals, and the local and state economy.

(e) Promote effective instructional practices by providing professional learning opportunities and to support educators in ways that are consistent with the implementation of the Common Core State Standards and Oregon Science Standards.

(f) Provide age-appropriate career exploration opportunities in STEM for students along the education continuum including career guidance, tours, and internships.

(g) Expand effective STEM learning experiences for students both in and out of school.

(h) Share knowledge, expertise, insights, and leadership to assist other communities in their efforts to create similar STEM partnerships.

(i) Foster greater coherency across institutions to smooth student transitions and support services along education and career pathways.

(j) Diminish the sense of academic isolation and silos, both locally and statewide.

(k) Increase interactions of STEM practitioners with students and educators.

Stat. Auth.: Sect. 1, ch. 661, OL 2013 (Enrolled HB 3233)

Stats. Implemented: Sect. 1, ch. 661, OL 2013 (Enrolled HB 3233)

Hist.: ODE 27-2013(Temp), f. & cert. ef. 11-22-13 thru 5-21-14

581-017-0308

Eligibility of Regional STEM Hubs

The Oregon Department of Education shall allocate funds for Regional STEM Hubs based on the following criteria:

(1) The following entities shall be eligible to be the fiscal agent for the Regional STEM Hub Grant:

(a) School districts,

(b) Student-focused nonprofit organizations, or

(c) Postsecondary institutions for the purpose of supporting STEM & CTE education.

(2) A Regional STEM Hub must be established by a school district, postsecondary institutions or student-focused nonprofit and is required to include the following additional partners at a minimum:

(a) A School District,

(b) A Postsecondary Education Partner,

(c) A Student-focused nonprofit; and

(d) An Industry, Business or STEM focused Community Partner.

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(3) A Regional STEM Hub must be able to demonstrate that the Hub has the following five key elements:

- (a) A common agenda;
- (b) Shared measurement systems;
- (c) Mutually reinforcing activities;
- (d) Continuous communication; and
- (e) Backbone support organizations.

Stat. Auth.: Sect. 1, ch. 661, OL 2013 (Enrolled HB 3233)
Stats. Implemented: Sect. 1, ch. 661, OL 2013 (Enrolled HB 3233)
Hist.: ODE 27-2013(Temp), f. & cert. ef. 11-22-13 thru 5-21-14

581-017-0311

Criteria of Regional STEM Hubs Awards

(1) The Oregon Department of Education shall establish a request for proposal solicitation and approval process to be conducted each biennium for which the Regional STEM Hub grant funds are available. All proposals must comply with the requirements of section 1, Chapter 661, Oregon Law 2013 (Enrolled House Bill 3232) and rules adopted to implement that section.

(2) The Oregon Department of Education may only award grants to Regional STEM Hubs which meet the minimum criteria by having a record of success in or clearly established plans for addressing the following:

(a) Each eligible recipient must establish a partnership for a Regional STEM Hub consisting of a school district, post-secondary, student-focused nonprofit, and industry, business.

(b) In creating a Regional STEM Hub, network leadership that has a plan to demonstrate the needs of ALL students and incorporate the principles of the Equity Lens adopted by the Oregon Education Investment Board.

(c) Regional STEM Hubs must identify a common agenda that contributes to the achievement of STEM to the State 40/40/20 goal and the STEM-related goals, which states by 2025 to:

(A) Double the percentage of students in 4th and 8th grades who are proficient or advanced in mathematics and science.

(B) Double the number of students who earn a post-secondary degree requiring proficiency in science, technology, engineering or mathematics.

(d) Regional STEM Hub Partnerships will be expected to:

(A) Participate in the development and dissemination of a minimum set of shared measurements and reporting of progress as determined by Oregon Department of Education in collaboration with the Oregon Education Investment Board

(B) Engage in mutually reinforcing activities for improving STEM/CTE education that will focus on instructional systems, communication, student support systems, human resource systems, and governance

(C) Engage in continuous communication both within and between Regional STEM Hubs

(D) Establish a backbone support organization to manage and support the Regional STEM Hub Partnership by serving the roles of project manager, data manager, communications hub and professional development facilitators.

Stat. Auth.: Sect. 1, ch. 661, OL 2013 (Enrolled HB 3233)
Stats. Implemented: Sect. 1, ch. 661, OL 2013 (Enrolled HB 3233)
Hist.: ODE 27-2013(Temp), f. & cert. ef. 11-22-13 thru 5-21-14

581-017-0314

Implementation of Grant Funding of Regional STEM Hubs

(1) The Oregon Department of Education shall allocate funds to support expanding and newly established Regional STEM Hubs.

(2) Each grantee may receive funds between \$100,000 to 750,000 which shall be distributed as follows:

(a) Phase 1- Initial funding will be no more than 10 percent or \$25,000, whichever is higher, of the grant awarded amount.

(b) Phase 2- Full funding will be released up to the awarded amount within six months of the date of the initial funding if the Oregon Department of Education, in collaboration with the Chief Education Officer or their STEM designee, determines that the grantee has established evidence of readiness.

(c) Evidence of readiness will consist of a business plan addressing the following:

(A) Formalized partnership agreements in place with commitments of human and financial resources.

(B) Agreed upon goals and common outcomes related to student, teacher and community needs, with particular attention to closing the achievement gap and furthering 40/40/20.

(C) Needs analysis related to student, teacher, and community challenges.

(D) Community profile of STEM-related programs, initiatives, and resources.

(E) Program implementation plan to address goals.

(F) Demonstrated leadership and capacity to implement grant.

(G) Evaluation plan to identify records of success and/or challenges.

(H) Plan for sustaining partnership and activities beyond the funding period.

(I) Commitment to participating and supporting the statewide STEM Network.

Stat. Auth.: Sect. 1, ch. 661, OL 2013 (Enrolled HB 3233)
Stats. Implemented: Sect. 1, ch. 661, OL 2013 (Enrolled HB 3233)
Hist.: ODE 27-2013(Temp), f. & cert. ef. 11-22-13 thru 5-21-14

581-017-0317

Reporting of Regional STEM Hubs

The Department of Education shall develop partnership-reporting requirements for allocation of funds for implementation of Regional STEM Hubs as required by the Oregon Education Investment Board.

Stat. Auth.: Sect. 1, ch. 661, OL 2013 (Enrolled HB 3233)
Stats. Implemented: Sect. 1, ch. 661, OL 2013 (Enrolled HB 3233)
Hist.: ODE 27-2013(Temp), f. & cert. ef. 11-22-13 thru 5-21-14

581-017-0320

Establishment of STEAM & CTE Programs and Activities

(1) The STEAM & CTE Program and Activities Grant is established as part of the Connecting to the World of Work Program.

(2) The purpose of the STEAM & CTE Programs and Activities Grant is to:

(a) Engage school districts, public schools, post-secondary institutions, and student-focused nonprofit organizations to implement programs and activities that increase learning opportunities focused on Science, Technology, Engineering, Art-related industries and Mathematics (STEAM) and Career and Technical Education (CTE) to serve Oregon students.

(b) Address ongoing access, opportunity, interest and attainment gaps for underserved and underrepresented students in STEAM and CTE consistent with the Equity Lens and specifically from demographic groups who's representation in STEAM industries fields and industries does not mirror regional and national focus populations, especially women, African American, Native American, Hispanic and Pacific Islander students for which current programs have provided insufficient or inadequate balance of opportunity.

(c) Expand effective STEAM learning environments in both in-school and out-of-school by implementing innovative programs and activities to improve, enhance and enrich students' problem-solving capabilities that foster 21st century STEAM skills.

(d) Promote more effective STEAM and CTE instructional practices consistent with Common Core State Standards, Oregon State Science Standards and Oregon State Arts Standards.

Stat. Auth.: Sect. 1, ch. 661, OL 2013 (Enrolled HB 3233)
Stats. Implemented: Sect. 1, ch. 661, OL 2013 (Enrolled HB 3233)
Hist.: ODE 27-2013(Temp), f. & cert. ef. 11-22-13 thru 5-21-14

581-017-0323

Eligibility of STEAM and CTE Programs and Activities

The Oregon Department of Education shall allocate funds for the STEAM and CTE program and activities grant. The following entities are able to apply and shall be eligible as the fiscal agent for the STEAM and CTE Implementation Activities and Program Grant:

(1) School districts;

(2) Public schools;

(3) Student-focused nonprofit organizations; or

(4) Post-secondary institutions.

Stat. Auth.: Sect. 1, ch. 661, OL 2013 (Enrolled HB 3233)
Stats. Implemented: Sect. 1, ch. 661, OL 2013 (Enrolled HB 3233)
Hist.: ODE 27-2013(Temp), f. & cert. ef. 11-22-13 thru 5-21-14

581-017-0326

Criteria of STEAM & CTE Programs and Activities

(1) The Oregon Department of Education shall establish a request for proposal solicitation and approval process to be conducted each biennium for which the STEAM and CTE Program and Activities grant funds are available. All proposals must comply with the requirements of section 1, Chapter 661, Oregon Law 2013 (Enrolled House Bill 3232) and rules adopted to implement that section.

(2) Eligible school districts, public schools, student-focused nonprofit organizations, and post-secondary institutions will focus on STEAM education with a specific agenda that demonstrates a record of success or clearly established plans for addressing the following:

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(a) Closing the achievement gap for underserved students and those underrepresented in STEAM and CTE fields with innovative approaches.

(b) Support effective implementation of the Common Core State Standards, the Oregon State Science Standards and the Oregon State Arts Standards.

(c) Successfully move students along a P-20 STEAM workforce pathway.

(d) Engage All students in meaningful, authentic problem-based learning that will support the Oregon's 40-40-20 goal.

(3) Eligible school districts, public schools, student-focused nonprofit organizations and post-secondary institutions must have a comprehensive system for measuring students' quantitative and qualitative outcomes, provide documented data and ensure that the resources received will be used for STEAM and CTE program and activity implementation.

Stat. Auth.: Sect. 1, ch. 661, OL 2013 (Enrolled HB 3233)

Stats. Implemented: Sect. 1, ch. 661, OL 2013 (Enrolled HB 3233)

Hist.: ODE 27-2013(Temp), f. & cert. ef. 11-22-13 thru 5-21-14

581-017-0329

Implementation of Grant Funding of STEAM & CTE Programs and Activities

(1) The Oregon Department of Education shall allocate funds to support in-school and out-of-school STEAM and CTE programs and activities.

(2) Each grantee may receive funds between \$10,000 and \$250,000 for use during the 2013-2015 biennium.

(3) The Department of Education will award STEAM and CTE Programs and Activities Grants for the biennium distributed as follows:

(a) The Oregon Department of Education shall establish a request for proposal solicitation and approval process to be conducted for the STEAM and CTE Programs and Activities funds. All proposals will comply with the requirement of section 4, chapter 661, Oregon Laws 2013 (enrolled House Bill 3232) and rules adopted to implement that section.

(b) The Department shall give priority to proposals that meet the minimum criteria and clearly demonstrates how the grant funds will be used to address the following:

(A) Establish how underserved and underrepresented students will be engaged and have increased learning opportunities;

(B) Support new or expand STEAM & CTE programs and activities;

(C) Demonstrate a long-term sustainability plan;

(D) Collaborate with local business and industry partners or Regional STEM Hubs

Stat. Auth.: Sect. 1, ch. 661, OL 2013 (Enrolled HB 3233)

Stats. Implemented: Sect. 1, ch. 661, OL 2013 (Enrolled HB 3233)

Hist.: ODE 27-2013(Temp), f. & cert. ef. 11-22-13 thru 5-21-14

581-017-0332

Reporting of STEAM and CTE Programs and Activities

The Department of Education shall develop partnership-reporting requirements for allocation of funds for implementation of STEAM and CTE Programs and Activities as required by the Oregon Investment Board.

Stat. Auth.: Sect. 1, ch. 661, OL 2013 (Enrolled HB 3233)

Stats. Implemented: Sect. 1, ch. 661, OL 2013 (Enrolled HB 3233)

Hist.: ODE 27-2013(Temp), f. & cert. ef. 11-22-13 thru 5-21-14

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Oregon Health Authority, Division of Medical Assistance Programs Chapter 410

Rule Caption: Prescription Drug Monitoring Program

Adm. Order No.: DMAP 64-2013

Filed with Sec. of State: 11-19-2013

Certified to be Effective: 11-19-13

Notice Publication Date: 10-1-2013

Rules Amended: 410-121-4005, 410-121-4010, 410-121-4020

Subject: The Oregon Health Authority, Division of Medical Assistance Programs is permanently amending administrative rules in chapter 410, division 121 to add and revise definition terms; to revise reporting requirements; and to clarify expanded access to information in the electronic system.

Rules Coordinator: Sandy Cafourek—(503) 945-6530

410-121-4005

Definitions

Unless otherwise stated in OAR 410-121-4000 through 410-121-4020, or the context of OAR 410-121-4000 through 410-121-0420 requires otherwise, the following definitions apply to OAR 410-121-4000 through 410-121-0420:

(1) "Authority" means the Oregon Health Authority.

(2) "Controlled substance" means a prescription drug classified in Schedules II through IV under the Federal Controlled Substances Act, 21 U.S.C. 811 and 812, as modified under ORS 475.035.

(3) "Delegate" means a member of staff of a practitioner or pharmacist who is authorized by the practitioner or pharmacist to access the system on his or her behalf.

(4) "Dispense" and "dispensing" have the meaning given those terms in ORS 689.005.

(5) "Health professional regulatory board" has the meaning given that term in ORS 676.160.

(6) "Pharmacy" has the meaning given that term in ORS 689.005 but does not include a pharmacy in an institution as defined in ORS 179.010.

(7) "Practitioner" has the meaning given that term in ORS 431.960.

(8) "Prescription drug" has the meaning given that term in ORS 689.005.

(9) "System" means the secure electronic system used to monitor reported prescription drug information.

(10) "Unsecure data" means data that is electronic and is not encrypted at the level established by the National Institute of Standards and Technology.

(11) "Vendor" means the private entity under contract with the Authority to operate the system.

Stat. Auth.: ORS 431.962

Stats. Implemented: ORS 431.962 - 431.978 & 431.992

Hist.: DMAP 6-2011, f. & cert. ef. 5-5-11; DMAP 64-2013, f. & cert. ef. 11-19-13

410-121-4010

Reporting Requirements

(1) No later than one week after dispensing a controlled substance a pharmacy shall electronically report to the Authority the following information for prescription drugs dispensed that are classified in schedules II through IV under the federal Controlled Substances Act, 21 U.S.C. 811 and 812, as modified by the State Board of Pharmacy by rule under ORS 475.035:

(a) Patient's full name, address, date of birth, and sex;

(b) Pharmacy Drug Enforcement Administration Registration Number (or other identifying number in lieu of such registration number);

(c) Prescriber name and Drug Enforcement Administration Registration Number (or other identifying number in lieu of such registration number);

(d) Identification of the controlled substance using a national drug code number;

(e) Prescription number;

(f) Date the prescription was written;

(g) Date the drug was dispensed;

(h) Number of metric units dispensed;

(i) Number of days supplied; and

(j) Number of refills authorized by the prescriber and the number of the fill of the prescription.

(2) A pharmacy located outside of the state and licensed by the Oregon Board of Pharmacy shall electronically report the required information for controlled substances dispensed to residents of Oregon.

(3) A pharmacy shall submit data formatted in the American Society for Automation in Pharmacy (ASAP) 2007 version 4 release 1 specification standard.

(4) Data submitted by a pharmacy shall meet criteria prescribed by the Authority before it is uploaded into the system.

(5) A pharmacy shall be responsible for the correction of errors in the submitted data. Corrections shall be submitted no later than one week after the data was submitted.

(6) A pharmacy that has not dispensed any controlled substances during a seven-day reporting period must submit a zero report to the Authority at the end of the reporting period.

(7) A pharmacy that does not dispense any controlled substances or any controlled substances directly to a patient may request a waiver from the Authority for exemption from the reporting requirement. A pharmacy requesting a no reporting waiver shall submit to the Authority a written waiver request form provided by the Authority.

(8) If the Authority approves or denies the no reporting waiver request, the Authority shall provide written notification of approval or denial to the pharmacy. The duration of the waiver shall be two years at which time the pharmacy must reapply.

(9) A pharmacy may request a waiver from the Authority for exemption from the electronic reporting method. A pharmacy requesting an electronic reporting waiver shall submit to the Authority a written waiver

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request form provided by the Authority that contains the reason for the requested waiver.

(10) The Authority may grant a waiver of the electronic reporting requirement for good cause as determined by the Authority. Good cause includes financial hardship and not having an automated recordkeeping system.

(a) If the Authority approves the electronic reporting waiver, the Authority shall provide written notification to the pharmacy. The Authority shall determine an alternative reporting method for the pharmacy granted a waiver. The duration of the waiver shall be two years at which time the pharmacy must reapply.

(b) If the Authority denies the electronic reporting waiver, the Authority shall provide written notification to the pharmacy explaining why the request was denied. The Authority may offer alternative suggestions for reporting to facilitate participation in the program.

Stat. Auth.: ORS 431.962

Stats. Implemented: ORS 431.962 & 431.964

Hist.: DMAP 6-2011, f. & cert. ef. 5-5-11; DMAP 64-2013, f. & cert. ef. 11-19-13

410-121-4020

Information Access

(1) System Access. Only the following individuals or entities may access the system:

(a) Practitioners and pharmacists authorized to prescribe or dispense controlled substances;

(b) Delegates;

(c) Designated representatives of the Authority and any vendor contracted to establish or maintain the system; and

(d) State Medical Examiner and designees of the State Medical Examiner.

(2) All entities or individuals who request access from the Authority for the creation of user accounts shall agree to terms and conditions of use of the system.

(3) All delegates must be authorized by a practitioner or pharmacist with an active system account.

(4) The Authority shall monitor the system for unusual and potentially unauthorized use. When such use is detected, the user account shall be immediately deactivated.

(5) The vendor, a practitioner, a pharmacist or a pharmacy shall report to the Authority within 24 hours any suspected breach of the system or unauthorized access.

(6) When the Authority is informed of any suspected breach of the system or unauthorized access, the Authority shall notify the Authority's Information Security Office and investigate.

(7) If patient data is determined to have been breached or accessed without proper authorization, the Authority shall notify all affected patients, the Attorney General, and the applicable health professional regulatory board as soon as possible but no later than 30 days from the date of the final determination that a breach or unauthorized access occurred. Notice shall be made by first class mail to a patient or a patient's next of kin if the patient is deceased. The notice shall include:

(a) The date the breach or unauthorized access was discovered and the date the Authority believes the breach or unauthorized access occurred;

(b) The data that was breached or accessed without proper authorization;

(c) Steps the individual can take to protect him or herself from identity or medical identity theft;

(d) Mitigation steps taken by the Authority; and

(e) Steps the Authority will take to reasonably ensure such a breach does not occur in the future.

(8) Practitioner, Pharmacist, and Delegate Access. A practitioner, pharmacist, or delegate who chooses to request access to the system shall apply for a user account as follows:

(a) Complete and submit an application provided by the Authority that includes identifying information and credentials;

(b) Agree to terms and conditions of use of the system that defines the limits of access, allowable use of patient information, and penalties for misuse of the system; and

(c) Mail to the Authority a notarized application.

(9) State Medical Examiner Access. The State Medical Examiner or his or her designee shall apply for a user account as required in section (8) of this rule and indicate their license type as Medical Examiner.

(10) The Authority shall compare the licensure requirements between Oregon practitioners and similarly licensed professionals in California, Idaho, and Washington. The Authority's determination of similar licensure requirements shall be based upon scope of practice and formulary.

(11) The Authority shall review each application to authenticate before granting approval of a new account.

(12) If the Authority learns that an applicant has provided inaccurate or false information on an application, the Authority shall deny access to the system or terminate access to the system if access has already been established. The Authority may send written notification to the appropriate health professional regulatory board or oversight entity.

(13) A practitioner or pharmacist who is an authorized system user shall notify the Authority when his or her license or DEA registration has been limited, revoked, or voluntarily retired. A practitioner or pharmacist who changes or terminates employment shall notify the Authority of that change.

(14) When the Authority learns that a practitioner or pharmacist's license has been limited or revoked, the Authority shall deny further access to the system.

(15) When a delegate for any reason is no longer authorized as a delegate by a practitioner or pharmacist, the practitioner or pharmacist shall revoke the delegation and notify the Authority.

(16) When the account of a delegate is inactive for more than six months, the account shall be deactivated by the Authority.

(17) When for any reason access of a designee of the State Medical Examiner must be revoked, the State Medical Examiner shall notify the Authority.

(18) Each time a practitioner or pharmacist makes a patient query he or she shall certify that requests are in connection with the treatment of a patient in his or her care and agree to terms and conditions of use of the system.

(19) Each time the State Medical Examiner or designee of the State Medical Examiner makes a patient query he or she shall certify that requests are for the purpose of conducting a specific medicolegal investigation or autopsy where there is reason to believe controlled substances contributed to the death and agree to terms and conditions of use of the system.

(20) Each time a delegate makes a patient query he or she shall certify that requests are in connection with the treatment of a patient of the practitioner or pharmacist for whom the delegate is conducting the query, agree to terms and conditions of use, and indicate the authorizing practitioner or pharmacist for whom the delegate is conducting the query.

(21) Practitioners and pharmacists with delegates must conduct monthly audits of delegate use to monitor for potential misuse of the system.

(22) When a practitioner or pharmacist learns of any potential unauthorized use of the system or system data by a delegate, the practitioner or pharmacist shall:

(a) Revoke the delegation; and

(b) Notify the Authority of the potential unauthorized use.

(23) When the State Medical Examiner learns of any potential unauthorized use of the system or system data by a designee, the State Medical Examiner shall notify the Authority.

(24) When the Authority learns of any potential unauthorized use of the system or system data, the Authority shall revoke the user's access to the system, notify the Authority's Information Security Office, and investigate.

(a) If the Authority determines unauthorized use occurred, the Authority shall send written notification to the appropriate health professional regulatory board, the Attorney General and all affected individuals.

(b) If the Authority determines unauthorized use did not occur, the Authority shall reinstate access to the system.

(25) The Authority shall send written notification to a user or a potential user when an account has been deactivated or access has been denied.

(26) Patient Access. A patient may request a report of the patient's own controlled substance record. The patient shall mail to the Authority a request that contains the following documents:

(a) A signed and dated patient request form provided by the Authority; and

(b) A copy of the patient's current valid U.S. driver's license or other valid government issued photo identification.

(27) The Authority shall review the personal information submitted and verify that the patient's identification and request match before taking further action.

(28) If the Authority cannot verify the information, the Authority shall send written notification to the patient explaining why the request cannot be processed.

(29) After the Authority has verified the request, the Authority shall query the system based upon the patient information provided in the request

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and securely send the report to the patient at no cost to the patient. The report shall include:

(a) A list of controlled substances dispensed to the patient including the dates of dispensation, the practitioners who prescribed the controlled substances, and the pharmacies that dispensed them; and

(b) A list of users who accessed the system for information on that specific patient with the date of each instance of access.

(30) If no data is found that matches the patient identified in the request, the Authority shall send written notification to the patient explaining possible reasons why no patient data was identified.

(31) A patient may send written notification to the Authority if he or she believes unauthorized access to his or her information has occurred. The notification shall include the patient's name, who is suspected to have gained unauthorized access to the patient's information, what information is suspected to have been accessed by unauthorized use, when the suspected unauthorized access occurred, and why the patient suspects the access was unauthorized. The Authority shall treat such patient notifications as potential unauthorized use of the system.

(32) A patient may request that the Authority correct information in a patient record report as follows:

(a) The patient shall specify in writing to the Authority what information in the report the patient considers incorrect.

(b) When the Authority receives a request to correct a patient's information in the system, the Authority shall make a note in the system that the information is contested and verify the accuracy of the system data with the vendor. The vendor shall verify that the data obtained from the query is the same data received from the pharmacy.

(c) If the data is verified incorrect, the Authority shall correct the errors in consultation with the vendor and document the correction. The Authority shall send to the patient the corrected report.

(d) If the vendor verifies the data is correct, the Authority shall send written notification informing the patient that the request for correction is denied. The notice shall inform the patient of his or her rights as are applicable to the prescription drug monitoring program, the process for filing an appeal, and if there are no appeal rights, how to otherwise address or resolve the issue.

(33) The Authority shall respond to all patient requests within 10 business days after the Authority receives a request. Each response shall include information that informs the patient of his or her rights as are applicable to the prescription drug monitoring program.

(34) If the Authority denies a patient's request to correct information, or fails to grant a patient's request within 10 business days after the Authority receives the request, a patient may appeal the denial or failure by requesting a contested case hearing. The appeal shall be filed within 30 days after the request to correct information is denied. The appeal process is conducted pursuant to ORS chapter 183 and the Attorney General's Uniform and Model Rules of Procedure for the Office of Administrative Hearings (OAH), OAR 137-003-0501 through 137-003-0700.

(35) Law Enforcement Access. A federal, state, or local law enforcement agency engaged in an authorized drug-related investigation of an individual may request from the Authority controlled substance information pertaining to the individual to whom the information pertains. The request shall be pursuant to a valid court order based on probable cause.

(36) A law enforcement agency shall submit to the Authority a request that contains the following:

(a) A form provided by the Authority specifying the information requested; and

(b) A copy of the court order documents.

(37) The Authority shall review the law enforcement request.

(a) If the form is complete and the court order is valid, the Authority shall query the system for the requested information and securely provide a report to the law enforcement agency.

(b) If the request or court order is not valid, the Authority shall respond to the law enforcement agency providing an explanation for the denial.

(38) Health Professional Regulatory Board Access. A health professional regulatory board investigating an individual regulated by the board may request from the Authority controlled substance information pertaining to the member.

(a) A health professional regulatory board shall submit to the Authority a form provided by the Authority specifying the information requested. The board's executive director shall certify that the requested information is necessary for an investigation related to licensure, renewal, or disciplinary action involving the applicant, licensee, or registrant to whom the requested information pertains.

(b) The Authority shall review the regulatory board request.

(A) If a request is valid, the Authority shall query the system for the requested information and securely provide a report to the health professional regulatory board.

(B) If a request is not valid, the Authority shall respond to the health professional regulatory board providing an explanation for the denial.

(39) Researcher Access. The Authority may provide de-identified data for research purposes to a researcher. A researcher shall submit a research data request form provided by the Authority.

(a) The request shall include but is not limited to a thorough description of the study aims, data use, data storage, data destruction, and publishing guidelines.

(b) The Authority shall approve or deny research data requests based on application merit.

(c) If a request is approved, the requestor shall sign a data use agreement provided by the Authority.

(d) The Authority shall provide the minimum data set necessary that does not identify individuals.

(e) The Authority may charge researchers a reasonable fee for services involved in data access.

Stat. Auth.: ORS 431.962

Stats. Implemented: ORS 431.962 & 431.966

Hist.: DMAP 6-2011, f. & cert. ef. 5-5-11; DMAP 64-2013, f. & cert. ef. 11-19-13

Rule Caption: Add Dental Care Organization (DCO) language for dental integration into CCO's

Adm. Order No.: DMAP 65-2013

Filed with Sec. of State: 11-29-2013

Certified to be Effective: 11-29-13

Notice Publication Date: 8-1-2013

Rules Amended: 410-141-3060, 410-141-3080, 410-141-3220, 410-141-3420

Subject: The Division needs to amend these rules to incorporate language related to dental services being integrated into the Coordinated Care Organizations (CCO). Changes have been made for clarity of rule language; the addition of effective dates, behavioral health and Dental Care Organization.

Rules Coordinator: Sandy Cafourek—(503) 945-6530

410-141-3060

Enrollment Requirements in a CCO

(1) A client who is eligible for or receiving health services must enroll in a CCO as required by ORS 414.631, except as provided in ORS 414.631(2), (3), (4), and (5) and 414.632(2) or exempted by this rule.

(2) If, upon application or redetermination, a client does not select a CCO, the Authority shall enroll the client and the client's household in a CCO that has adequate health care access and capacity.

(3) For existing members of a PHP that has transitioned to a CCO, the Authority shall enroll those members in the CCO when the Authority certifies and contracts with the CCO. The Authority shall provide notice to the enrollees 30 days before the effective date.

(4) Existing members of a PHP that is on the path to becoming a CCO shall retain those members. The Authority shall enroll those members in the CCO when certification and contracting are complete. The Authority shall provide notice to the clients 30 days before the effective date.

(5) Unless otherwise exempted by sections (17) and (18) of this rule, existing clients receiving their physical health care services on a fee-for-service basis shall enroll in a CCO serving their area that has adequate health care access and capacity. They must enroll by November 1, 2012. The Authority shall send a notice to the clients 30 days before the effective date.

(6) The following apply to clients receiving physical health care services on a fee-for-service basis but managed or coordinated behavioral health services:

(a) The Authority shall enroll the client in a CCO that is serving the client's area before November 1, 2012;

(b) The client shall receive their behavioral health care services from that CCO;

(c) The client shall continue to receive their physical health care services on a fee-for-service basis; and

(d) On or after November 1, 2012, the Authority shall enroll the client in a CCO for both physical health and behavioral health care services, unless otherwise exempted by sections (17) and (18) of this rule.

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(e) On or after November 1, 2012, for the client exempt from coordinated physical health services by sections (17) and (18) shall receive managed or coordinated behavioral health services from a CCO or MHO.

(7) The following apply to clients enrolled in Medicare:

(a) A client may enroll in a CCO regardless of whether they are enrolled in Medicare Advantage;

(b) A client enrolled in Medicare Advantage, whether or not they pay their own premium, may enroll in a CCO, even if the CCO does not have a corresponding Medicare Advantage plan.

(c) A client may enroll with a CCO, even if the client withdrew from that CCO's Medicare Advantage plan. The CCO shall accept the client's enrollment if the CCO has adequate health access and capacity;

(d) A client may enroll with a CCO, even if the client is enrolled in Medicare Advantage with another entity.

(8) From August 1, 2012, until November 1, 2012, enrollment is required in service areas with adequate health care access and capacity to provide health care services through a CCO or PHP. The following outlines the priority of enrollment during this period in service areas where enrollment is required:

(a) Priority 1: The client must enroll in a CCO that serves that area and has adequate health care access and capacity;

(b) Priority 2: The client must enroll in a PHP if:

(A) A PHP serves an area that a CCO does not serve; or

(B) A PHP serves an area that a CCO serves, but the CCO has inadequate health care access and capacity to accept new members;

(c) Priority 3: The client shall receive services on a fee-for-service basis.

(9) From August 1, 2012, until November 1, 2012, enrollment is voluntary in service areas without adequate access and capacity to provide health care services through a CCO or PHP. If a client decides to enroll in a CCO or PHP, the priority of enrollment in section (8) applies.

(10) On or after November 1, 2012, CCO enrollment is required in all areas. The following outlines the priority of options to enroll in all service areas:

(a) Priority 1: The client must enroll in a CCO that serves that area and has adequate health care access and capacity;

(b) Priority 2: The client must enroll in a PHP on the path to becoming a CCO if:

(A) The PHP serves an area that a CCO does not serve; or

(B) The PHP serves an area that a CCO serves, but the CCO has inadequate health care services capacity to accept new members;

(c) Priority 3: The client must enroll in a PHP that is not on the path to becoming a CCO if:

(A) The PHP serves an area that a CCO does not serve; or

(B) The PHP serves an area that a CCO serves, but the CCO has inadequate health care access or capacity to accept new members;

(d) Priority 4: The client shall receive physical services on a fee-for-service basis.

(11) On or after July 1, 2013, a client must enroll in a CCO or managed dental care organization (DCO) in a service area where a CCO or DCO has adequate dental care access and capacity, and a CCO or DCO is open to enrollment. (13) If a client receives physical health care through a PHP, PCM or on a fee-for-service basis, under circumstances allowed by this rule, the client must enroll in a CCO or mental (behavioral) health organization (MHO) in a service area where MHO enrollment is required. The following determines if a service area requires CCO or MHO enrollment:

(a) CCO: The service area has adequate CCO behavioral health care access and capacity;

(b) MHO: A CCO does not serve in the area; or

(c) MHO: A CCO serves the area, but the CCO has inadequate health care access and capacity to accept new members:

(12) From August 1, 2012, until November 1, 2012, if a service area changes from required enrollment to voluntary enrollment, the member shall remain with the PHP for the remainder of their eligibility period or until the Authority or Department redetermines eligibility, whichever comes sooner, unless otherwise eligible to disenroll pursuant to OAR 410-41-3080.

(13) At the time of application or recertification, the primary person in the household shall select the CCO on behalf of all household members on the same household case. If the client is not able to choose a CCO, the client's representative shall make the selection.

(14) The Department or OYA shall select the CCO for a child in the legal custody of the Department or OYA, except for children in subsidized adoptions.

(15) The following populations are exempt from CCO enrollment:

(a) Populations expressly exempted by ORS 414.631(2) (a), (b) and (c), which includes:

(A) Persons who are non-citizens who are eligible for labor and delivery services and emergency treatment services;

(B) Persons who are American Indian and Alaskan Native beneficiaries; and

(C) Persons who are dually eligible for Medicare and Medicaid and enrolled in a program of all-inclusive care for the elderly.

(b) Newly eligible clients are exempt from enrollment with a CCO if the client became eligible when admitted as an inpatient in a hospital. The client shall receive health care services on a fee-for-service basis only until the hospital discharges the client. The client is not exempt from enrollment in a DCO. The client is not exempt from enrollment in a DCO.

(c) Children in the legal custody of the Department or OYA where the child is expected to be in a substitute care placement for less than 30 calendar days, unless:

(A) Access to health care on a fee-for-service basis is not available; or

(B) Enrollment would preserve continuity of care.

(d) Clients with major medical health insurance coverage, also known as third party liability, except as provided in OAR 410-141-3050;

(e) Clients receiving prenatal services through the Citizen/Alien Waivered-Emergency Medical program; and

(f) Clients receiving premium assistance through the Specified Low-Income Medicare Beneficiary, Qualified Individuals, Qualified Disabled Working Individuals and Qualified Medicare Beneficiary programs.

(16) The following populations are exempt from CCO enrollment until specified below:

(a) From August 1, 2012, until November 1, 2012, children under 19 years of age who are medically fragile and who have special health care needs. Beginning November 1, 2012, the Authority may enroll these children in CCOs on a case-by-case basis; children not enrolled in a CCO shall continue to receive services on a FFS basis.

(b) Until July 1, 2014, women who are in their third trimester of pregnancy when first determined eligible for OHP or at re-determination may qualify as identified below to receive OHP benefits on a Fee-for-Service (FFS) basis until 60 days after the birth of her child. After the 60 day period the OHP member must enroll in a CCO. In order to qualify for the FFS third trimester exemption the member must:

(A) Not have been enrolled with a service area CCO, FCHP or PCO during the three months preceding re-determination,

(B) Have an established relationship with a licensed qualified practitioner who is not a participating provider with the service area CCO, FCHP or PCO and wishes to continue obtaining maternity services from the non-participating provider on a FFS basis, and

(C) Make a request to change to FFS prior to the date of the delivery if enrolled with a CCO, FCHP or PCO.

(c) From August 1, 2012 until November 1, 2012, clients receiving health care services through the Breast and Cervical Cancer Program are exempt. Beginning November 1, 2012, enrollment is required;

(d) Existing clients who had organ transplants are exempt until the Authority enrolls them in a CCO on a case-by-case basis; and

(e) From August 1, 2012, until November 1, 2012, clients with end-stage renal disease. Beginning November 1, 2012, enrollment is required.

(17) The following clients who are exempt from CCO enrollment and who receive services on a fee-for-service basis may enroll in a CCO:

(a) Clients who are eligible for both Medicare and Medicaid;

(b) Clients who are American Indian and Alaskan Native beneficiaries;

(18) The Authority may exempt clients or temporarily exempt clients for other just causes as determined by the Authority through medical review. The Authority may set an exemption period on a case-by-case basis. Other just causes include the considerations:

(a) Enrollment would pose a serious health risk; and

(b) The Authority finds no reasonable alternatives.

(19) The following pertains to the effective date of the enrollment. If the enrollment occurs:

(a) On or before Wednesday, the date of enrollment shall be the following Monday; or

(b) After Wednesday, the date of enrollment shall be one week from the following Monday.

(20) Coordinated care services shall begin on the first day of enrollment with the CCO except for:

(a) A newborn's date of birth when the mother was a member of a CCO at the time of birth;

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(b) For members who are re-enrolled within 30 calendar days of disenrollment, the date of enrollment shall be the date specified by the Authority that may be retroactive to the date of disenrollment;

(c) For adopted children or children placed in an adoptive placement, the date of enrollment shall be the date specified by the Authority.

Stat. Auth.: ORS 413.042, 414.615, 414.625, 414.635 & 414.651

Stats. Implemented: ORS 414.610 - 414.685

Hist.: DMAP 16-2012(Temp), f. & cert. ef. 3-26-12 thru 9-21-12; DMAP 37-2012, f. & cert. ef. 8-1-12; DMAP 62-2012(Temp), f. 12-27-12, cert. ef. 1-1-13 thru 6-29-13; DMAP 4-2013(Temp), f. & cert. ef. 2-7-13 thru 6-29-13; DMAP 33-2013, f. & cert. ef. 6-27-13; DMAP 38-2013(Temp), f. 7-8-13, cert. ef. 7-9-13 thru 1-5-14; DMAP 65-2013, f. & cert. ef. 11-29-13

410-141-3080

Disenrollment from Coordinated Care Organizations

(1) At the time of recertification, a member may disenroll from one CCO or DCO in a service area and enroll in another CCO or DCO in that service area. The primary person in the household shall make this decision on behalf of all household members.

(2) A member who moves from one service area to another service area shall disenroll from the CCO or DCO in the previous service area and enroll with a CCO or DCO in the new service area. The member must change their address with the Authority or Department within ten days of moving.

(3) A member who is an exempt client receiving services from a non-integrated CCO and wishes to receive services from an integrated CCO in their service area.

(4) A member who voluntarily enrolls in a CCO or DCO per OAR 410-141-3060(19) may disenroll from their CCOs or DCO's at any time and receive health care services on a fee-for service basis or enroll in another CCO or DCO in their service area. This only applies to:

(a) Members who are eligible for both Medicare and Medicaid; and

(b) Members who are American Indian and Alaskan Native beneficiaries;

(c) Notwithstanding other sections of this rule, members may request disenrollment for just cause at any time pursuant to state law or CFR 438.56. This includes:

(A) The CCO or DCO does not cover the service the member seeks, because of moral or religious objections;

(B) The member needs related services (for example a cesarean section and a tubal ligation) to be performed at the same time, not all related services are available within the network, and the member's primary care provider or another provider determines that receiving the services separately would subject the member to unnecessary risk; or

(C) The member is experiencing poor quality of care, lack of access to services covered under the contract, or lack of access to providers experienced in dealing with the member's health care needs.

(5) The Authority may approve the disenrollment after medical review using the following just-cause considerations:

(a) Required enrollment would pose a serious health risk; and

(b) The Authority finds no reasonable alternatives.

(6) The following applies to time lines for clients to change their CCO or DCO assignment:

(a) Newly eligible clients may change their CCO or DCO assignment within 90 days of their application for health services;

(b) Existing members may change their CCO or DCO assignment within 30 days of the Authority's automatic assignment in a CCO or DCO; or

(c) Members may change their CCO or DCO assignment upon eligibility redetermination.

(d) Members may change enrollment in their CCO or DCO once during each enrollment period.

(7) Pursuant to CFR 438.56, the CCO or DCO shall not request and the Authority shall not approve disenrollment of a member due to:

(a) A physical or behavioral disability or condition;

(b) An adverse change in the member's health;

(c) The member's utilization of services, either excessive or lacking;

(d) The member's decisions regarding medical care with which the CCO or DCO disagrees;

(e) The member's behavior is uncooperative or disruptive, including but not limited to threats or acts of physical violence, resulting from the member's special needs, except when continued enrollment in the CCO or DCO seriously impairs the CCO's or DCO's ability to furnish services to this particular member or other members.

(8) A CCO or DCO may request the Authority to disenroll a member if the CCO or DCO determines:

(a) Except as provided in OAR 410-141-3050, the member has major medical coverage, including employer sponsored insurance (ESI);

(b) The CCO or DCO determines:

(A) The member has moved to a service area the CCO or DCO does not serve;

(B) The member is out of the CCO's or DCO's area for three months without making arrangements with the CCO or DCO;

(C) The member did not initiate enrollment in the CCO or DCO serving the member's area; and

(D) The member is not in temporary placement or receiving out-of-area services.

(c) The member is in a state psychiatric institution;

(d) The CCO or DCO has verifiable information that the member has moved to another Medicaid jurisdiction; or

(e) The member is deceased.

(9) Before requesting disenrollment under the exception in section (7)(e) of this rule, a CCO or DCO must take meaningful steps to address the member's behavior, including but not limited to:

(a) Contacting the member either orally or in writing to explain and attempt to resolve the issue. The CCO or DCO must document all oral conversations in writing and send a written summary to the member. This contact may include communication from advocates, including peer wellness specialists, where appropriate, personal health navigators and qualified community health workers who are part of the member's care team to provide assistance that is culturally and linguistically appropriate to the member's need to access appropriate services and participate in processes affecting the member's care and services;

(b) Developing and implementing a care plan in coordination with the member and the member's care team that details the problem and how the CCO or DCO shall address it;

(c) Reasonably modifying practices and procedures as appropriate to accommodate the member's circumstances;

(d) Assessing the member's behavior to determine if it results from the member's special needs or a disability;

(e) Providing education, counseling and other interventions to resolve the issue; and

(f) Submitting a complete summary to the Authority if the CCO or DCO requests disenrollment.

(10) The Authority may disenroll members of CCOs or DCOs for the reasons specified in Section (8) without receiving a disenrollment request from a CCO or DCO.

(11) The CCO or DCO shall request the Authority to suspend a member's enrollment when the inmate is incarcerated in a State or Federal prison, a jail, detention facility or other penal institution for no longer than 12 months. The CCO or DCO shall request that the Authority disenroll a member when the inmate is incarcerated in a State or Federal prison, jail, detention facility or other institution for longer than 12 months. This does not include members on probation, house arrest, living voluntarily in a facility after adjudication of their case, infants living with inmates or inmates admitted for inpatient hospitalization. The CCO or DCO is responsible for identifying the members and providing sufficient proof of incarceration to the Authority for review of the request for suspension of enrollment or disenrollment. CCOs shall pay for inpatient services only during the time a member is an inmate and enrollment is otherwise suspended.

(12) Unless otherwise specified in these rules or in the Authority notification of disenrollment to the CCO or DCO, all disenrollments are effective at the end of the month the Authority approves the disenrollment, with the following exceptions;

(a) The Authority may specify a retroactive disenrollment effective date if the member has:

(A) Third party coverage including employee-sponsored insurance. The effective date shall be the date the coverage begins;

(B) Enrolls in a program for all-inclusive care for the elderly (PACE). The effective date shall be the day before PACE enrollment;

(C) Is admitted to the State Hospital. The effective date shall be the day before hospital admission; or

(D) Becomes deceased. The effective date shall be the date of death.

(b) The Authority may retroactively disenroll or suspend enrollment if the member is incarcerated pursuant to section (11) of this rule. The effective date shall be the date of the notice of incarceration or the day before incarceration, whichever is earlier.

(c) The Authority shall specify a disenrollment effective date if the member moves out of the CCO's or DCO's service area. The Authority shall recoup the balance of that month's capitation payment from the CCO or DCO;

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(d) The Authority may specify the disenrollment effective date if the member is no longer eligible for OHP;

(13) The Authority shall inform the members of a disenrollment decision in writing, including the right to request a contested case hearing to dispute the Authority's disenrollment if the Authority disenrolled the member for cause that the member did not request. If the member requests a hearing, the disenrollment shall remain in effect pending outcome of the contested case hearing.

(14) For purposes of a member's right to a contested case hearing, "disenrollment" does not include the Authority's:

(a) Transfer of a member from a PHP to a CCO or DCO;

(b) Transfer of a member from a CCO or DCO to another CCO or DCO; or

(c) Automatic enrollment of a member in a CCO or DCO.

(15) The Authority may approve the transfer of 500 or more members from one CCO or DCO to another CCO or DCO if:

(a) The members' provider has contracted with the receiving CCO or DCO and has stopped accepting patients from or has terminated providing services to members in the transferring CCO or DCO; and

(b) Members are offered the choice of remaining enrolled in the transferring CCO or DCO.

(16) Members may not be transferred under section (15) until the Authority has evaluated the receiving CCO or DCO and determined that the CCO or DCO meets criteria established by the Authority by rule, including but not limited to ensuring that the CCO or DCO maintains a network of providers sufficient in numbers and areas of practice and geographically distributed in a manner to ensure that the health services provided under the contract are reasonably accessible to members.

(17) The Authority shall provide notice of a transfer under section (15) to members that will be affected by the transfer at least 90 days before the scheduled date of the transfer.

(18) Except as otherwise allowed by rule, a member may transfer from one CCO or DCO to another CCO or DCO no more than once during each enrollment period.

Stat. Auth.: ORS 413.032, 414.615, 414.625, 414.635 & 414.651

Stats. Implemented: ORS 414.610 - 414.685

Hist.: DMAP 16-2012(Temp), f. & cert. ef. 3-26-12 thru 9-21-12; DMAP 37-2012, f. & cert. ef. 8-1-12; DMAP 47-2012(Temp), f. & cert. ef. 10-16-12 thru 4-13-13; DMAP 55-2012(Temp), f. & cert. ef. 11-15-12 thru 4-13-13; Administrative correction 4-22-13; DMAP 19-2013, f. & cert. ef. 4-23-13; DMAP 25-2013, f. & cert. ef. 6-11-13; DMAP 38-2013(Temp), f. 7-8-13, cert. ef. 7-9-13 thru 1-5-14; DMAP 65-2013, f. & cert. ef. 11-29-13

410-141-3220

Accessibility

(1) Consistent with the community health assessment and health improvement plan, CCOs must assure that members have access to high quality care. The CCO shall accomplish this developing a provider network that demonstrates communication, collaboration, and shared decision making with the various providers and care settings. The CCO shall develop and implement the assessment and plan over time that meets access-to-care standards, and allows for appropriate choice for members. The goal shall be that services and supports should be geographically as close as possible to where members reside and, to the extent necessary, offered in nontraditional settings that are accessible to families, diverse communities, and underserved populations.

(2) CCOs shall ensure access to integrated and coordinated care as outlined in OAR 410-141-3160, which includes access to a primary care provider or primary care team that is responsible for coordination of care and transitions.

(3) In developing its access standards, the CCO should anticipate access needs, so that the members receive the right care at the right time and place, using a patient-centered approach. The CCO provider network shall support members, especially those with behavioral health issues, in the most appropriate and independent setting, including in their own home or independent supported living.

(4) CCOs shall have policies and procedures which ensure that for 90% of their members in each service area, routine travel time or distance to the location of the PCPCH or PCP does not exceed the community standard for accessing health care participating providers. The travel time or distance to PCPCHs or PCPs shall not exceed the following, unless otherwise approved by the Authority:

(a) In urban areas-30 miles, 30 minutes or the community standard, whichever is greater;

(b) In rural areas-60 miles, 60 minutes or the community standard, whichever is greater.

(5) CCOs shall have an access plan that establishes standards for access, outlines how capacity is determined and establishes procedures for

monthly monitoring of capacity and access, and for improving access and managing risk in times of reduced participating provider capacity. The access plan shall also identify populations in need of interpreter services and populations in need of accommodation under the Americans with Disabilities Act.

(6) CCOs shall make the services it provides including: primary care, specialists, pharmacy, hospital, vision, ancillary, and behavioral health services, as accessible to members for timeliness, amount, duration, and scope as those services are to other members within the same service area. If the CCO is unable to provide those services locally, it must so demonstrate to the Authority and provide reasonable alternatives for members to access care that must be approved by the Authority. CCOs shall have a monitoring system that shall demonstrate to the Authority that the CCO has surveyed and monitored for equal access of members to referral providers of pharmacy, hospital, vision, ancillary, and behavioral health services:

(a) CCOs shall ensure that PCPs screen all eligible members for behavioral health issues to promote prevention, early detection, intervention and referral to treatment, especially at initial contact or physical exam or at initial prenatal examination, when a member shows evidence of behavioral health issues or when a member over utilizes services;

(b) CCOs must use a universal screening process that assesses members for critical risk factors that trigger intensive care coordination for high-needs members.

(7) CCOs shall have policies and procedures and a monitoring system to ensure that members who are aged, blind, or disabled, or who have complex or high health care needs, multiple chronic conditions, behavioral health issues or who are children receiving Department or OYA services have access to primary care, dental care (when the CCO or DCO is responsible for dental care), mental health providers and referral, and involves those members in accessing and managing appropriate preventive, health, remedial and supportive care and services.

(8) CCOs shall have policies and procedures that ensure scheduling and rescheduling of member appointments are appropriate to the reasons for, and urgency of, the visit. The member shall be seen, treated, or referred as within the following timeframes:

(a) Emergency care-Immediately or referred to an emergency department depending on the member's condition;

(b) Urgent care-Within 72 hours or as indicated in initial screening, in accordance with OAR 410-141-0140;

(c) Well care-Within 4 weeks or within the community standard;

(d) Emergency dental care (when dental care is provided by the CCO or DCO)-Seen or treated within 24- hours;

(e) Urgent dental care (when dental care is provided by the CCO or DCO)-Within one to two weeks or as indicated in the initial screening in accordance with OAR 410-123-1060; and

(f) Routine dental care (when dental care is provided by the CCO or DCO)-Seen for routine care within an average of eight weeks and within 12 weeks or the community standard, whichever is less, unless there is a documented special clinical reason which would make access longer than 12 weeks appropriate;

(g) Non-Urgent behavioral health treatment-Seen for an intake assessment within 2 weeks from date of request.

(9) CCOs shall develop policies and procedures for communicating with, and providing care to members who have difficulty communicating due to a medical condition or who are living in a household where there is no adult available to communicate in English or here there is no telephone:

(a) The policies and procedures shall provide certified or qualified interpreter services by phone, in person, in CCO administrative offices, especially those of member services and complaint and grievance representatives and in emergency rooms of contracted hospitals;

(b) CCOs shall ensure the provision of certified or qualified interpreter services for covered coordinated care services including medical, behavioral health or dental care (when the CCO or DCO is responsible for dental care) visits, and home health visits, to interpret for members with hearing impairment or in the primary language of non-English speaking members. All interpreters shall be linguistically appropriate and be capable of communicating in English and the members' primary language and be able to translate clinical information effectively. Interpreter services shall be sufficient for the provider to understand the member's complaint; to make a diagnosis; respond to member's questions and concerns; and to communicate instructions to the member;

(c) CCOs shall ensure the provision of coordinated care services which are culturally appropriate, i.e., demonstrating both awareness for and sensitivity to cultural differences and similarities and the effect on the members' care;

ADMINISTRATIVE RULES

(d) CCOs shall have written policies and procedures that ensure compliance with requirements of the Americans with Disabilities Act of 1990 in providing access to covered coordinated care services for all members and shall arrange for services to be provided by non-participating referral providers when necessary;

(e) CCOs shall have a plan for ensuring compliance with these requirements and shall monitor for compliance.

Stat. Auth.: ORS 413.032, 414.615, 414.625, 414.635 & 414.651

Stats. Implemented: ORS 414.610 - 414.685

Hist.: DMAP 16-2012(Temp), f. & cert. ef. 3-26-12 thru 9-21-12; DMAP 37-2012, f. & cert. ef. 8-1-12; DMAP 38-2013(Temp), f. 7-8-13, cert. ef. 7-9-13 thru 1-5-14; DMAP 65-2013, f. & cert. ef. 11-29-13

410-141-3420

Billing and Payment

(1) Subject to other applicable Division billing rules, providers must submit all billings for CCO members following the timeframes in (a) and (b) below:

(a) Submit billings within twelve (12) months of the date of service in the following cases:

(A) Member pregnancy;

(B) Eligibility issues such as retroactive deletions or retroactive enrollments;

(C) Medicare is the primary payer, except where the CCO is responsible for the Medicare reimbursement;

(D) Other cases that could have delayed the initial billing to the CCO (which does not include failure of provider to certify the member's eligibility); or

(E) Third Party Liability (TPL). Pursuant to 42 CFR 136.61, subpart G: Indian Health Services and the amended Public Law 93-638 under the Memorandum of Agreement that Indian Health Service and 638 Tribal Facilities are the payer of last resort and is not considered an alternative liability or TPL.

(b) Submit bills within four (4) months of the date of service for all other cases.

(2) Providers must be enrolled with the Authority's Division of Medical Assistance Programs to be eligible for fee-for-service (FFS) payments. Mental health providers, except Federally Qualified Health Centers (FQHC), must be approved by the Local Mental Health Authority (LMHA) and the Authority's Addictions and Mental Health (AMH) Division before enrollment with the Authority or to be eligible for CCO payment for services. Providers may be retroactively enrolled, in accordance with OAR 410-120-1260 (Provider Enrollment).

(3) Providers, including mental health providers, must be enrolled with the Authority as a Medicaid provider or an encounter-only provider prior to submission of encounter data to ensure the encounter is accepted.

(4) Providers shall verify, before providing services, that the member is eligible for coordinated care services on the date of service. Providers shall use the Authority tools and the CCO's tools, as applicable, to determine if the service to be provided is covered under the member's Oregon Health Plan Benefit Package of covered services. Providers shall also identify the party responsible for covering the intended service and seek pre-authorizations from the appropriate payer before providing services. Before providing a non-covered service, the provider must complete a DMAP 3165, or facsimile, signed by the client, as described in OAR 141-120-1280.

(5) CCOs shall pay for all covered coordinated care services. These services must be billed directly to the CCO, unless the CCO or the Authority specifies otherwise. CCOs may require providers to obtain preauthorization to deliver certain coordinated care services.

(6) Payment by the CCO to participating providers for coordinated care services is a matter between the CCO and the participating provider, except as follows:

(a) CCOs shall have procedures for processing pre-authorization requests received from any provider. The procedures shall specify time frames for:

(A) Date stamping pre-authorization requests when received;

(B) Determining within a specific number of days from receipt whether a pre-authorization request is valid or non-valid;

(C) The specific number of days allowed for follow up on pended preauthorization requests to obtain additional information;

(D) The specific number of days following receipt of the additional information that a redetermination must be made;

(E) Providing services after office hours and on weekends that require preauthorization;

(F) Sending notice of the decision with appeal rights to the member when the determination is a denial of the requested service as specified in OAR 410-141-3263.

(b) CCOs shall make a determination on at least 95 percent of valid preauthorization requests, within two working days of receipt of a pre-authorization or reauthorization request related to urgent services; alcohol and drug services; or care required while in a skilled nursing facility. Preauthorization for prescription drugs must be completed and the pharmacy notified within 24 hours. If a preauthorization for a prescription cannot be completed within the 24 hours, the CCO must provide for the dispensing of at least a 72-hour supply if there is an immediate medical need for the drug. CCOs shall notify providers of the determination within 2 working days of receipt of the request;

(c) For expedited prior authorization requests in which the provider indicates, or the CCO determines, that following the standard timeframe could seriously jeopardize the member's life or health or ability to attain, maintain, or regain maximum function:

(A) The CCO must make an expedited authorization decision and provide notice as expeditiously as the member's health or mental health condition requires and no later than three working days after receipt of the request for service;

(B) The CCO may extend the three working day time period no more than 14 calendar days if the member requests an extension, or if the CCO justifies to the Authority a need for additional information and how the extension is in the member's best interest.

(d) For all other preauthorization requests, CCOs shall notify providers of an approval, a denial or the need for further information within 14 calendar days of receipt of the request, as outlined in 410-141-3263. CCOs must make reasonable efforts to obtain the necessary information during the 14-day period. However, the CCO may use an additional 14 days to obtain follow-up information, if the CCO justifies (to the Authority upon request) the need for additional information and how the delay is in the interest of the member. The CCO shall make a determination as the member's health or mental health condition requires, but no later than the expiration of the extension.

(7) CCOs shall have written procedures for processing payment claims submitted from any source. The procedures shall specify time frames for:

(a) Date stamping claims when received;

(b) Determining within a specific number of days from receipt whether a claim is valid or non-valid;

(c) The specific number of days allowed for follow up of pended claims to obtain additional information;

(d) The specific number of days following receipt of additional information that a determination must be made; and

(e) Sending notice of the decision with appeal rights to the member when the determination is made to deny the claim;

(f) CCOs shall pay or deny at least 90 percent of valid claims within 45 calendar days of receipt and at least 99 percent of valid claims within 60 calendar days of receipt. CCOs shall make an initial determination on 99 percent of all claims submitted within 60 calendar days of receipt;

(g) CCOs shall provide written notification of CCO determinations when the determinations result in a denial of payment for services as outlined in 410-141-3263;

(h) CCOs may not require providers to delay billing to the CCO;

(i) CCOs may not require Medicare be billed as the primary insurer for services or items not covered by Medicare, or require non-Medicare approved providers to bill Medicare;

(j) CCOs may not deny payment of valid claims when the potential TPR is based only on a diagnosis, and no potential TPR has been documented in the member's clinical record;

(k) CCOs may not delay or deny payments because a co-payment was not collected at the time of service.

(8) CCOs shall pay for Medicare coinsurances and deductibles up to the Medicare or CCOs allowable for covered services the member receives within the CCO, for authorized referral care, and urgent care services or emergency services the member receives from non-participating providers. CCOs may not pay for Medicare coinsurances and deductibles for non-urgent or non-emergent care members receive from non-participating providers.

(9) CCOs shall pay transportation, meals and lodging costs for the member and any required attendant for services that the CCO has arranged and authorized when those services are not available within the state, unless otherwise approved by the Authority.

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(10) CCOs shall pay for covered services provided by a non-participating provider which was not pre-authorized if the following conditions exist:

(a) It can be verified that the participating provider ordered or directed the covered services to be delivered by a non-participating provider; and

(b) The covered service was delivered in good faith without the pre-authorization; and

(c) It was a covered service that would have been pre-authorized with a participating provider if the CCO's referral procedures had been followed;

(d) The CCO shall pay non-participating providers (providers enrolled with the Authority that do not have a contract with the CCO) for covered services that are subject to reimbursement from the CCO, in the amount specified in OAR 410-120-1295. This rule does not apply to providers that are Type A or Type B hospitals;

(e) CCOs shall reimburse hospitals for services provided on or after January 1, 2012 using Medicare Severity DRG for inpatient services and Ambulatory Payment Classification (APC) for outpatient services or other alternative payment methods which incorporate the most recent Medicare payment methodologies for both inpatient and outpatient services established by CMS for hospital services; and alternative payment methodologies, including but not limited to pay-for-performance, bundled payments and capitation. An alternative payment methodology does not include reimbursement payment based on percentage of billed charges. This requirement does not apply to Type A or Type B hospitals as referenced in ORS 442.470. CCO shall attest annually to the Authority, in a manner to be prescribed, to CCO's compliance with these requirements.

(11) Members may receive certain services on a Fee for Service (FFS) basis:

(a) Certain services must be authorized by the CCO or the Community Mental Health Program (CMHP) for some mental health services, even though the services are then paid by the Authority on a FFS basis. Before providing services, providers must verify a member's eligibility using the web portal or AVR;

(b) Services authorized by the CCO or CMHP are subject to the rules and limitations of the appropriate Authority administrative rules and supplemental information, including rates and billing instructions;

(c) Providers shall bill the Authority directly for FFS services in accordance with billing instructions contained in the Authority administrative rules and supplemental information;

(d) The Authority shall pay at the Medicaid FFS rate in effect on the date the service is provided subject to the rules and limitations described in the relevant rules, contracts, billing instructions;

(e) The Authority may not pay a provider for provision of services for which a CCO has received a CCO payment unless otherwise provided for in rule;

(f) When an item or service is included in the rate paid to a medical institution, a residential facility or foster home, provision of that item or service is not the responsibility of the Authority or a CCO except as provided in Authority administrative rules and supplemental information (e.g., coordinated care services that are not included in the nursing facility all-inclusive rate);

(g) CCOs that contract with FQHCs and RHCs shall negotiate a rate of reimbursement that is not less than the level and amount of payment which the CCO would pay for the same service furnished by a provider, who is not an FQHC nor RHC, consistent with the requirements of BBA 4712(b)(2).

(12) Coverage of services through the Oregon Health Plan Benefit Package of covered services is limited by OAR 410-141-0500, excluded services and limitations for OHP clients.

Stat. Auth.: ORS 414.032, 414.615, 414.625, 414.635, 414.651
Stats. Implemented: ORS 414.610 – 685 OL 2011, Ch 602 Sec. 13, 14, 16, 17, 62, 64 (2), 65, HB 3650
Hist.: DMAP 16-2012(Temp), f. & cert. ef. 3-26-12 thru 9-21-12; DMAP 37-2012, f. & cert. ef. 8-1-12; DMAP 38-2013(Temp), f. 7-8-13, cert. ef. 7-9-13 thru 1-5-14; DMAP 60-2013, f. & cert. ef. 10-31-13; DMAP 65-2013, f. & cert. ef. 11-29-13

Rule Caption: Process for Traditional Health Worker Training, Certification, Registry Enrollment and Training Program Criteria
Adm. Order No.: DMAP 66-2013

Filed with Sec. of State: 12-3-2013

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Rules Adopted: 410-180-0300, 410-180-0305, 410-180-0310, 410-180-0312, 410-180-0315, 410-180-0320, 410-180-0327, 410-

180-0340, 410-180-0345, 410-180-0350, 410-180-0355, 410-180-0360, 410-180-0370, 410-180-0375, 410-180-0380

Rules Repealed: 410-180-0300(T), 410-180-0305(T), 410-180-0310(T), 410-180-0315(T), 410-180-0320(T), 410-180-0327(T), 410-180-0340(T), 410-180-0345(T), 410-180-0350(T), 410-180-0355(T), 410-180-0370(T), 410-180-0375(T), 410-180-0380(T)

Subject: House Bill 3650, passed during the 2011 legislative session, mandates that members enrolled in Oregon's Coordinated Care Organizations (CCOs) have access to Traditional Health Workers (THWs) to facilitate culturally and linguistically appropriate care. THWs include community health workers, personal health navigators, peer wellness specialists, and other health care workers who are not regulated or certified by this state. These rules establish:

The competency requirements for each THW type, including Community Health Workers, Peer Wellness Specialists, Personal Health Navigators, Peer Support Specialists, and Birth Doulas;

Eligibility requirements, curriculum guidelines and procedures for Authority approval of training programs, including a process for temporary waivers;

Eligibility requirements and procedures for THW certification and provisional certification; and

A THW registry maintained by the Authority.

These rules set forth the requirements for training programs in developing curricula that meet the Authority's requirements to certify THWs. Individuals who successfully complete the certification process set forth in these rules will be eligible for Medicaid reimbursement for their services. These rules also establish a registry of THWs whom CCOs may employ to meet the requirement of providing for their members, THW's including peer wellness specialists, personal health navigators, community health workers, peer support specialists, and birth doulas as part of the member's care team to provide assistance that is culturally and linguistically appropriate. These rules also set forth provisional THW certification requirements.

Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-180-0300

Purpose

The purpose of these rules is to establish criteria, description, and training requirements for Traditional Health Workers (THW) which include community health workers, personal health navigators, peer wellness specialists and other health care workers not regulated or certified by the state of Oregon. These rules set forth the procedures for THW certification and enrollment in a registry maintained by the Authority. These rules also establish curriculum guidelines for training programs seeking to train THWs and the procedures for Authority approval of training programs.

Stat. Auth.: ORS 413.042, 414.635 & 414.665

Stats. Implemented: ORS 414.635 & 414.665

Hist.: DMAP 42-2013(Temp), f. & cert. ef. 8-2-13 thru 1-29-14; DMAP 66-2013, f. & cert. ef. 12-3-13

410-180-0305

Definitions

The following definitions apply to OAR 410-180-0300 through 410-180-0380:

(1) "Authority" means the Oregon Health Authority.

(2) "Authority Approved Training Program" (Training program) means an organization that has a training program with curriculum that meets Authority standards for one or more types of THWs and has been approved by the Authority to train those types of THWs.

(3) "Birth Doula" means a birth companion who provides personal, nonmedical support to women and families throughout a woman's pregnancy, childbirth, and post-partum experience.

(4) "Certified Traditional Health Worker" means an individual who has successfully completed a training program as required by these rules, and has applied for and been certified by the Authority for one of the THW types; or a grandfathered THW who has been certified by the Authority.

(5) "Community Based Organization" (CBO) means a public or private nonprofit organization that is representative of a community or significant segments of a community, which may be located within or in close proximity to the community it serves; and is engaged in meeting that community's needs in the areas of social, human, or health services.

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(6) "Community Health Worker" has the meaning given that term in ORS 414.025.

(7) "Contact Hour" means a training hour, which includes classroom, group or distance learning. Contact hour does not include homework time, preparatory reading, or practicum.

(8) "Competencies" mean key skills and applied knowledge necessary for THWs to be effective in the work field and carry out their roles.

(9) "Equivalency" means an individual has fulfilled the requirements of a course or combination of courses, by completing a relatively equivalent course.

(10) "Grandfathered THW" means an individual who has been certified by the Authority as an THW as a result of their prior THW work experience and fulfillment of all additional requirements for grandfathering as set forth in these rules.

(11) "Incumbent Worker Training" means training offered by an approved training program for individuals eligible for grandfathering that assesses for and addresses any gaps in THW competencies.

(12) "Peer" means any individual who has similar life experience, either as a current or former recipient of addictions or mental health services, or as a family member of an individual who is a current or former recipient of addictions or mental health services.

(13) "Peer Support Specialist" means a person providing peer delivered services to an individual or family member with similar life experience. A peer support specialist must be:

(a) A self-identified person currently or formerly receiving mental health services; or

(b) A self-identified person in recovery from an addiction disorder, who meets the abstinence requirements for recovering staff in alcohol and other drug treatment programs;

(c) A self-identified person in recovery from problem gambling; or

(d) A family member of an individual who is a current or former recipient of addictions or mental health services.

(14) "Peer Wellness Specialist" has the meaning given that term in ORS 414.025.

(15) "Personal Health Navigator" has the meaning given that term in ORS 414.025.

(16) "Provisionally Certified THW" means an individual who has temporary certified status, pursuant to OAR 410-180-0327.

(17) "Registry" means a list of certified THWs maintained by the Authority.

(18) "THW Applicant" means an individual who has applied for THW certification.

(19) "Traditional Health Worker" (THW) means a community health worker, peer wellness specialist, personal health navigator, peer support specialist or birth doula.

(20) "Training Program Applicant" means an organization that has applied for Authority approval of its training program and curricula for any of the THW types.

Stat. Auth.: ORS 413.042, 414.635 & 414.665

Stats. Implemented: ORS 414.635 & 414.665

Hist.: DMAP 42-2013(Temp), f. & cert. ef. 8-2-13 thru 1-29-14; DMAP 66-2013, f. & cert. ef. 12-3-13

410-180-0310

Community Health Worker, Peer Wellness Specialist, Personal Health Navigator Certification Requirements

(1) To be certified as a community health worker, peer wellness specialist, or personal health navigator, an individual must successfully complete all required training offered by a training program for that individual's THW type.

(2) Individuals who have worked or volunteered in the capacity of a community health worker, peer wellness specialist or personal health navigator in the state of Oregon at least 3000 hours from January 1, 2004 to June 30, 2014 but have not completed a training program are eligible for certification if they successfully complete approved incumbent worker training.

(3) Individuals who have completed some or all of the certification training requirements may receive equivalency for previously completed training. The training program shall determine equivalency requirements.

Stat. Auth.: ORS 413.042, 414.635 & 414.665

Stats. Implemented: ORS 414.635 & 414.665

Hist.: DMAP 42-2013(Temp), f. & cert. ef. 8-2-13 thru 1-29-14; DMAP 66-2013, f. & cert. ef. 12-3-13

410-180-0312

Peer Support Specialist Certification Requirements

(1) To be certified as a peer support specialist, an individual must:

(a) Successfully complete all required training offered by a training program for peer support specialist; or

(b) Be certified by an entity whose qualifications for the certificate includes completion of an Authority approved training program for peer support specialists and a minimum of 20 hours of continuing education every three years.

(2) Individuals who have worked or volunteered in the capacity of a peer support specialist in the state of Oregon at least 2000 hours from January 1, 2004 to June 30, 2014 but have not completed a training program are eligible for certification if they successfully complete an approved incumbent worker training.

Stat. Auth.: ORS 413.042, 414.635 & 414.665

Stats. Implemented: ORS 414.635 & 414.665

Hist.: DMAP 42-2013(Temp), f. & cert. ef. 8-2-13 thru 1-29-14; DMAP 66-2013, f. & cert. ef. 12-3-13

410-180-0315

Birth Doula Certification Requirements

To be certified in Oregon as a birth doula, an individual must:

(1) Successfully complete an approved birth doula training program;

or

(2) Have successfully completed all birth doula training requirements as described in OAR 410-180-0375 through one or a combination of non-approved birth doula training programs and meet the cultural competency course requirements through an approved training program for doulas.

Stat. Auth.: ORS 413.042, 414.635 & 414.665

Stats. Implemented: ORS 414.635 & 414.665

Hist.: DMAP 42-2013(Temp), f. & cert. ef. 8-2-13 thru 1-29-14; DMAP 66-2013, f. & cert. ef. 12-3-13

410-180-0320

THW Continuing Education Requirements

(1) To maintain certification status, all THWs must complete at least 20 hours of continuing education during every three year renewal period.

(2) Continuing education hours taken in excess of the total number required may not be carried over to the next renewal period.

(3) The Authority shall award continuing education hours for:

(a) Additional THW training offered by a training program; and

(b) Any other Authority approved training or event.

(4) Requests for approval of continuing education may come from the hosting organization or from a certified THW attending the training or event.

Stat. Auth.: ORS 413.042, 414.635 & 414.665

Stats. Implemented: ORS 414.635 & 414.665

Hist.: DMAP 42-2013(Temp), f. & cert. ef. 8-2-13 thru 1-29-14; DMAP 66-2013, f. & cert. ef. 12-3-13

410-180-0327

Provisional THW Certification

(1) Individuals may qualify for provisional certification if:

(a) They are eligible for grandfathering as described in OAR 410-180-0310 and 410-180-0312 but have not yet completed incumbent worker training; or

(b) They have completed or matriculated in a non-approved training program between February 4, 2010 and August 2, 2013 provided:

(A) The individual successfully completes the training program; and

(B) The training program includes a minimum of 40 contact hours of training.

(2) Individuals seeking provisional certification must:

(a) Be at least 18 years of age;

(b) Submit a completed application on an Authority prescribed form;

and

(c) Submit one of the following:

(A) Verifiable evidence of working or volunteering in the capacity of a community health worker, peer wellness specialist, or personal health navigator for at least 3000 hours from January 1, 2004 to June 30, 2014; or

(B) Verifiable evidence of working or volunteering in the capacity of a peer support specialist for at least 2000 hours from January 1, 2004 to June 30, 2014; or

(C) Written documentation of successful completion of a training program that includes at minimum 40 contact hours of training.

(3) Applications are available on the THW program webpage or a paper copy may be obtained upon request to the Oregon Health Authority Office of Equity and Inclusion.

(4) If the Authority determines that an applicant has met all provisional certification requirements, the Authority shall notify the applicant in writing granting provisional certification.

(5) Provisionally certified THWs may become certified if:

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(a) The individual successfully completes remaining training requirements or incumbent worker training from a training program within one year from the provisional certification date; or

(b) The non-approved training program completed by the provisionally certified THW becomes Authority approved.

(6) Provisionally certified THWs seeking certification must comply with OAR 410-180-0325.

(7) The Authority shall revoke provisional certification if the individual does not complete the remaining training requirements within one year from the date of provisional certification.

Stat. Auth.: ORS 413.042, 414.635 & 414.665

Stats. Implemented: ORS 414.635 & 414.665

Hist.: DMAP 42-2013(Temp), f. & cert. ef. 8-2-13 thru 1-29-14; DMAP 66-2013, f. & cert. ef. 12-3-13

410-180-0340

Standards of Professional Conduct

(1) A certified or provisionally certified THW, pursuant to OAR 410-180-0305 must comply with Standards of Professional Conduct set forth in this rule. The violation of the standards may result in the denial of an application for certification or suspension or revocation of certification.

(2) THWs must:

(a) Acquire, maintain and improve professional knowledge and competence using scientific, clinical, technical, psychosocial, governmental, cultural and community-based sources of information;

(b) Represent all aspects of professional capabilities and services honestly and accurately;

(c) Ensure that all actions with community members are based on understanding and implementing the core values of caring, respect, compassion, appropriate boundaries, and appropriate use of personal power;

(d) Develop positive collaborative partnerships with community members, colleagues, other health care providers, and the community to provide care, services, and supports that are safe, effective, and appropriate to a community member's needs;

(e) Regardless of clinical diagnosis, develop and incorporate respect for diverse community member backgrounds including lifestyle, sexual orientation, race, gender, ethnicity, religion, age, marital status, political beliefs, socioeconomic status or any other preference or personal characteristic, condition or state when planning and providing services;

(f) Act as an advocate for community members and their needs;

(g) Support self-determination and advocate for the needs of community members in a culturally competent, trauma informed manner

(h) Base decisions and actions in support of empowerment and respect for community member's culture and self-defined health care goals using sound ethical reasoning and current principles of practice;

(i) Maintain individual confidentiality; and

(j) Recognize and protect an individual's rights as described in section

(3) of this rule.

(3) Individuals being served have the right to:

(a) Be treated with dignity and respect;

(b) Be free from theft, damage, or misuse of personal property;

(c) Be free from neglect of care, verbal, mental, emotional, physical, and sexual abuse;

(d) Be free from financial exploitation;

(e) Be free from physical restraints;

(f) Voice grievances or complaints regarding services or any other issue without discrimination or reprisal for exercising their rights;

(g) Be free from discrimination in regard to race, color, national origin, gender, sexual orientation, or religion; and

(h) Have their information and records confidentially maintained.

Stat. Auth.: ORS 413.042, 414.635 & 414.665

Stats. Implemented: ORS 414.635 & 414.665

Hist.: DMAP 42-2013(Temp), f. & cert. ef. 8-2-13 thru 1-29-14; DMAP 66-2013, f. & cert. ef. 12-3-13

410-180-0345

Denial, Suspension or Revocation of Certification

(1) The Authority may deny, suspend, or revoke certification when an applicant or certificate holder fails to comply with ORS 414.665 or these rules.

(2) The Authority shall deny, suspend, or revoke certification pursuant to ORS 183.411 through 183.470 and the applicant or certificate holder may request a contested case hearing.

Stat. Auth.: ORS 413.042, 414.635 & 414.665

Stats. Implemented: ORS 414.635 & 414.665

Hist.: DMAP 42-2013(Temp), f. & cert. ef. 8-2-13 thru 1-29-14; DMAP 66-2013, f. & cert. ef. 12-3-13

410-180-0350

Training Program Requirements

(1) All training programs must:

(a) Meet the curriculum requirements for the THW type being trained;

(b) Demonstrate active efforts to establish equivalency for students who have previously completed training that meets one or more training requirements for their THW type;

(c) Demonstrate active efforts to involve experienced THWs in developing and teaching the core curriculum;

(d) Demonstrate active efforts to collaborate with at least one culturally diverse CBO;

(e) Demonstrate the use of various teaching methodologies including but not limited to popular education and adult learning;

(f) Demonstrate the use of various training delivery formats including but not limited to classroom instruction, group and distance learning;

(g) Demonstrate efforts to make training inclusive and accessible to individuals with different learning styles, education backgrounds, and student needs;

(h) Demonstrate efforts to remove barriers to enrollment for students;

(i) Demonstrate inclusion of cognitive and practical examinations to evaluate and document the acquisition of knowledge and mastery of skills by the individual trained. This examination:

(A) May be any combination of written, oral, or practical competency tests; and

(B) Must assess THW competencies covered in the curriculum.

(j) Demonstrate the inclusion of a method or process for the individual trained to evaluate and give feedback on the training experience;

(k) Maintain an accurate record of each individual's attendance and participation in training for at least five years after course completion;

(l) Agree to verify and provide the Authority with names of individuals who successfully completed the training program when those individuals apply for certification and registry enrollment; and

(m) Agree to issue a written letter of completion to all successful training program graduates.

(2) All training programs that provide incumbent worker training for individuals eligible to grandfather into the NTHW program must also:

(a) Require students to submit an Authority prescribed competency evaluation form from any previous employer, THW coach or supervisor or volunteer coordinator or supervisor for whom THW services have been provided in the five years prior to the date of application

(b) Include a pre-course assessment to evaluate student's current level of knowledge and skill; and

(c) Provide training that addresses gaps in competencies identified in the employer competency evaluation and pre-course assessment.

(3) Training program applicants must submit an application to the Authority. At a minimum, the training program application must include:

(a) Contact information for the individual or entity, including director name and contact information;

(b) Syllabus and course materials that demonstrate curriculum requirements are met; language per comment #23 above.

(c) Indication of the training type to be offered:

(A) Curriculum for community health workers, peer wellness specialists, peer support specialists, personal health navigators, and birth doulas; and

(B) Additional curriculum for:

(i) Community health workers;

(ii) Peer wellness specialists

(iii) Peer support specialists; and

(iv) Incumbent worker training

(d) An overview of the teaching philosophy and methodology;

(e) A description of the method of final examination as described in section (1) (h);

(f) A list of instructors, including experienced THWs if available;

(g) A description of the geographic area served;

(h) If the applicant is not a CBO, a signed agreement with description of the partnership with a CBO;

(i) A description of the approach for recruiting and enrolling a diverse student population to meet the needs of the community, including any strategies for reducing barriers to enrollment; and

(j) An indication of whether academic credit may be given for successful completion of training program.

Stat. Auth.: ORS 413.042, 414.635 & 414.665

Stats. Implemented: ORS 414.635 & 414.665

Hist.: DMAP 42-2013(Temp), f. & cert. ef. 8-2-13 thru 1-29-14; DMAP 66-2013, f. & cert. ef. 12-3-13

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410-180-0355

Application and Renewal Process for Authority Training Program Approval

(1) Training program applications are available on the THW program webpage or by requesting a paper copy from the Oregon Health Authority Office of Equity and Inclusion.

(2) Training program applicants must submit an application at least 90 days in advance of the first expected class day.

(3) If an application is incomplete, the Authority shall send notice requesting the additional materials required. The notice shall specify the date by which additional materials must be submitted. Unless the Authority grants an extension, if the applicant does not respond within the specified time, the Authority shall return the application to the applicant and take no further action.

(4) If the Authority determines that an applicant has met all training program requirements, the Authority shall send written notice of program approval. The written notice of Authority approval shall be made available to any student or partnering organization that requests a copy.

(5) The Authority shall maintain a list of training programs. The list shall be available to the public.

(6) The training program must apply to renew its approval status every three years.

(a) Renewal applications are available on the THW program webpage or by requesting a paper copy from the Oregon Health Authority Office of Equity and Inclusion.

(b) Training programs must complete and submit the renewal application no less than six months prior to the expiration of the current approval period.

(c) At a minimum, training programs seeking renewal shall report:

(A) Summary of any proposed changes to the curriculum;

(B) Number of students trained in the three year approval period

(7) Training programs that fail to submit a renewal application pursuant to section (6) (b) of this rule must submit a new application and may not apply for renewal of its current approval.

(8) The Authority may conduct site visits of training programs, either prior to approving or renewing a training program application, or at any time during the three year approval period.

(9) During the three year approval period, any change made to a training program shall be reported to the Authority within 30 days of the decision to make the change.

(a) Changes that must be reported include:

(A) Changes to the training program director or primary contact;

(B) Changes to the teaching methodology;

(C) Changes to the curriculum; and

(D) Any other change that is not consistent with or not represented in the initial application for approval.

(b) If the Authority determines that the reported changes meet the training program requirements described in OAR 410-180-0350, the Authority shall approve the change.

(c) The Authority may request additional information and justification for the reported change.

(d) If the Authority determines that the reported changes do not comply with the training program requirements described in OAR 410-180-0350, the Authority may deny the change or revoke training program approval.

(10) A training program applicant or approved training program may request a temporary waiver from a requirement in these rules. A request for a waiver must be:

(a) Submitted to the Authority in writing;

(b) Identify the specific rule for which a waiver is requested;

(c) Identify the special circumstances relied upon to justify the waiver;

(d) Describe alternatives that were considered, if any, and why alternatives, including compliance, were not selected;

(e) Demonstrate that the proposed waiver is desirable to maintain or improve the training of THWs; and

(f) Indicate the proposed duration of the waiver, not to exceed one year.

(11) If the Authority determines that the applicant or program has satisfied the conditions of this rule, the Authority may grant a waiver.

(12) An applicant or an approved training program may not act on or implement a waiver until it has received written approval from the Authority.

(13) AMH peer support specialist training programs approved prior to August 2, 2013 may remain approved if:

(a) The program currently provides a minimum of 40 hours of training; or

(b) The program increases its curriculum to a minimum of 40 hours of training.

(c) The program must submit to the Authority a peer support specialist program renewal application by October 2, 2013

(A) The renewal application and waiver request is available on THW program webpage or by requesting a paper copy from the Oregon Health Authority Office of Equity and Inclusion;

(B) If the renewal application is not submitted before October 2, 2013, the program must apply as a new training program.

Stat. Auth.: ORS 413.042, 414.635 & 414.665

Stats. Implemented: ORS 414.635 & 414.665

Hist.: DMAP 42-2013(Temp), f. & cert. ef. 8-2-13 thru 1-29-14; DMAP 66-2013, f. & cert. ef. 12-3-13

410-180-0360

Denial, Suspension or Revocation of Training Program Approval

(1) The Authority may deny, suspend or revoke training program approval when an applicant or approved program has failed to comply with ORS 414.665 or these rules.

(2) If the Authority denies, suspends, or revokes approval it shall send written notice and explain the basis for its decision.

(3) An applicant or approved training program may request that the Authority reconsider its decision and may request a meeting with Authority staff. The request for reconsideration and a meeting, if requested, must be submitted in writing within 30 days of the date the Authority mailed the written decision of denial, suspension or revocation. The request must contain a detailed statement with supporting documentation explaining why the requestor believes the Authority's decision is in error. The Authority shall issue a written decision on reconsideration following review of the materials submitted by the applicant or training program and a meeting with the applicant or training program, if applicable.

Stat. Auth.: ORS 413.042, 414.635 & 414.665

Stats. Implemented: ORS 414.635 & 414.665

Hist.: DMAP 42-2013(Temp), f. & cert. ef. 8-2-13 thru 1-29-14; DMAP 66-2013, f. & cert. ef. 12-3-13

410-180-0370

Community Health Workers, Peer Wellness Specialists, Personal Health Navigators, and Peer Support Specialists Certification Curriculum Standards

(1) All Authority approved curricula used to train community health workers, peer wellness specialists and personal health navigators must:

(a) Include a minimum of 80 contact hours, which addresses the core curricula topics set forth in section (2) of this rule and any other additional curriculum topics specific to the type of worker being trained;

(b) Provide training that addresses all the major roles and core competencies of community health workers, peer wellness specialists and personal health navigators in Oregon as listed and defined in Oregon Health Policy Board's Report "The Role of Non-Traditional Health Workers in Oregon's Health Care System" incorporated by reference. (<http://www.oregon.gov/oha/oei/docs/nthw-report-120106.pdf>, January 2012)

(2) An Authority approved core curriculum for community health workers, peer wellness specialists and personal health navigators shall, at a minimum, introduce students to the key principles of the following topics:

(a) Community Engagement, Outreach Methods and Relationship Building;

(b) Communication Skills, including cross-cultural communication, active listening, and group and family dynamics;

(c) Empowerment Techniques;

(d) Knowledge of Community Resources;

(e) Cultural Competency and Cross Cultural Relationships, including bridging clinical and community cultures;

(f) Conflict Identification and Problem Solving;

(g) Conducting Individual Strengths and Needs Based Assessments;

(h) Advocacy Skills;

(i) Ethical Responsibilities in a Multicultural Context;

(j) Legal Responsibilities;

(k) Crisis Identification and Problem-Solving;

(l) Professional Conduct, including culturally appropriate relationship boundaries and maintaining confidentiality;

(m) Navigating Public and Private Health and Human Service Systems, including state, regional, and local;

(n) Working with Caregivers, Families, and Support Systems, including paid care workers;

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- (o) Trauma-Informed Care, including screening and assessment, recovery from trauma, minimizing re-traumatization;
- (p) Self-Care;
- (q) Social Determinants of Health;
- (r) Building Partnerships with Local Agencies and Groups;
- (s) The Role and Certified Scope of Practice of Traditional Health Workers;

- (t) Roles, expectations, and supervisory relationships for Working in Multidisciplinary Teams, including supervisory relationships;
- (u) Data Collection and Types of Data;
- (v) Organization Skills and Documentation and use of HIT;
- (w) Introduction to Disease Processes, including chronic diseases, mental health, tobacco cessation, and addictions (warning signs, basic symptoms, when to seek medical help);
- (x) Health Across the Life Span;
- (y) Adult Learning Principles - Teaching and Coaching;
- (z) Stages of Change;
- (aa) Health Promotion Best Practices; and
- (bb) Health Literacy Issues.

(3) In addition to the core curriculum set forth in section (2), training programs for community health workers shall include the following topics:

- (a) Self-Efficacy;
- (b) Community Organizing;
- (c) Group Facilitation Skills;
- (d) Conducting Community Needs Assessments;
- (e) Popular Education Methods; and
- (f) Principles of Motivational interviewing.

(4) In addition to the core curriculum, set forth in section (2) training programs for peer wellness specialists shall include the following topics:

- (a) Self-Efficacy;
- (b) Group Facilitation Skills;
- (c) Cultivating Individual Resilience;
- (d) Recovery, Resilience and Wellness Models; and
- (e) Principles of Motivational interviewing.

(5) An Authority approved curriculum for peer support specialists shall include a minimum of 40 contact hours that include:

- (a) The core curriculum set forth in section (2)(a) through (p);
- (b) The Role and Scope of Practice of Peer Support Specialists; and
- (c) Recovery, Resilience and Wellness.

Stat. Auth.: ORS 413.042, 414.635 & 414.665
Stats. Implemented: ORS 414.635 & 414.665
Hist.: DMAP 42-2013(Temp), f. & cert. ef. 8-2-13 thru 1-29-14; DMAP 66-2013, f. & cert. ef. 12-3-13

410-180-0375

Birth Doula Certification Curriculum Standards

(1) All Authority approved curricula used to train birth doulas must include a minimum of the following:

- (a) 16 contact hours in Labor Support training;
- (b) 4 contact hours in Breastfeeding training;
- (c) 12 contact hours in Childbirth Education; and
- (d) 6 contact hours in Cultural Competency training.

(2) Authority approved birth doula training curricula must also incorporate the following components and students must:

- (a) Be CPR-certified for children and adults;
- (b) Read five books from an Authority approved reading list;
- (c) Write a 500 to 1000 word essay on the value of labor support;
- (d) Create a community resource list;
- (e) Submit evaluations from work with three families and one provider;

- (f) Attend at least three births and three postpartum visits; and
- (g) Have a valid food handler's permit.

Stat. Auth.: ORS 413.042, 414.635 & 414.665
Stats. Implemented: ORS 414.635 & 414.665
Hist.: DMAP 42-2013(Temp), f. & cert. ef. 8-2-13 thru 1-29-14; DMAP 66-2013, f. & cert. ef. 12-3-13

410-180-0380

THW and Training Program Complaints and Investigations

(1) Any individual may make a complaint verbally or in writing to the Authority regarding an allegation as to the care or services provided by a certified or provisionally certified THW pursuant to OAR 410-180-0305 or that an approved training program has violated THW statutes or these rules.

(2) The identity of an individual making a complaint shall be kept confidential to the extent permitted by law but may be disclosed as necessary to conduct the investigation and may include but is not limited to disclosing the complainant's identity to the THW's employer.

(3) If a complaint involves an allegation of criminal conduct or that is within the jurisdiction of another local, state, or federal agency, the Authority shall refer the matter to the appropriate agency.

(4) The Authority shall investigate complaints and take any actions that are necessary for resolution. An investigation may include but is not limited to:

(a) Interviews of the complainant, program management or staff, and other students; or

(b) Interviews of the complainant, caregivers, clients, client's representative, client's family members, and witnesses, and employer management and staff;

(c) On-site observations of the training program, the client, THW performance and client environment; and

(d) Review of documents and records.

(e) Utilize complaint and investigation findings to identify trends and potential areas for quality improvement.

Stat. Auth.: ORS 413.042, 414.635 & 414.665
Stats. Implemented: ORS 414.635 & 414.665
Hist.: DMAP 42-2013(Temp), f. & cert. ef. 8-2-13 thru 1-29-14; DMAP 66-2013, f. & cert. ef. 12-3-13

Rule Caption: Statewide CHIP funded CAWEM prenatal program
Adm. Order No.: DMAP 67-2013

Filed with Sec. of State: 12-3-2013

Certified to be Effective: 12-3-13

Notice Publication Date: 11-1-2013

Rules Amended: 410-120-0030

Subject: The General Rules program administrative rules govern Division payments for services to clients. The Division needs to amend 410-120-0030 to include coverage statewide. The Division will amend this rule to include coverage for prenatal care; retroactive to October 1, 2013.

Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-120-0030

Children's Health Insurance Program

(1) The Children's Health Insurance Program (CHIP) is a federal non-entitlement program. The Oregon Health Authority, Division of Medical Assistance Program (Division) administers two programs funded under CHIP in accordance with the Oregon Health Plan waiver and the CHIP state plan.

(a) CHIP: Provides health coverage for uninsured, low-income children who are ineligible for Medicaid;

(b) CHIP prenatal care expansion program.

(2) 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.

(3) Children under 19 years of age, who meet the income limits, citizenship requirements and eligibility criteria for medical assistance established in OAR chapter 461 through the program acronym OHP-CHP, receive the OHP Plus benefit package (for benefits refer to OAR 410-120-1210).

(4) CHIP Prenatal care expansion coverage: Women not eligible for Medicaid at or below 185% of the FPL, with the benefit package identifier CWX:

(a) Receive the OHP Plus benefit package with limitations as described in subsection (d) of these rules;

(b) Effective October 1, 2013 resides in the state during pregnancy.

(c) 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 this program:

(A) Postpartum care (except when provided and billed as part of a global obstetric package code that includes the delivery procedure);

(B) Sterilization;

(C) Abortion;

(D) Death with dignity services;

(E) Hospice.

Stat. Auth.: ORS 413.042
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; DMAP 19-2012, f. 3-30-12, cert. ef. 4-1-12; DMAP 49-2012, f. 10-31-12, cert. ef. 11-1-12; DMAP 67-2013, f. & cert. ef. 12-3-13

ADMINISTRATIVE RULES

Rule Caption: Expand age for varnish in medical setting and update language for dental integration

Adm. Order No.: DMAP 68-2013

Filed with Sec. of State: 12-5-2013

Certified to be Effective: 12-23-13

Notice Publication Date: 11-1-2013

Rules Amended: 410-123-1260

Subject: Revises language based on Health Evidence Review Commission's Prioritized List changes for October 1, 2013. Clarifies billing to avoid ambiguity regarding the responsibility of Coordinated Care Organizations (CCO).

Rules Coordinator: Sandy Cafourek—(503) 945-6430

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 clients according to the following documents:

(i) The Dental Services Program administrative rules (OAR chapter 410, division 123), for dentally appropriate services funded on the Oregon Health Evidence Review Commission Prioritized List of Health Services (Prioritized List); and

(ii) The "Oregon Health Plan (OHP), Recommended Dental Periodicity Schedule," dated January 1, 2010, incorporated by reference and posted on the Division Web site in the Dental Services Provider Guide document at

www.oha.state.or.us/policy/healthplan/guides/dental/main.html;

(b) Restorative, periodontal and prosthetic treatments:

(A) 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) once every 12 months;

(C) For problem focused exams (urgent or emergent problems), the Division shall reimburse D0140 for the initial exam. The Division shall reimburse D0170 for related problem focused follow-up exams. Providers should not bill D0140 and D0170 for routine dental visits;

(D) The Division only covers oral exams by medical practitioners when the medical practitioner is an oral surgeon;

(E) As the American Dental Association's Current Dental Terminology (CDT) codebook specifies the evaluation, diagnosis and treatment planning components of the exam are the responsibility of the dentist,

the Division may not reimburse dental exams when furnished by a dental hygienist (with or without an expanded practice permit);

(b) Assessments of a patient (D0191):

(A) When performed by a dental practitioner, the Division shall reimburse:

(i) If performed by a dentist outside of a dental office;

(ii) If performed by a dental hygienist with an expanded practice dental hygiene permit;

(iii) Only if an exam (D0120-D0180) is not performed on the same date of service. An oral assessment is included in the exam;

(iii) For children (under 19 years of age), a maximum of twice every 12 months; and

(iv) For adults (age 19 and older), a maximum of once every 12 months;

(B) When performed by a medical practitioner, the Division shall cover:

(i) Only for children under 7 years of age; and

(ii) A maximum of once a year;

(C) Medical practitioners performing D0191 shall bill the client's medical coverage for reimbursement (Coordinated Care Organization (CCO) or Prepaid Health Plan (PHP) if enrolled member, or Division if fee-for-service);

(D) The maximum limits for this procedure for dental practitioners do not affect the maximum limits for medical providers, and vice versa; and

(E) An assessment does not take the place of the need for oral evaluations/exams;

(c) Radiographs:

(A) The Division shall reimburse for routine radiographs once every 12 months;

(B) The Division shall reimburse bitewing radiographs for routine screening once every 12 months;

(C) The Division shall reimburse a maximum of six radiographs for any one emergency;

(D) For clients under age six, radiographs may be billed separately every 12 months as follows:

(i) D0220-once;

(ii) D0230-a maximum of five times;

(iii) D0270-a maximum of twice, or D0272 once;

(E) The Division shall reimburse for panoramic (D0330) or intra-oral complete series (D0210) once every five years, but both cannot be done within the five-year period;

(F) Clients 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;

ADMINISTRATIVE RULES

(D) Are coded using the appropriate Current Dental Terminology (CDT) coding:

(i) D1110 (Prophylaxis-Adult), Use for clients 14 years of age and older; and

(ii) D1120 (Prophylaxis-Child), Use for clients under 14 years of age;

(b) Topical fluoride treatment:

(A) For adults (19 years of age and older), limited to once every 12 months;

(B) For children (under 19 years of age), limited to twice every 12 months;

(C) For children under 19 years of age, topical fluoride varnish may be applied by a medical practitioner during a medical visit:

(i) Bill the Division directly when the client is fee-for-service (FFS), is enrolled in a CCO that does not include integrated dental services, or is enrolled in a PHP that does not include integrated dental services;

(ii) Bill the client's Coordinated Care Organization (CCO) if the client is enrolled in a CCO that includes integrated dental services;

(iii) Bill using a professional claim format with the appropriate CDT code (D1206-Topical Fluoride Varnish);

(D) Additional topical fluoride treatments may be available, up to a total of 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 years old with high-risk oral health factors, such as poor oral hygiene, deep pits and fissures (grooves) in teeth, severely crowded teeth, poor diet, etc.;

(E) Fluoride limits include any combination of fluoride varnish (D1206) or other topical fluoride (D1208);

(c) Sealants (D1351):

(A) Are covered only for children under 16 years of age;

(B) The Division limits coverage to:

(i) Permanent molars; and

(ii) Only one sealant treatment per molar every five years, except for visible evidence of clinical failure;

(d) Tobacco cessation:

(A) For services provided during a dental visit, bill as a dental service using CDT code D1320 when the following brief counseling is provided:

(i) Ask patients about their tobacco-use status at each visit and record information in the chart;

(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) The Division shall cover resin-based composite restorations only for anterior teeth (D2330-D2390) and one surface posterior tooth (D2391);

(B) Resin-based composite crowns on anterior teeth (D2390) are only covered for clients under 21 years of age or who are pregnant;

(C) The Division reimburses posterior composite restorations at the same rate as amalgam restorations;

(D) The Division limits payment for replacement of posterior composite restorations to once every five years;

(E) The Division limits payment of covered restorations to the maximum restoration fee of four surfaces per tooth. Refer to the American

Dental Association (ADA) CDT codebook for definitions of restorative procedures;

(E) Providers must combine and bill multiple surface restorations as one line per tooth using the appropriate code. Providers may not bill multiple surface restorations performed on a single tooth on the same day on separate lines. For example, if tooth #30 has a buccal amalgam and a mesial-occlusal-distal (MOD) amalgam, then bill MOD, B, using code D2161 (four or more surfaces);

(F) The Division may not reimburse for an amalgam or composite restoration and a crown on the same tooth;

(G) The Division reimburses for a surface once in each treatment episode regardless of the number or combination of restorations;

(H) The restoration fee includes payment for occlusal adjustment and polishing of the restoration;

(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) The Division shall cover core buildup (D2950) only when necessary to retain a cast restoration due to extensive loss of tooth structure from caries or a fracture and only when done in conjunction with a crown. Less than 50% of the tooth structure must be remaining for coverage of the core buildup. The Division may not cover core buildup if the crown is not covered under the client's OHP benefit package;

(iv) Reimbursement of retention pins (D2951) is per tooth, not per pin;

(B) The Division shall not cover the following services:

(i) Endodontic therapy alone (with or without a post);

(ii) Aesthetics (cosmetics);

(iii) Crowns in cases of advanced periodontal disease or when a poor crown/root ratio exists for any reason;

(C) The Division shall cover acrylic heat or light cured crowns (D2970 temporary crown, fractured tooth), allowed only for anterior permanent teeth;

(D) The Division shall cover the following only for clients under 21 years of age or who are pregnant:

(i) Prefabricated plastic crowns (D2932), allowed only for anterior teeth, permanent or primary;

(ii) Stainless steel crowns (D2930/D2931), allowed only for anterior 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 D2712, and porcelain fused to metal (PFM), D2751 and D2752) as follows:

(I) Limited to teeth numbers 6-11, 22 and 27 only, if dentally appropriate;

(II) Limited to four in a seven-year period. This limitation includes any replacement crowns allowed according to (E)(i) of this rule;

(III) Only for clients at least 16 years of age; and

(IV) Rampant caries are arrested and the client demonstrates a period of oral hygiene before prosthetics are proposed;

(vi) PFM crowns (D2751 and D2752) 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 410123-1100 (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

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(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 prosthesis;
 - (F) Crown repair (D2980) is limited to only anterior teeth.
- (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) Pulpal therapy on primary teeth (D3230 and D3240) is covered only for clients under 21 years of age;

(B) For permanent teeth:

(i) Anterior and bicuspid endodontic therapy (D3310 and D3320) is covered for all OHP Plus clients; and

(ii) Molar endodontic therapy (D3330):

(I) For clients through age 20, is covered only for first and second molars; and

(II) For clients age 21 and older who are pregnant, is covered only for first molars;

(C) The Division covers endodontics only if the crown-to-root ratio is 50:50 or better and the tooth is restorable without other surgical procedures;

(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 covers endodontics if the tooth is restorable within the OHP benefit coverage package;

(f) 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.

(6) PERIODONTIC SERVICES:

(a) Surgical periodontal services:

(A) Gingivectomy/Gingivoplasty (D4210 and D4211) — limited to coverage for severe gingival hyperplasia where enlargement of gum tissue occurs that prevents access to oral hygiene procedures, e.g., Dilantin hyperplasia; and

(B) Includes six months routine postoperative care;

(C) The Division shall consider gingivectomy or gingivoplasty to allow for access for restorative procedure, per tooth (D4212) as part of the restoration and will not provide a separate reimbursement for this procedure;

(b) Non-surgical periodontal services:

(A) Periodontal scaling and root planing (D4341 and D4342):

- (i) For clients through age 20, allowed once every two years;
- (ii) For clients age 21 and over, allowed once every three years;
- (iii) A maximum of two quadrants on one date of service is payable, except in extraordinary circumstances;

(iv) Quadrants are not limited to physical area, but are further defined by the number of teeth with pockets 5 mm or greater:

(I) D4341 is allowed for quadrants with at least four or more teeth with pockets 5 mm or greater;

(II) D4342 is allowed for quadrants with at least two teeth with pocket depths of 5 mm or greater;

(v) Prior authorization for more frequent scaling and root planing may be requested when:

(I) Medically/dentally necessary due to periodontal disease as defined above is found during pregnancy; and

(II) Client's medical record is submitted that supports the need for increased scaling and root planing;

(B) Full mouth debridement (D4355):

(i) For clients through age 20, allowed only once every 2 years;

(ii) For clients age 21 and older, allowed once every three years;

(c) Periodontal maintenance (D4910):

(A) For clients through age 20, allowed once every six months;

(B) For clients age 21 and older:

(i) Limited to following periodontal therapy (surgical or non-surgical) that is documented to have occurred within the past three years;

(ii) Allowed once every twelve months;

(iii) Prior authorization for more frequent periodontal maintenance may be requested when:

(I) Medically/dentally necessary, such as due to presence of periodontal disease during pregnancy; and

(II) Client's medical record is submitted that supports the need for increase periodontal maintenance (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) D4341 (Periodontal scaling and root planning-four or more teeth per quadrant);

(F) D4342 (Periodontal scaling and root planning-one to three teeth per quadrant);

(G) D4355 (Full mouth debridement to enable comprehensive evaluation and diagnosis); and

(H) D4910 (Periodontal maintenance).

(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 clients age 21 and older to only those clients who are recently edentulous:

(A) For the purposes of this rule:

(i) "Edentulous" means all teeth removed from the jaw for which the denture is being provided; and

(ii) "Recently edentulous" means the most recent extractions from that jaw occurred within six months of the delivery of the final denture (or, for fabricated prosthetics, the final impression) for that jaw;

(B) See OAR 410-123-1000 for detail regarding billing fabricated prosthetics;

(c) The fee for the partial and full dentures includes payment for adjustments during the six-month period following delivery to clients;

(d) Resin partial dentures (D5211-D5212):

(A) The Division may not approve resin partial dentures if stainless steel crowns are used as abutments;

(B) For clients through age 20, the client 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) For clients age 21 and older, the client must have one or more missing anterior teeth or six or more missing posterior teeth per arch with documentation by the provider of resulting space causing serious impairment to mastication. Third molars are not a consideration when counting missing teeth;

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(D) 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 - 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 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)/Coordinated Care Organization (CCO) 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, CCO. The client would not be eligible for another partial until February 3, 2022, regardless of DCO, CCO or FFS enrollment;

(D) Replacement of partial dentures with full dentures is payable ten years after the partial denture placement. Exceptions to this limitation may be made in cases of acute trauma or catastrophic illness that directly or indirectly affects the oral condition and results in additional tooth loss. This pertains to, but is not limited to, cancer and periodontal disease resulting from pharmacological, surgical and/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 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) Replacement of all teeth and acrylic on cast metal framework (D5670D5671):

(A) Is covered for clients age 16 and older a maximum of once every 10 years, per arch;

(B) Ten years or more must have passed since the original partial denture was delivered;

(C) Is considered replacement of the partial so a new partial denture may not be reimbursed for another 10 years; and

(D) Requires prior authorization as it is considered a replacement partial denture;

(h) Denture rebase procedures:

(A) The Division shall cover rebases only if a reline may not adequately solve the problem;

(B) For clients through age 20, the Division limits payment for rebase to once every three years;

(C) For clients age 21 and older:

(i) There must be documentation of a current reline which has been done and failed; and

(ii) The Division limits payment for rebase to once every five years;

(D) The Division may make exceptions to this limitation in cases of acute trauma or catastrophic illness that directly or indirectly affects the oral condition and results in additional tooth loss. This pertains to, but is not limited to, cancer and periodontal disease resulting from pharmacological, surgical and medical treatment for aforementioned conditions. Severe periodontal disease due to neglect of daily oral hygiene may not warrant rebasing;

(i) Denture reline procedures:

(A) For clients through age 20, the Division limits payment for reline of complete or partial dentures to once every three years;

(B) For clients age 21 and older, the Division limits payment for reline of complete or partial dentures to once every five years;

(C) The Division may make exceptions to this limitation under the same conditions warranting replacement;

(D) Laboratory rebases:

(i) Are not payable prior to six months after placement of an immediate denture; and

(ii) For clients through age 20, are limited to once every three years;

(iii) For clients age 21 and older, are limited to once every five years;

(j) Interim partial dentures (D5820-D5821, also referred to as "flippers"):

(A) Are allowed if the client has one or more anterior teeth missing; and

(B) The Division shall reimburse for replacement of interim partial dentures once every 5 years, but only when dentally appropriate;

(k) Tissue conditioning:

(A) Is allowed once per denture unit in conjunction with immediate dentures; and

(B) Is allowed once prior to new prosthetic placement.

(8) MAXILLOFACIAL PROSTHETIC SERVICES:

(a) Fluoride gel carrier (D5986) is limited to those patients whose severity of oral disease causes the increased cleaning and fluoride treatments allowed in rule to be insufficient. The dental practitioner must document failure of those options prior to use of the fluoride gel carrier;

(b) All other maxillofacial prosthetics (D5900-D5999) are medical services. Refer to the "Covered and Non-Covered Dental Services" document and OAR 410-123-1220:

(A) Bill for medical maxillofacial prosthetics using the professional (CMS1500, DMAP 505 or 837P) claim format:

(B) For clients receiving services through a CCO or PHP, bill medical maxillofacial prosthetics to the CCO or PHP;

(C) For clients receiving medical services through FFS, bill the Division.

(9) ORAL SURGERY SERVICES:

(a) Bill the following procedures in an accepted dental claim format using CDT codes:

(A) Procedures that are directly related to the teeth and supporting structures that are not due to a medical, 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 ICD9 diagnosis codes:

(A) Procedures that are a result of a medical condition (i.e., fractures, cancer);

(B) Services requiring hospital dentistry that are the result of a medical condition/diagnosis (i.e., fracture, cancer);

(c) Refer to the "Covered and Non-Covered Dental Services" document to see a list of CDT procedure codes on the Prioritized List that may also have CPT medical codes. See OAR 410-123-1220. The procedures listed as "medical" on the table may be covered as medical procedures, and the table may not be all-inclusive of every dental code that has a corresponding medical code;

(d) For clients enrolled in a DCO or CCO responsible for dental services, the DCO, CCO shall pay for those services in the dental plan package;

(e) Oral surgical services performed in an ASC or an inpatient or outpatient hospital setting:

(A) Require PA;

(B) For clients enrolled in a CCO or FCHP, the CCO or FCHP shall pay for the facility charge and anesthesia services. For clients enrolled in a Physician Care Organization (PCO), the PCO shall pay for the outpatient facility charge (including ASCs) and anesthesia. Refer to the current Medical Surgical Services administrative rules in OAR chapter 410, division 130 for more information;

(C) If a client is enrolled in a CCO or PHP, the provider must contact the CCO or PHP for any required authorization before the service is rendered;

(f) All codes listed as "by report" require an operative report;

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(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 either frenulectomy or frenuloplasty not in conjunction with extractions (D7320-D7321) only for clients under 21 years of age or who are pregnant;

(1) Frenulectomy/frenulotomy (D7960) and frenuloplasty (D7963):

(A) The Division covers either frenulectomy or frenuloplasty once per lifetime per arch only for clients under age 21;

(B) The Division covers maxillary labial frenulectomy only for clients age 12 through 20;

(C) The Division shall cover frenulectomy/frenuloplasty in the following situations:

(i) When the client has ankyloglossia;

(ii) When the condition is deemed to cause gingival recession; or

(iii) When the condition is deemed to cause movement of the gingival margin when the frenum is placed under tension;

(m) The Division covers excision of pericoronal gingival (D7971) only for clients under age 21 or who are pregnant.

(10) ORTHODONTIA SERVICES:

(a) The Division limits orthodontia services and extractions to eligible clients:

(A) With the ICD-9-CM diagnosis of:

(i) Cleft palate; or

(ii) Cleft palate with cleft lip; and

(B) Whose orthodontia treatment began prior to 21 years of age; or

(C) Whose surgical corrections of cleft palate or cleft lip were not completed prior to age 21;

(b) PA is required for orthodontia exams and records. A referral letter from a physician or dentist indicating diagnosis of cleft palate or cleft lip 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 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-D8690-PA required.

(11) ADJUNCTIVE GENERAL AND OTHER SERVICES:

(a) Fixed partial denture sectioning (D9120) is covered only when extracting a tooth connected to a fixed prosthesis and a portion of the fixed prosthesis is to remain intact and serviceable, preventing the need for more costly treatment;

(b) Anesthesia:

(A) Only use general anesthesia or IV sedation for those clients with concurrent needs: age, physical, medical or mental status, or degree of difficulty of the procedure (D9220, D9221, D9241 and D9242);

(B) The Division reimburses providers for general anesthesia or IV sedation as follows:

(i) D9220 or D9241: For the first 30 minutes;

(ii) D9221 or D9242: For each additional 15-minute period, up to three hours on the same day of service. Each 15-minute period represents a quantity of one. Enter this number in the quantity column;

(C) The Division reimburses administration of Nitrous Oxide (D9230) per date of service, not by time;

(D) Oral pre-medication anesthesia for conscious sedation (D9248):

(i) Limited to clients under 13 years of age;

(ii) Limited to four times per year;

(iii) Includes payment for monitoring and Nitrous Oxide; and

(iv) Requires use of multiple agents to receive payment;

(E) Upon request, providers must submit a copy of their permit to administer anesthesia, analgesia and sedation to the Division;

(F) For the purpose of Title XIX and Title XXI, the Division limits payment for code D9630 to those oral medications used during a procedure and is not intended for "take home" medication;

(c) The Division limits reimbursement of house/extended care facility call (D9410) only for urgent or emergent dental visits that occur outside of a dental office. This code is not reimbursable for provision of preventive services or for services provided outside of the office for the provider or facilities' convenience;

(d) Oral devices/appliances (E0485, E0486):

(A) These may be placed or fabricated by a dentist or oral surgeon, but are considered a medical service;

(B) Bill the Division, CCO or the PHP for these codes using the professional claim format.

Stat. Auth.: ORS 413.042, 414.065 & 414.707

Stats. Implemented: ORS 414.065 & 414.707

Hist.: HR 3-1994, f. & cert. ef. 2-1-94; HR 20-1995, f. 9-29-95, cert. ef. 10-1-95; OMAP 13-1998(Temp), f. & cert. ef. 5-1-98 thru 9-1-98; OMAP 28-1998, f. & cert. ef. 9-1-98; OMAP 23-1999, f. & cert. ef. 4-30-99; OMAP 8-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 17-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 48-2002, f. & cert. ef. 10-1-02; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 65-2003, f. 9-10-03 cert. ef. 10-1-03; OMAP 55-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 12-2005, f. 3-11-05, cert. ef. 4-1-05; DMAP 25-2007, f. 12-11-07, cert. ef. 1-1-08; DMAP 18-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 38-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 16-2009 f. 6-12-09, cert. ef. 7-1-09; DMAP 41-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 14-2010, f. 6-10-10, cert. ef. 7-1-10; DMAP 31-2010, f. 12-15-10, cert. ef. 1-1-11; DMAP 17-2011, f. & cert. ef. 7-12-11; DMAP 41-2011, f. 12-21-11, cert. ef. 1-1-12; DMAP 46-2011, f. 12-23-11, cert. ef. 1-1-12; DMAP 13-2013, f. 3-27-13, cert. ef. 4-1-13; DMAP 28-2013(Temp), f. 6-26-13, cert. ef. 7-1-13 thru 12-28-13; DMAP 68-2013, f. 12-5-13, cert. ef. 12-23-13

Oregon Health Authority, Oregon Educators Benefit Board Chapter 111

Rule Caption: Amended to revise definition of spouse

Adm. Order No.: OEBC 19-2013(Temp)

Filed with Sec. of State: 11-19-2013

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Rules Amended: 111-010-0015

Subject: 111-010-0015 is amended to reflect a revised definition of "spouse". This revision makes the Oregon Educators Benefit Board's definition of "spouse" in sync with the recent US Supreme Court Windsor decision as articulated in the IRS Notice 2013-17 and the policy call for the State of Oregon as directed by Michael Jordon, Department of Administrative Services' Chief Operating Officer.

Rules Coordinator: April Kelly—(503) 378-6588

111-010-0015

Definitions

Unless the context indicates otherwise, as used in OEBC administrative rules, the following definitions will apply:

(1) "Actuarial value" means the expected financial value for the average member of a particular benefit plan.

(2) "Adverse Benefit Determination" means a denial, reduction, or termination of, or a failure to provide or make payment (in whole or in part), for a benefit, including any such denial, reduction, termination, or failure to provide or make payment that is based on but not limited to:

(a) A determination of a member's eligibility to participate in the plan;

(b) A determination that the benefit is not a covered benefit; or

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(c) A rescission of coverage, whether or not, in connection with rescission, there is an adverse effect on any particular benefit.

(3) "Affidavit of Domestic Partnership" means a document that attests the eligible employee and one other eligible individual meet the criteria in section (15)(b).

(4) "Benefit plan" includes, but is not limited to, insurance or other benefits including:

(a) Medical (including non-integrated health reimbursement arrangements (HRAs));

(b) Dental;

(c) Vision;

(d) Life, disability and accidental death;

(e) Long term care;

(f) Employee Assistance Program Plans;

(g) Supplemental medical, dental and vision coverages (including Integrated General Purpose and Integrated Post-Deductible health reimbursement arrangements (HRAs); and Limited Purpose, Post-Separation/Retiree, and Premium Only health reimbursement arrangements (HRAs));

(h) Any other remedial care recognized by state law, and related services and supplies;

(i) Comparable benefits for employees who rely on spiritual means of healing; and

(j) Self-insurance programs managed by the Board.

(5) "Benefits" means goods and services provided under Benefit Plans.

(6) "Board" means the ten-member board established in the Department of Administrative Services as the Oregon Educators Benefit Board under chapter 00007, Oregon Laws 2007.

(7) "Child" means and includes the following:

(a) An eligible employee's, spouse's, or domestic partner's biological son or daughter; adopted child; child placed for adoption; or legally placed child, who is 25 or younger on the first day of the month. An eligible employee must provide the required custody or legal documents to their Educational Entity showing proof of adoption, legal guardianship or other court order if enrolling a child for whom the employee, spouse, or domestic partner is not the biological parent. Grandchildren are only eligible when the eligible employee is the legal guardian or adoptive parent of the grandchild.

(b) A person who is incapable of self-sustaining employment because of a developmental disability, mental illness, or physical disability. There is no age limit for a dependent child who is incapable of self-sustaining employment because of a developmental disability, mental illness, or physical disability. When the dependent child is 26 years of age or older all the following requirements must be met:

(A) The disability must have existed before attaining age 26.

(B) The employee must provide evidence to the Educational Entity or OEBB that (1) the person had health plan coverage, group or individual, prior to attaining age 26, and (2) health plan coverage continued without a gap until the OEBB health plan effective date.

(C) The person's attending physician must submit documentation of the disability to the eligible employee's OEBB health insurance plan for review and approval. If the person receives health plan approval, the health plan may review the person's health status at any time to determine continued OEBB coverage eligibility.

(D) The person must not have terminated from OEBB health plan coverage after attaining the age of 26.

(c) Eligibility for coverage under this rule includes people who may not be dependents under federal or state tax law and may require an Educational Entity to adjust an Eligible Employee's income based on the imputed value of the benefit.

(8) "Comparable cost (Medical, Dental and Vision)" means that the total cost to a district for enrollment in OEBB plans comparable in design to the district's plan(s) do not exceed the total cost to a district for enrollment in the district's plan(s) using the rate(s) in effect or proposed for the benefit plan year.

(9) "Comparable cost (Basic and Optional Life Insurance, Accidental Death & Dismemberment, and Short and Long Term Disability)" means that the premium rates of an OEBB plan design option do not exceed the average, aggregate premium rates of a district's pre-OEBB plan design in effect the year prior to implementation.

(10) "Comparable plan design (Medical, Dental and Vision)" means that the actuarial values of two plan designs are within 2.5 percent higher or lower of each other.

(11) "Comparable plan design (Basic and Optional Life Insurance and Accidental Death & Dismemberment)" means that 90 percent of district employees can obtain a maximum benefit through an OEBB plan design that is within \$2,500 of the maximum benefit obtained through a pre-OEBB plan design in effect the year prior to implementation.

(12) "Comparable plan design (Short and Long Term Disability)" means 90 percent of the district employees can obtain the same elimination period, percentage of covered compensation, definition of covered compensation, coverage period duration, and maximum payment per benefit period through an OEBB plan design as through a pre-OEBB plan design in effect the year prior to implementation.

(13) "Dependent" means and includes the eligible employee's spouse or domestic partner, or child as defined by OAR 111-010-0010(7), unless otherwise defined in another OEBB rule.

(14) "Documented district policies" means Educational Entities' policies and practices that apply to an employee group and are submitted to the Oregon Educators Benefit Board during the plan selection process. Educational Entities' policies and practices must be identified and submitted with the applicable employee group plan selections.

(15) "Eligible Domestic partner," unless otherwise defined by a collective bargaining agreement or documented district policy in effect on January 31, 2008, means and includes the following:

(a) An unmarried individual of the same sex who has entered into a "Declaration of Domestic Partnership" with the eligible employee that is recognized under Oregon law; or

(b) An unmarried individual of the same or opposite sex who has entered into a partnership that meets the following criteria:

(A) Both are at least 18 years of age;

(B) Are responsible for each other's welfare and are each other's sole domestic partners;

(C) Are not married to anyone and have not had a spouse or another domestic partner within the prior six months. If previously married, the six-month period starts on the final date of divorce;

(D) Share a close personal relationship and are not related by blood closer than would bar marriage in the State of Oregon;

(E) Have jointly shared the same regular and permanent residence for at least six months immediately preceding the date the Affidavit of Domestic Partnership is signed and submitted to the Educational Entity; and

(F) Are jointly financially responsible for basic living expenses defined as the cost of food, shelter and any other expenses of maintaining a household. Financial information must be provided if requested.

(G) The eligible employee and domestic partner must jointly complete and submit to the Educational Entity an Affidavit of Domestic Partnership form, within five business days of the electronic enrollment date or the date the Educational Entity received the enrollment/change form. If the affidavit is not received, coverage will terminate for the domestic partner retroactive to the effective date.

(c) The Eligible Employee must notify the Educational Entity within 31 days of meeting all criteria as defined in 111-010-0015 (15)(b) or obtaining the "Declaration of Domestic Partnership" which is recognized under Oregon law.

(d) Educational Entities' must calculate and apply applicable imputed value tax for domestic partners covered under OEBB benefit plans.

(16) "Educational Entity" means public school districts (K-12), education service districts (ESDs), community colleges and public charter schools participating in OEBB.

(17) "Eligible employee" means and includes an employee of an Educational Entity or Local Government who is actively working or on paid or unpaid leave that is recognized by federal or state law, and:

(a) Is employed in a half time or greater position or is in a job-sharing position; or

(b) Meets the definition of an eligible employee under a separate OEBB rule or under a collective bargaining agreement or documented district policy in effect on January 31, 2008; or

(c) Is an employee of a community college who is covered under a collectively bargained contract and has worked a class load of between 25 percent and 49 percent for a minimum period of two years and is expected to continue to work a class load of at least 25 percent. Coverage is limited to medical to include Kaiser Medical Plan 2 (where available), Moda Health Plan E, Moda Health Plan G, or Moda Health Plan H. Moda Health Plan H can only be elected if the eligible employee is eligible for and actively contributing to a Health Savings Account (HSA). The tiered rate structure will apply to all medical plans.

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(18) "Eligible Early Retiree" means and includes a previously Eligible Employee who is:

- (a) Not Medicare-eligible; or
- (b) Under 65 years old; and

(A) Receiving a service or disability retirement allowance or pension under the Public Employees Retirement System (PERS) or under any other retirement or disability benefit plan or system offered by an OEBB participating organization for its employees;

(B) Eligible to receive a service retirement allowance under PERS and has reached earliest retirement age under ORS Chapter 238;

(C) Eligible to receive a pension under ORS 238A.100 to 238A.245 and has reached earliest retirement age as described in ORS 238A.165; or

(D) Eligible to receive a service retirement allowance or pension under another retirement benefit plan or system offered by an OEBB participating organization and has reached earliest retirement age under the plan or system.

(19) "Employee Group" means employees and early retirees of a similar employment type, for example administrative, represented classified, non-represented classified, confidential, represented licensed, or non-represented licensed, within an Educational Entity. If one or more collective bargaining unit exists within an employee group, each unit will be considered a separate employee group.

(20) "Flexible benefit plan" includes plans that allow contributions on a tax-favored basis including health savings accounts.

(21) "Health Reimbursement Arrangement (HRA)" means an account established and funded solely by the employer that can be used to pay for qualified health care expenses for eligible employees and their spouses and federal tax dependents, up to a maximum dollar amount for a coverage period, and any unused portion of the maximum dollar amount at the end of a coverage period is carried forward to increase the maximum reimbursement amount in subsequent coverage periods. This definition should be interpreted to comply with the guidelines established by the IRS for treatment of HRAs on a tax-favored basis in Technical Release No. 2013-03, IRS Publication 969 and IRS Notice 2002-45. HRA includes, but is not limited to, the following:

(a) "Integrated General Purpose HRA" is an HRA that allows participants to be reimbursed for all IRS qualified expenses and is available only to eligible employees who are enrolled in an OEBB medical plan as the primary subscriber, or as an eligible dependent.

(b) "Integrated Post-Deductible HRA" is an HRA that allows participants to be reimbursed for expenses up to a certain amount, but only after the participants have met the annual deductible on an OEBB medical plan in which the employee participant is enrolled as the primary subscriber, or as an eligible dependent.

(c) "Limited Purpose HRA" is an HRA that allows participants to be reimbursed for only standard dental, vision, and orthodontia expenses and does not require the employee participant to be enrolled in an OEBB medical plan as the primary subscriber, or as a dependent.

(d) "Non-integrated HRA" is an HRA that allows participants to be reimbursed for all IRS qualified expenses when the employee participant is not enrolled in an OEBB medical plan as the primary subscriber, or as an eligible dependent.

(e) "Post-Separation/Retiree HRA" is an HRA that allows participants to be reimbursed for qualified expenses only after the employee separates/retires and does not require the employee participant to be enrolled in an OEBB medical plan as the primary subscriber, or as a dependent.

(f) "Premium Only HRA" is an HRA that allows participants to be reimbursed only for insurance premiums paid on an after tax basis, where the employee participant has no ability to pay the premium on a pre-tax basis and the HRA does not require the employee participant to be enrolled in an OEBB medical plan as the primary subscriber, or as a dependent.

(22) "Health Savings Account (HSA)" means a tax-exempt trust or custodial account that is set up with a qualified HSA trustee to pay or reimburse certain incurred medical expenses, as defined in 26 U.S.C. § 223(d) and IRS Publication 969.

(23) "High Deductible Health Plan (HDHP)" means a health plan that meets the criteria for a "high deductible health plan" as outlined in 26 U.S.C. § 223(c)(2). Enrollment in an HDHP is one of the requirements that must be met in order to qualify to contribute to a health savings account (HSA).

(24) "Local Government" means cities, counties and special districts in Oregon.

(25) "Members" means and includes the following:

- (a) "Eligible employee" as defined by OAR 111-010-0015(17).
- (b) "Child" as defined by OAR 111-010-0015(7).

(c) "Eligible Domestic Partner" as defined by OAR 111-010-0015(15).

(d) "Spouse" as defined by OAR 111-010-0015(32).

(26) "Non-subject District" means a community college not yet participating in benefit plans provided by the Oregon Educators Benefit Board, or a charter school whose employees are not considered employees of a school district.

(27) "Oregon Educators Benefit Board or OEBB" means the program created under chapter 00007, Oregon Laws 2007.

(28) "OEBB participating organization" means a Subject District, Non-subject District, or Provisional Non-subject District that participates in benefit plans provided by the Oregon Educators Benefit Board (OEBB).

(29) "Provisional Non-subject District" means a common school district, a union high school district, or an education service district that:

(a) Was self-insured on December 31, 2006;

(b) Had an independent health insurance trust established and functioning on December 31, 2006; or

(c) Can provide comparable plan designs at a comparable cost as defined by sections (8) and (10) of this Rule.

(30) "Qualified Status Change (QSC)" means a change in family or work status that allows limited mid-year changes to benefit plans consistent with the individual event.

(31) "Special district" means any district listed in ORS Chapter 198 "Special Districts Generally," or as determined by the Board.

(32) "Spouse" means a person who is married under the laws of the State of Oregon or under the laws of any other state or country. The definition of spouse does not include a former spouse and a former spouse does not qualify as a dependent.

(33) "Subject District" means a common school district, a union high school district, or an education service district that:

(a) Did not self-insure on January 1, 2007;

(b) Did not have a health trust in effect on January 1, 2007; or

(c) Does not provide comparable plan designs at a comparable cost as defined by sections (8) and (10) of this rule.

Stat. Auth.: ORS 243.860 – 243.886

Stats. Implemented: ORS 243.864(1)(a)

Hist.: OEBB 2-2007(Temp), f. & cert. ef. 9-21-07 thru 3-18-08; OEBB 2-2008, f. & cert. ef. 1-4-08; OEBB 10-2008(Temp), f. & cert. ef. 8-13-08 thru 2-6-09; OEBB 1-2009, f. & cert. ef. 1-30-09; OEBB 5-2009(Temp), f. & cert. ef. 3-10-09 thru 9-4-09; OEBB 8-2009, f. & cert. ef. 5-1-09; OEBB 12-2009(Temp), f. & cert. ef. 7-31-09 thru 1-26-10; OEBB 19-2009, f. & cert. ef. 12-17-09; OEBB 7-2010(Temp), f. & cert. ef. 8-3-10 thru 1-29-11; OEBB 11-2010(Temp), f. & cert. ef. 10-1-10 thru 1-29-11; OEBB 1-2011, f. & cert. ef. 2-11-11; OEBB 6-2011(Temp), f. & cert. ef. 2-15-11 thru 8-13-11; OEBB 14-2011, f. & cert. ef. 8-2-11; OEBB 15-2011(Temp), f. & cert. ef. 8-2-11 thru 1-28-12; OEBB 16-2011(Temp), f. & cert. ef. 10-1-11 thru 1-28-12; OEBB 20-2011, f. & cert. ef. 10-14-11; OEBB 22-2011, f. & cert. ef. 12-14-11; OEBB 13-2012, f. & cert. ef. 12-19-12; OEBB 6-2013, f. & cert. ef. 7-12-13; OEBB 12-2013(Temp), f. & cert. ef. 10-11-13 thru 4-8-14; OEBB 19-2013(Temp), f. & cert. ef. 11-19-13 thru 4-8-14

Oregon Health Authority, Public Health Division Chapter 333

Rule Caption: Implementation of training of laypeople to recognize and treat opiate overdose

Adm. Order No.: PH 12-2013

Filed with Sec. of State: 11-19-2013

Certified to be Effective: 11-19-13

Notice Publication Date: 10-1-2013

Rules Adopted: 333-055-0100, 333-055-0105, 333-055-0110, 333-055-0115

Rules Repealed: 333-055-0100(T), 333-055-0105(T), 333-055-0110(T)

Subject: The Oregon Health Authority, Public Health Division is permanently adopting administrative rules in chapter 333, division 55 to clarify the purpose of training on lifesaving treatments for opiate overdose; to establish definition terms; to establish training protocols and criteria; and to establish certificates of completion of training.

Rules Coordinator: Brittany Sande—(971) 673-1291

333-055-0100

Purpose

(1) The purpose of OAR 333-055-0100 through 333-055-0110 is to define the protocols and criteria for training on lifesaving treatments for opiate overdose.

ADMINISTRATIVE RULES

(2) Nothing in these rules is meant to require training for health care professionals that are otherwise authorized to administer naloxone within their scope of practice.

(3) Opiate overdose requiring lifesaving treatment occurs in a wide variety of settings and circumstances, creating a need for training a variety of overdose responders. In recognition of this need, Oregon law authorizes a wide range of organizations to provide training on lifesaving treatments for opiate overdose including public health authorities, and organizations and other appropriate entities that provide services to individuals who take opiates. The Oregon Public Health Division interprets providing services to opiate users broadly and includes but is not limited to clinical, substance abuse, social services, public health, law enforcement and criminal justice, and other providers.

Stat. Auth: OL 2013, ch. 340
Stats. Implemented: OL 2013, ch. 340
Hist.: PH 8-2013(Temp), f. & cert. ef. 7-1-13 thru 12-27-13; PH 12-2013, f. & cert. ef. 11-19-13

333-055-0105

Definitions

Unless otherwise stated in OAR 333-055-0100 through 333-055-0110, or the context of 333-055-0100 through 333-055-0110 requires otherwise, the following definitions apply to OAR 333-055-0100 through 333-055-0110:

(1) "Certified nurse practitioner" means a nurse practitioner licensed under ORS chapter 678.

(2) "Licensed physician" means a physician licensed under ORS chapter 677.

(3) "Opiate" has the same meaning given that term in Oregon Laws 2013, chapter 340.

(4) "Opiate overdose" has the same meaning given that term in Oregon Laws 2013, chapter 340.

(5) "Oversight" means ensuring, through periodic review, that the training on lifesaving treatments for opiate overdose is consistent with the scope and intent of the protocols and criteria established by the Oregon Health Authority. "Oversight" does not require the licensed physician or certified nurse practitioner to be present during the training.

Stat. Auth: OL 2013, ch. 340
Stats. Implemented: OL 2013, ch. 340
Hist.: PH 8-2013(Temp), f. & cert. ef. 7-1-13 thru 12-27-13; PH 12-2013, f. & cert. ef. 11-19-13

333-055-0110

Educational Training

(1) Training to administer naloxone is subject to oversight by a licensed physician or certified nurse practitioner with prescriptive privileges.

(2) Subject to the oversight required in section (1) of this rule, training may be conducted by a public health authority, an organization or other entity that provides services to individuals who take opiates.

(3) Individuals trained to respond to opiate overdose must be retrained at least every three years.

(4) The training must meet the protocols and criteria established by the Oregon Health Authority, Public Health Division. The approved training protocol and criteria for the treatment of opiate overdose is available on the Internet at <https://public.health.oregon.gov/ProviderPartnerResources/EMSTraumaSystems/Pages/Naloxone-Training-Protocol.aspx> and is incorporated by reference.

Stat. Auth: OL 2013, ch. 340
Stats. Implemented: OL 2013, ch. 340
Hist.: PH 8-2013(Temp), f. & cert. ef. 7-1-13 thru 12-27-13; PH 12-2013, f. & cert. ef. 11-19-13

333-055-0115

Certificate of Completion of Training

(1) Persons who successfully complete opiate overdose response training under OAR 333-055-0000 through 333-055-0115 shall be given a statement of completion signed by the individual conducting the training. The statement of completion may be used as an authorization to obtain naloxone from a licensed pharmacy if fully completed and signed by a nurse practitioner or physician overseeing the training. The statement of completion for the treatment of opiate overdose response training is available on the Internet at <https://public.health.oregon.gov/ProviderPartnerResources/EMSTraumaSystems/Pages/Naloxone-Training-Protocol.aspx> and is incorporated by reference.

(2) The statement of completion authorizes a pharmacist to generate a prescription and dispense to the trained individual doses of naloxone if the statement of completion is signed by a nurse practitioner or physician.

Whenever such a statement of completion is presented, the pharmacist may generate a prescription and dispense naloxone to the trained individual as specified under OAR 855-041-2330.

(3) A statement of completion and authorization to obtain naloxone shall expire three years after the date of training identified on the statement of completion. Individuals trained to respond to opiate overdose must be trained every three years in accordance with OAR 333-055-0110 to obtain a new statement of completion.

Stat. Auth: OL 2013, ch. 340
Stats. Implemented: OL 2013, ch. 340
Hist.: PH 12-2013, f. & cert. ef. 11-19-13

Oregon Health Insurance Exchange Chapter 945

Rule Caption: Lay Representation in Contested Case Hearings

Adm. Order No.: OHIE 7-2013(Temp)

Filed with Sec. of State: 11-18-2013

Certified to be Effective: 11-18-13 thru 5-17-14

Notice Publication Date:

Rules Adopted: 945-040-0180

Subject: Authorizes the Exchange to use lay representation in contested case hearings conducted by the Office of Administrative Hearings.

Rules Coordinator: Gregory Jolivette—(503) 373-9406

945-040-0180

Lay Representation in Contested Case Hearings

(1) Subject to the approval of the Attorney General, an officer or employee of the Oregon Health Insurance Exchange (Exchange) is authorized to appear on behalf of the Exchange in the following types of contested case hearings conducted by the Office of Administrative Hearings:

(a) Qualified health plan enrollment eligibility denial, including enrollment in a qualified health plan that is a catastrophic plan;

(b) Advance payments of the premium tax credit and cost sharing reductions eligibility for benefits, including the level and amount of benefits, or denial of benefits;

(c) MAGI-based Medicaid and CHIP program eligibility; and

(d) Failure of the Exchange to provide timely notice of an eligibility determination.

(2) Exchange representatives may not make legal argument on behalf of the Exchange.

(3) "Legal argument" includes arguments on

(a) The jurisdiction of the Exchange to hear the contested case;

(b) The constitutionality of a statute or rule or the application of a constitutional requirement to the Exchange; and

(c) The application of court precedent to the facts of the particular contested case proceeding.

(4) "Legal argument" does not include presentation of motions, evidence, examination and cross-examination of witnesses, or representation 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 Exchange in handling similar situations;

(c) The literal meaning of the statutes or rules directly applicable to the issues in the contested case;

(d) The admissibility of evidence; and

(e) The correctness of procedures being followed in the contested case hearing.

(5) When an officer or employee appears on behalf of the Exchange, the administrative law judge shall advise the Exchange's representative of the manner in which objections may be made and matters preserved for appeal. Such advice is of a procedural nature and does not change applicable law on waiver or the duty to make timely objection.

(6) If the administrative law judge determines that statements or objections made by the Exchange representative appearing under section (1) of this rule involve legal argument as defined in this rule, the administrative law judge shall provide reasonable opportunity for the Exchange to consult with the Attorney General and permit the Attorney General to present argument at the hearing or to file written legal argument within a reasonable time after conclusion of the hearing.

Stat. Auth.: ORS 741.002
Stats. Implemented: ORS 741.002, 183.452
Hist.: OHIE 7-2013(Temp), f. & cert. ef. 11-18-13 thru 5-17-14

ADMINISTRATIVE RULES

Oregon Liquor Control Commission Chapter 845

Rule Caption: Amended to define additional terms.

Adm. Order No.: OLCC 11-2013

Filed with Sec. of State: 11-26-2013

Certified to be Effective: 1-1-14

Notice Publication Date: 9-1-2013

Rules Amended: 845-013-0001

Subject: Manufacturers and wholesalers are generally prohibited from giving services and other gifts to retailers. This rule defines and explains some of the exceptions to this general prohibition. The amendments add one new definition (for "supplier") to section (2).

Rules Coordinator: Annabelle Henry — (503) 872-5004

845-013-0001

Financial Assistance; Purpose, Limitation, Definitions and Record Keeping

(1) Purpose. ORS 471.398 and 471.400 generally prohibit manufacturers and wholesalers from giving services or things to retailers. The statute makes some exceptions to the general prohibition. OAR 845-013-0001 through 845-013-0090 define and explain the exceptions. The Commission's basis for its interpretations of point of sale material, items of nominal value and services of nominal value is that manufacturers and wholesalers may promote their products but may not promote a retailer's business or underwrite a retailer's business expenses.

(2) Definitions. As used in ORS 471.398, 471.400, and OAR 845-013-0001 through 845-013-0090:

(a) "Customize" means designing or modifying point of sale material or items of nominal value to promote a specific retail business;

(b) "Exterior" means on the outside of the business or clearly visible from the outside;

(c) "Manufacturer" includes brewery, distillery, winery, brew-pub and grower sales privilege licensees;

(d) "Retailer," "retail license," and "any licensee authorized to sell alcoholic liquor at retail" includes any officer, director, agent, employee or substantial stockholder of the licensed business;

(e) "Substantial stockholder" as used in subsection (2)(d) of this rule means a person who owns ten percent or more of any class of stock.

(f) "Supplier" includes manufacturers, wholesalers and their respective agents.

(3) General Limitations:

(a) Although Oregon law allows manufacturers and wholesalers to provide the items and services described in these rules, federal laws regarding wine may not. When the federal law is more strict, wine manufacturers and wholesalers must follow the federal law rather than Oregon law. Therefore, manufacturers and wholesalers should check with the Alcohol and Tobacco Tax and Trade Bureau (TTB) before applying these rules to their wine business;

(b) Manufacturers and wholesalers may give or loan the point of sale material (OAR 845-013-0050), items of nominal value (845-013-0060), and services of nominal value (845-013-0070) described in these rules:

(A) Only for the manufacturer's or wholesaler's alcoholic beverage products; and

(B) To all retailers without discrimination. Without discrimination means the manufacturer or wholesaler makes all allowable point of sale material, items of nominal value, and services of nominal value available to all the manufacturer's or wholesaler's retailers upon request subject to availability. The Commission will not consider it discrimination if a manufacturer or wholesaler gives allowable material, items or services based on the type of business or in proportion to the size of the account;

(c) In addition to the requirements of subsection (3)(b) of this rule, when manufacturers and wholesalers give the services of nominal value (OAR 845-013-0070) described in these rules, they must not alter or disturb another manufacturer's or wholesaler's alcoholic beverage products. This limitation does not apply when a retailer decides to rearrange all the alcoholic beverage products his/her business carries (a general reset). For a general reset, manufacturers and wholesalers may move each other's products as long as the retailer has notified all the manufacturers and wholesalers whose products are being moved and the retailer moves or helps move the products of any manufacturers or wholesalers who are not present;

(d) Manufacturers and wholesalers may not customize point of sale material (OAR 845-013-0050) or items of nominal value (845-013-0060).

Despite this prohibition, a manufacturer or wholesaler may, on items of nominal value and interior point of sale material:

(A) Add the retailer's name or logo;

(B) Add the retailer's price for the advertised product(s); or

(C) Leave a blank space for the retailer to add only the retailer's price for the advertised product(s).

(4) Records. Manufacturers and wholesalers must keep accurate and complete records of any gratuities the manufacturer or wholesaler gives a retailer and of all activities described in OAR 845-013-0010 (Substantial Gratuities), any credit that 845-013-0020(1)(a) and (b) allow and all exchanges and returns that 845-013-0070 (Services of Nominal Value) allows. These records must include dates, times, amounts and names of all persons and premises involved; be kept for two years; and be available for Commission inspection.

(5) Retailer Purchase of Items/Services: A manufacturer or wholesaler may, for a reasonable fee, sell to a retailer items, labor, or services that ORS 471.398 prohibits. As used in this section, a reasonable fee for labor or service is one that covers at least the manufacturer's or wholesaler's cost; a reasonable fee for the item is at least the cost to the manufacturer or wholesaler who initially purchased or produced the item. The manufacturer or wholesaler and the retailer must keep a record of the sale.

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

Stats. Implemented: ORS 471.398

Hist.: OLCC 8-1987, f. 31-3-87, ef. 4-1-87; OLCC 7-1992, f. & cert. ef. 7-1-92; Renumbered from 845-010-0121; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 10-2004, f. 10-15-04 cert. ef. 11-1-04; OLCC 11-2013, f. 11-26-13, cert. ef. 1-1-14

Rule Caption: Inserts a statutory exemption that excuses a specific Commissioner from compliance with its provisions.

Adm. Order No.: OLCC 12-2013

Filed with Sec. of State: 11-26-2013

Certified to be Effective: 1-1-14

Notice Publication Date: 9-1-2013

Rules Amended: 845-004-0001

Subject: ORS 471.710(2) sets forth the interests that an individual is prohibited from holding while serving as a commissioner or an employee of the Commission. This rule defines and describes these interests. However, it omits the statutory exemption that excuses the commissioner designated as the food and alcoholic beverage retail industry representative from compliance with its prohibitions. The amendments correct this omission and clarify the rule by alphabetizing the terms in section (1) and revising language in sections (2) through (4).

Rules Coordinator: Annabelle Henry — (503) 872-5004

845-004-0001

Prohibited Interests in the Alcoholic Beverage Industry

(1) Definitions. For this rule:

(a) "Business connections" include, but are not limited to, the following behaviors and relationships:

(A) Knowingly providing anything of value to a manufacturer or a business licensed by the Commission in return for something of value except for the exchange of commodities or services that are routinely provided to the general public under the same terms, and

(B) Partnerships with a manufacturer or licensee and similar ventures formed for the purpose of making a profit.

(b) "Business licensed by the Commission" means a business or any part of a business that requires an alcoholic beverage license to operate. A person is "employed by a business licensed by the Commission" if:

(A) The person's job duties include involvement with any portion of the business that requires an alcoholic beverage license to operate, or

(B) The person exercises management control over any portion of the business that requires an alcoholic beverage license to operate.

(c) "Close association" means a relationship that does or could be reasonably perceived to influence commissioner or employee decisions.

(d) "Domestic Partner" means an individual who, along with another individual of the same sex, has received a Certificate of Registered Domestic Partnership pursuant to the Oregon Family Fairness Act.

(e) "Employed by the Commission" means any permanent, temporary or limited duration Commission employee.

(f) "Financial Interest" means knowingly holding an ownership interest as a sole proprietor, partner, limited partner or stockholder, in any business that is licensed by the Commission or manufactures alcoholic beverages sold in Oregon. This definition excludes any investment that the investor does not control in nature, amount or timing.

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(g) "Household member" means all persons living as a family unit in the same dwelling as the commissioner or Commission employee.

(h) "Immediate family" means the spouse or Domestic Partner, and juvenile dependent children of the commissioner or Commission employee.

(i) "Knowledge" and "knowingly" mean that the person had actual knowledge of or reasonably should have known of the fact in question.

(j) "Position to take action or make decisions that could affect the licensed business" means that the employee's job duties include the discretion to take actions or make decisions that are reasonably likely to create more than a trivial cost or benefit for a licensed business in money, time or anything else of value. However, an employee is not in a "position to take action or make decisions that could affect the licensed business" under ORS 471.710(2)(c) or (d) if the Commission removes the employee from actions and decisions affecting the licensed business. The Commission will do so where the removal would not unreasonably effect the employee's ability to perform his or her job duties.

(2) Prohibitions.

(a) The prohibitions in this section do not apply to the commissioner appointed as the food and alcoholic beverage retail industry representative under ORS 471.705(1).

(b) Financial Interests. No commissioner, employee, household member or family member may hold a financial interest described in this rule.

(c) Employment. No commissioner, employee, household member or family member may be employed by a business licensed by the Commission unless the commissioner or employee is not in a position to take action or make decisions that could affect the licensed business.

(d) Business Connections. No commissioner, employee, household member or family member may have a business connection described in this rule unless the commissioner or employee is not in a position to take action or make decisions that could affect the licensed business.

(3) Reporting Requirements.

(a) The reporting requirements in this section do not apply to the commissioner appointed as the food and alcoholic beverage retail industry representative under ORS 471.705(1).

(b) Close Association. A commissioner or employee who has a close association with an alcoholic beverage licensee must:

(A) Inform the Commission of the association as soon as the commissioner or employee has knowledge of the association, and

(B) Refrain from participating in any decision that directly affects the licensee.

(c) An applicant for a Commission job must disclose all financial interests, current employment relationships and business connections that the applicant, or any person in the applicant's household or immediate family, has with the alcoholic beverage industry of which the applicant has knowledge. If the Commission determines that a prohibited financial interest, employment relationship or business connection exists, the applicant must divest the financial interest, employment relationship or business connection before he or she may be hired.

(d) A Commission employee must report all financial interests, current employment relationships and business connections that the employee, or any person in the employee's household or immediate family, has with the alcoholic beverage industry to his or her supervisor as soon as the employee has knowledge of it. If the financial interest, employment relationship or business connection is prohibited, the Commission will set a reasonable time period for divestiture. If divestiture does not occur within the given time period, the Commission will terminate the employee's employment.

(4) Disciplinary Action. The Commission will appropriately discipline any employee who:

(a) Fails to report a prohibited financial interest, employment relationship or business connection as required under this rule, or

(b) Knowingly acquires or establishes a financial interest, employment relationship or business connection prohibited under this rule.

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

Stats. Implemented: ORS 471.710

Hist.: OLCC 4-1988, f. & cert. ef. 7-1-88; OLCC 15-1989, f. 10-31-89, cert. ef. 11-1-89; OLCC 9-2008, f. 6-12-08, cert. ef. 7-1-08; OLCC 12-2013, f. 11-26-13, cert. ef. 1-1-14

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Rule Caption: Amends two rules as a package regulating direct shipment of malt beverages, wine and cider.

Adm. Order No.: OLCC 13-2013

Filed with Sec. of State: 12-12-2013

Certified to be Effective: 1-1-14

Notice Publication Date: 9-1-2013

Rules Amended: 845-006-0392, 845-006-0396

Subject: OAR 845-006-0392 defines when retailers may make same and next-day delivery of wine and cider. OAR 845-006-0396 defines when retailers may make same and next-day delivery of malt beverages. The Commission amended both rules in 2012. However, due to a technical error both amendments were recently invalidated. The proposed amendments permanently restore the 2012 amendments, which allow a retailer to accept an order for the delivery of wine, cider and/or malt beverages until 7:00 pm and to deliver that order before 9:00 pm on the same day if the quantities delivered do not exceed two standard bottles of wine or cider and two six-packs of malt beverages per Oregon residence. Incorporating more recent stakeholder feedback, the adopted amendments also allow a retailer to alternatively accept an order for the delivery of wine, cider and/or malt beverages between 7:01 pm and 9:00 pm and to deliver that order before 10:00 pm on the same day if the quantities delivered do not exceed one standard bottle of wine or cider and one six-pack of malt beverages per Oregon residence.

Rules Coordinator: Annabelle Henry—(503) 872-5004

845-006-0392

Requirements for Direct Shipment of Wine and Cider to a Resident of Oregon

This rule sets the requirements for direct shipment and same-day delivery of wine and cider to a resident of Oregon. A licensee must be approved by the Commission under OAR 845-005-0417 in order to provide direct shipment or same-day delivery of wine and cider. The provisions of this rule apply retroactively to May 1, 2012.

(1) A person may sell and ship wine or cider to a resident of Oregon only if the person holds:

(a) A valid Direct Shipper Permit and holds a license issued by this state or another state that authorizes the person to hold a Direct Shipper Permit; or

(b) An off-premises sales license issued by the Commission.

(2) A person holding a Direct Shipper Permit must ship not more than a total of two cases of wine or cider containing not more than nine liters per case per month to a resident of Oregon who is at least 21 years of age.

(3) A person holding a Direct Shipper Permit or an off-premises sales license must retain a record for a minimum of eighteen months of the amount of alcohol contained in the shipment to the resident.

(4) A person holding a Direct Shipper Permit or an off-premises sales license must ship:

(a) Only wine or cider and only in manufacturer-sealed containers;

(b) Only to a resident of Oregon who is at least 21 years of age and only if the wine or cider is for personal use and not for the purpose of resale;

(c) Only for delivery to a resident who is not visibly intoxicated at the time of receiving the alcohol;

(d) The product in a container that is conspicuously labeled with the words "Contains alcohol: signature of person age 21 years or older required for delivery" or similar language approved by the Commission;

(e) Only pursuant to an order for the wine or cider that is received by the permit holder or licensee prior to shipment of the alcohol;

(f) Only for next-day delivery, unless the permit holder or licensee has been approved for same-day delivery; and

(g) Only to a home or business where the home or business has a permanent street address.

(5) If the permit holder or licensee ships via a for-hire carrier, the permit holder and licensee must use a for-hire carrier with a plan approved by the Commission under OAR 845-005-0424 and must comply with sections (2), (3) and (4) of this rule, as applicable.

(6) If the permit holder or licensee does not use a for-hire carrier, in addition to complying with sections (2), (3) and (4) of this rule, as applicable, the person making the delivery of the wine or cider must:

(a) Be age 18 or over;

(b) Verify that the person receiving the alcohol is at least 21 years of age;

(c) Determine that the person receiving the alcohol is not visibly intoxicated; and

(d) Collect information that must be retained by the permit holder or licensee for a minimum of eighteen months from the date of delivery of the alcohol to the resident. The information retained must include:

(A) The date and time the alcohol was delivered to the resident;

ADMINISTRATIVE RULES

(B) The name or information that can be used to determine the name of the person delivering the alcohol to the resident; and

(C) The name, signature, and delivery address of the person receiving the alcohol.

(7) Same-day delivery for a permit holder. If a permit holder has also obtained approval to make same-day delivery of wine or cider, in addition to complying with sections (2), (3), (4) and either (5) or (6) of this rule, the permit holder must receive the order from the resident no later than 4:00 pm on the day the order is delivered, ensure that the wine and cider is delivered before 9:00 pm, and deliver not more than a total of two cases of wine or cider containing not more than nine liters per case per day to a resident of Oregon (and must also follow section (2) of this rule).

(8) Same-day delivery for a licensee. If a licensee has also obtained approval to make same-day delivery of wine or cider, in addition to complying with sections (3), (4) and either (5) or (6) of this rule, the licensee must:

(a) Receive the order from the resident no later than 4:00 pm on the day the order is delivered, ensure that the wine and cider is delivered before 9:00 pm, and deliver not more than a total of two cases of wine or cider containing not more than nine liters per case per day per Oregon residence;

(b) Receive the order from the resident no later than 4:00 pm on the day the order is delivered, ensure that the wine and cider is delivered before 9:00 pm, and may deliver an unlimited amount of wine or cider if the alcohol accounts for no more than 25 percent of the retail cost of the order (i.e., at least 75 percent of the retail cost of the order must be items other than alcohol);

(c) Receive the order from the resident no later than 9:00 am on the day the order is delivered, ensure that the wine and cider is delivered before 9:00 pm, and may deliver an unlimited amount of wine or cider;

(d) Receive the order from the resident no later than 7:00 pm on the day the order is delivered, ensure that the wine and cider is delivered before 9:00 pm, and deliver not more than a total of 1500 milliliters of wine or cider (approximately two standard bottles) per day per Oregon residence; or

(e) Receive the order from the resident between 7:01 pm and 9:00 pm on the day the order is delivered, ensure that the wine or cider is delivered before 10:00 pm, and deliver not more than a total of 750 milliliters of wine or cider (approximately one standard bottle) per day per Oregon residence.

(9) A permit holder must:

(a) Allow the Commission to audit the permit holder's records of wine and cider shipments to Oregon residents upon request and shall make those records available to the Commission in Oregon no later than 60 days after the Commission mails the notice;

(b) Report to the Commission all shipments of wine or cider made to a resident of Oregon under the permit as required by ORS Chapter 473. The report must be made in a form prescribed by the Commission; and

(c) Timely pay to the Commission all taxes imposed under ORS Chapter 473 on wine and cider sold and shipped directly to a resident of Oregon under the permit. For the purpose of the privilege tax imposed under ORS Chapter 473, all wine or cider sold and shipped pursuant to a direct shipper permit is sold in this state. The permit holder, not the purchaser, is responsible for the tax.

(10) If the permit holder is located in a state outside of Oregon, it consents to the jurisdiction of the Commission and the courts of this state for the purpose of enforcing the provisions of this rule and any related laws or rules.

(11) A violation of section (9) of this rule is a Category IV violation. A violation of any other section of this rule is a Category III violation. In lieu of a criminal citation, the Commission may assess an administrative penalty for shipping wine or cider without a valid Direct Shipper Permit in violation of section (1) of this rule against any Oregon license held by the shipper, including a Certificate of Approval issued pursuant to ORS 471.244.

Stat. Auth.: ORS 471, 471.030, 471.040, 471.186 & 471.730(1) & (5)

Stats. Implemented: ORS 471.186, 471.282 & 473

Hist.: OLCC 23-2007(Temp), f. 12-14-07, cert. ef. 1-1-08 thru 6-28-08; OLCC 6-2008(Temp), f. & cert. ef. 4-18-08 thru 6-28-08; OLCC 8-2008, f. 6-12-08, cert. ef. 6-29-08; OLCC 4-2012, f. 4-10-12, cert. ef. 5-1-12; OLCC 4-2013(Temp), f. 7-12-13, cert. ef. 7-15-13 thru 1-11-14; OLCC 13-2013, f. 12-12-13, cert. ef. 1-1-14

845-006-0396

Requirements for Same-Day and Next-Day Retail Delivery of Malt Beverages to a Resident of Oregon

This rule sets the requirements for same-day and next-day delivery of malt beverages to a resident of Oregon. A licensee must be approved by the Commission under OAR 845-005-0420 in order to provide same-day deliv-

ery of malt beverages. The provisions of this rule apply retroactively to May 1, 2012.

(1) A licensee qualified to make same-day or next-day delivery of malt beverages under OAR 845-005-0420 must ship:

(a) Only malt beverages and only in a manufacturer-sealed container. A container must not hold more than two and one-quarter gallons;

(b) Only to a resident of Oregon who is at least 21 years of age and only if the malt beverage is for personal use and not for the purpose of resale;

(c) Only for delivery to a resident who is not visibly intoxicated at the time of receiving the alcohol;

(d) The malt beverage in a package that is conspicuously labeled with the words "Contains alcohol: signature of person age 21 years or older required for delivery" or similar language approved by the Commission;

(e) Only pursuant to an order for the malt beverage that is received by the licensee prior to shipment of the alcohol;

(f) Only for next-day delivery unless the licensee has been approved for same-day delivery by the Commission; and

(g) Only to a home or business where the home or business has a permanent street address.

(2) A licensee must retain a record for a minimum of eighteen months of the amount of alcohol contained in the shipment to the resident.

(3) If the licensee ships via a for-hire carrier, in addition to complying with sections (1) and (2) of this rule, the licensee must use a for-hire carrier with a plan approved by the Commission under OAR 845-005-0424.

(4) If the licensee does not use a for-hire carrier, in addition to complying with sections (1) and (2) of this rule, the person delivering the malt beverage must:

(a) Be age 18 or over;

(b) Verify that the person receiving the alcohol is at least 21 years of age;

(c) Determine that the person receiving the alcohol is not visibly intoxicated; and

(d) Collect information that must be retained by the licensee for a minimum of eighteen months from the date of delivery of the alcohol to the resident. The information retained must include:

(A) The date and time the alcohol was delivered to the resident;

(B) The name or information which can be used to determine the name of the person delivering the alcohol to the resident; and

(C) The name, signature, and delivery address of the person receiving the alcohol.

(5) Same-day delivery. If the licensee is approved to make same-day delivery of malt beverages, in addition to complying with sections (1), (2) and either (3) or (4) of this rule, the licensee must:

(a) Receive the order from the resident no later than 4:00 pm on the day the order is delivered, ensure that the malt beverage is delivered before 9:00 pm, and deliver not more than a total of five gallons of malt beverage per day per Oregon residence;

(b) Receive the order from the resident no later than 4:00 pm on the day the order is delivered, ensure that the malt beverage is delivered before 9:00 pm, and may deliver an unlimited amount of malt beverage if the alcohol accounts for no more than 25 percent of the retail cost of the order (i.e., at least 75 percent of the retail cost of the order must be items other than alcohol);

(c) Receive the order from the resident no later than 9:00 am on the day the order is delivered, ensure that the malt beverage is delivered before 9:00 pm, and may deliver an unlimited amount of malt beverage;

(d) Receive the order from the resident no later than 7:00 pm on the day the order is delivered, ensure that the malt beverage is delivered before 9:00 pm, and deliver not more than a total of 160 ounces of malt beverage (approximately two standard six-packs) per day per Oregon residence; or

(e) Receive the order from the resident between 7:01 pm and 9:00 pm on the day the order is delivered, ensure that the malt beverage is delivered before 10:00 pm, and deliver not more than a total of 80 ounces of malt beverage (approximately one standard six-pack) per day per Oregon residence.

(6) Sanction. A violation of any section of this rule is a Category III violation.

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

Stats. Implemented: ORS 471.305

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 7-2003(Temp), f. & cert. ef. 5-20-03 thru 11-16-03; OLCC 12-2003, f. 9-23-03, cert. ef. 11-1-03; OLCC 23-2007(Temp), f. 12-14-07, cert. ef. 1-1-08 thru 6-28-08; OLCC 6-2008(Temp), f. & cert. ef. 4-18-08 thru 6-28-08; OLCC 8-2008, f. 6-12-08, cert. ef. 6-29-08; OLCC 4-2012, f. 4-10-12, cert. ef. 5-1-12; OLCC 4-2013(Temp), f. 7-12-13, cert. ef. 7-15-13 thru 1-11-14; OLCC 13-2013, f. 12-12-13, cert. ef. 1-1-14

ADMINISTRATIVE RULES

Rule Caption: Restores technically deficient 2012 rulemaking and clarifies minors on licensed premises requirements and prohibitions.

Adm. Order No.: OLCC 14-2013

Filed with Sec. of State: 12-12-2013

Certified to be Effective: 1-1-14

Notice Publication Date: 10-1-2013

Rules Amended: 845-006-0335

Subject: This rule describes a licensee's and a permittee's duty to prevent minors from purchasing or consuming alcohol on the licensed premises and from entering areas prohibited to minors. The Commission amended this rule in 2012; however, due to a technical error the amendments were recently invalidated. The proposed amendments permanently restore the 2012 amendments. The amendments clarify when minor employees and service permittees may be in various posted areas and where minor entertainers may stay when not performing. The amendments also delete language in section (3)(a) to clarify that this section should only be used to charge allowing a minor to drink (and not selling or serving to minors).

Rules Coordinator: Annabelle Henry—(503) 872-5004

845-006-0335

Age Verification; Minors on Licensed Premises

(1) Age Verification:

(a) ORS 471.130 requires a licensee or permittee to verify the age of a person who wants to buy or be served alcoholic beverages when there is "any reasonable doubt" that the person is at least 21 years old. The Commission requires a licensee or permittee to verify the age of anyone who wants to drink alcoholic beverages, or is in an area prohibited to minors, if there is reasonable doubt that the person is at least 21 years old. "Reasonable doubt" exists if the person appears to be under the age of 26;

(b) Whenever a licensee or permittee verifies age, he/she must verify it as ORS 471.130 requires (statement of age card or the specified items of identification) and must reject any obviously altered document or one which obviously does not identify the person offering it;

(c) Licensees must require all their employees who sell, serve, oversee or control the sale or service of alcoholic beverages to verify age as subsection (a) of this section requires.

(2) Sanctions for Failure to Verify Age:

(a) The Commission will sanction a licensee or permittee who does not verify the age of a person who appears to be under the age of 26 only if the person:

(A) Actually is a minor who buys, is served or drinks an alcoholic beverage at the licensed premises (Category III violation); or

(B) Actually is a minor who is in an area of the licensed premises prohibited to minors (Category IV violation).

(b) If the Commission sanctions a licensee or permittee for one or more of the following violations under this rule: Failure to verify the age of a minor; Allowing a minor to drink; or Allowing a minor in an area prohibited to minors, the Commission will not sanction the licensee or permittee separately under ORS 471.130 or 471.410(2) for the same conduct. The Commission may charge a licensee or permittee for one or more violations under this rule and also charge violation of one or more of the statutes in the alternative.

(c) Failure to verify age as ORS 471.130 requires or to reject obviously altered or false identification is a Category III violation.

(3) Minors on Premises: General Prohibitions. No licensee, permittee, or licensee's employee will permit a minor:

(a) To drink any alcoholic beverage on licensed premises;

(b) To be on licensed premises or an area of the licensed premises prohibited to minors, except as provided in ORS 471.430, 471.480, 471.482 and this rule. (The assigned minor posting(s) describes where on the premises minors are allowed or prohibited. See OAR 845-006-0340, Minor Postings.)

(4) Minor Employee and Minor Service Permittee:

(a) Whenever minors are prohibited from an entire licensed premises, minor employees and minor service permittees are also prohibited. This applies to a premises with a Number I minor posting and when minors are prohibited from the entire premises under a Number IIIA, IV or VI minor posting.

(b) When minors are allowed in a premises or portion of a premises, minor employees and minor service permittees are permitted in the areas of the premises where minors are allowed. This applies to a premises or area with a Number III posting and to a premises or area with a Number IIIA,

IV or VI posting during the times when minors are allowed. The primary duty of minor service permittees must be food service.

(c) If a premises has one or more areas where minors are prohibited and one or more areas where minors are allowed, the following requirements apply. An example is a premises with a Number III posting in the dining room and a Number II posting in the lounge.

(A) Minor employees who are not service permittees may be in areas prohibited to minors only to restock supplies and perform food service related activities such as setting and clearing tables and delivering food. The minor shall not remain in the prohibited area longer than is necessary to perform these duties.

(B) Minor service permittees may perform the duties of minor employees as described in subsection (4)(c)(A) of this rule as well as enter the prohibited areas to order and pick up alcoholic drinks for service in other areas of the premises where minors are allowed.

(5) Minor Vendor or Contractor. A minor, other than a licensee's employee, who has a legitimate business purpose, may be in the area of the licensed premises normally prohibited to minors. (For example, a minor who is a plumber may repair the plumbing in a prohibited area).

(6) Minor Entertainer:

(a) A minor entertainer may perform on licensed premises. If the minor entertainer stays on the premises when not performing, he/she must stay in an area where minors are permitted, such as an area with a Number III posting. If there is no break room, dressing room or patron area where minors are permitted, the licensee may, with prior Commission approval, designate space for minor entertainers in an area of the licensed premises normally prohibited to them. At a minimum, this place must be within the bartender's sight but not at the bar, and there must be no alcoholic beverages in this place. If conditions become unsuitable, the Commission may revoke its approval. If a minor entertainer is not performing and is not in a Commission-approved designated area on the licensed premises, then the minor entertainer must leave the licensed premises.

(b) If the minor is under 18 years old, and the licensee proposes to employ that minor to conduct or assist in conducting any public dance, including but not limited to dancing by the child as a public performance, or to assist in or furnish music for public dancing, the licensee and minor must make sure the minor has the written permission of the appropriate juvenile court judge as required by ORS 167.840(2).

(c) If the minor is under 18 years old, and the licensee proposes to employ that minor to perform or entertain on the licensed premises in a capacity other than described in (6)(b) of this rule, before allowing the minor to perform on the licensed premises the licensee must apply for and receive prior written permission from the Administrator of the Oregon Liquor Control Commission, or the Administrator's designee. Application must be made upon a form supplied by the Commission. The Administrator or designee shall grant such permission only if:

(A) The parents or legal guardians of the minor have consented to the child's participation in such activity; and

(B) The Administrator or designee has found that participation in such activity will not be inconsistent with the health, safety and morals of the minor.

(d) Minors under 14 years old must also get a work permit if one is required by the Oregon Bureau of Labor and Industries.

(7) Minor Patron: A minor patron may be in areas of licensed premises normally prohibited to minors in the following circumstances:

(a) If the licensee permits it, a minor may be in the immediate company of his/her spouse or Domestic Partner who is at least 21 years old. "Domestic Partner" means an individual who, along with another individual of the same sex, has received a Certificate of Registered Domestic Partnership pursuant to the Oregon Family Fairness Act. The minor must not buy, possess or drink alcoholic beverages;

(b) A minor may order and eat a meal in a Number IV posted area during the specified meal periods. This meal must at least meet the minimum food service requirements of OAR 845-006-0460.

(8) Sanctions: A violation of subsection (3)(a) of this rule is a Category III violation. A violation of subsection (3)(b) through section (7) of this rule is a Category IV violation.

Stat. Auth.: ORS 471.030, 471.040, 471.430, 471.482 & 471.730

Stats. Implemented: ORS 471.130, 471.410, 471.430, 471.480 & 471.482

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 12-2002, f. 8-29-02, cert. ef. 1-2-03; OLCC 13-2003(Temp), f. & cert. ef. 9-23-03 thru 3-20-04; OLCC 4-2004, f. & cert. ef. 4-9-04; OLCC 9-2005, f. 11-21-05, cert. ef. 1-1-06; OLCC 9-2008, f. 6-12-08, cert. ef. 7-1-08; OLCC 2-2009, f. 3-17-09, cert. ef. 4-1-09; OLCC 3-2012, f. 4-10-12, cert. ef. 5-1-12; OLCC 5-2013(Temp), f. 7-12-13, cert. ef. 7-15-13 thru 11-14-14; OLCC 14-2013, f. 12-13-13, cert. ef. 1-1-14

ADMINISTRATIVE RULES

Rule Caption: Amends the definitions of “interest in the business” and “financial interest” and clarifies their requirements.

Adm. Order No.: OLCC 15-2013

Filed with Sec. of State: 12-12-2013

Certified to be Effective: 1-1-14

Notice Publication Date: 10-1-2013

Rules Amended: 845-005-0311

Subject: Under the current rule, a license application must specify the real and true names of all persons who own or have an interest in the business proposed to be licensed. The current rule defines the term “interest in the business” by providing a list of persons that, by definition, own or hold an interest in the business. The amendments reframe this analysis to focus on conduct that indicates ownership or a right to control the business. Under section (4) of the current rule, the Commission may also require the applicant or licensee to submit a list of persons and legal entities with a financial interest in the business, and the Commission may evaluate those persons and legal entities as if they were the applicant. The amendments clarify the definition of “financial interest” and the actions that the Commission may take after it concludes this evaluation.

Rules Coordinator: Annabelle Henry — (503) 872-5004

845-005-0311

True Name on Application; Interest in Business

(1) True name on application. An application for a license must specify the real and true names of all persons and legal entities that have an ownership interest in the business proposed to be licensed.

(2) License privileges. License privileges are available only to the persons and legal entities specified in the application and only for the premises designated on the license.

(3) Ownership Interest. Under ORS 471.313(4)(h), the Commission may refuse to issue a license if the applicant is not the owner of the business proposed to be licensed or an undisclosed ownership interest exists. For purposes of this rule, an “ownership interest” is indicated by the following behaviors, benefits or obligations:

(a) Any person or legal entity, other than an employee acting under the direction of the owner, that exercises control over, or is entitled to exercise control over, the business;

(b) Any person or legal entity, other than an employee acting under the direction of the owner, that incurs, or is entitled to incur, debt or similar obligations on behalf of the business;

(c) Any person or legal entity, other than an employee acting under the direction of the owner, that enters into, or is entitled to enter into, a contract or similar obligations on behalf of the business; or

(d) Any person or legal entity identified as the lessee of the premises proposed to be licensed.

(4) Financial Interest. Under ORS 471.757, the Commission may require the licensee or applicant to identify the persons and legal entities with a financial interest in the business. The Commission may evaluate any such person as if he or she were the actual licensee or license applicant. If that evaluation reveals any circumstances that would support grounds for the denial, cancellation or suspension of such a license or license application, the Commission may deny, cancel or suspend the license of the actual licensee or issue the license with restrictions. For purposes of this rule, a “financial interest” exists if the performance of the business causes, or is capable of causing, a person or legal entity to benefit or suffer financially. Examples of a financial interest include, but are not limited to:

(a) A licensee;

(b) An employee or agent who receives out-of-the-ordinary compensation. “Out-of-the-ordinary compensation” includes both over- and under-compensation;

(c) Any person who rents or leases real property to a licensee or applicant for use by the business;

(d) Any person who rents or leases personal property to a licensee or applicant for use in the business for a commercially unreasonable rate;

(e) Any person who lends money, real property or personal property to a licensee or applicant for use in the business;

(f) Any person who gives money, real property or personal property to a licensee or applicant for use in the business.

(g) A spouse or domestic partner of the licensee or license applicant. For purposes of this subsection, “domestic partners” includes adults who share the same regular and permanent address and would be financially

affected by the success or failure of the business as well as adults who qualify for a “domestic partnership” as defined under ORS 106.310.

(5) For good cause shown, the Commission may waive the requirements in this rule to take into account unusual or extraordinary circumstances.

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

Stats. Implemented: ORS 471.757

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 9-2002, f. 6-12-02 cert. ef. 7-1-02; OLCC 9-2008, f. 6-12-08, cert. ef. 7-1-08; OLCC 1-2011, f. 2-23-11, cert. ef. 3-1-11; OLCC 15-2013, f. 12-12-13, cert. ef. 1-1-14

Oregon Public Employees Retirement System Chapter 459

Rule Caption: Clarifies criteria and process for the recovery of overpayments and erroneous payments made by PERS.

Adm. Order No.: PERS 10-2013

Filed with Sec. of State: 11-22-2013

Certified to be Effective: 11-22-13

Notice Publication Date: 9-1-2013

Rules Amended: 459-005-0610

Subject: ORS 238.715 directs PERS to adopt rules establishing the procedures to be followed in recovering overpayments and erroneous payments. OAR 459-005-0610 outlines several options for the recovery of a debt owed to PERS from a benefit recipient.

Section (6) of the rule currently states: “...PERS shall use one of the following methods to effect a full recovery of any overpayment or erroneous payment...” The proposed rule modifications clarify that PERS is allowed more than one method of recovery.

Also, section (7) of the rule states that if an overpayment is caused solely by the actions of PERS or the employer, that an actuarial reduction method (ARM) will be the preferred method to recover that overpayment unless otherwise ordered by the Board. The edits to this rule remove the designation of a preferred method of collection.

Rules Coordinator: Daniel Rivas — (503) 603-7713

459-005-0610

Recovery of Overpayments

(1) Authority and Purpose. In accordance with ORS 238.715, this rule sets forth the criteria and process for the recovery of overpayments and erroneous payments made by PERS. It is the policy of the Board to implement wherever possible, and if cost effective, a full recovery of all overpayments and erroneous payments in the most efficient method available and in the least amount of time possible.

(2) For the purposes of this rule:

(a) “Erroneous payment” means any payment that has been made from the Public Employees Retirement Fund in error, including a payment to a payee that is not entitled to receive the payment.

(b) “Good cause” means a cause beyond the reasonable control of the person. “Good cause” exists when it is established by satisfactory evidence that factors or circumstances are beyond the reasonable control of a rational and prudent person of normal sensitivity, exercising ordinary common sense.

(c) “Lump-sum payment” means any one-time distribution or payment made under ORS Chapters 238 or 238A, or any other law directing PERS to make a payment, including a retroactive adjustment, that is not scheduled to be paid to or on behalf of a payee on a regular monthly basis.

(d) “Monthly payment” means any gross pension, annuity, service or disability retirement allowance, death benefit, or other benefit under ORS Chapter 238 or 238A that is paid monthly to or on behalf of a payee.

(e) “Overpayment” refers to an amount that is in excess of the amount a payee is entitled to under ORS Chapters 238 and 238A.

(f) “Payee” means:

(A) A member, a trust established by the member, or the member’s estate;

(B) A member’s beneficiary, a trust established by the member’s beneficiary, or the estate of the member’s beneficiary;

(C) An alternate payee, as defined in OAR 459-045-0001(2), a trust established by an alternate payee, or the estate of an alternate payee;

(D) The beneficiary of an alternate payee, a trust established by the beneficiary of an alternate payee, or the estate of the beneficiary of an alternate payee; or

(E) Any other recipient of a benefit payment by PERS.

ADMINISTRATIVE RULES

Hist.: PERS 14-1998, f. & cert. ef. 12-17-98; PERS 2-2006, f. & cert. ef. 2-1-06; PERS 10-2013, f. & cert. ef. 11-22-13

(3) In addition to the notice of an overpayment or erroneous payment to a payee required by ORS 238.715(4), PERS shall also send an explanation of the overpayment or erroneous payment; whether the Board asserts a right to assess interest, penalties and costs of collection; and a description of the manner in which the payee may appeal the determinations reflected in the explanation, if applicable.

(4) In determining the amounts owed by a payee and setting a repayment schedule under sections (5) or (6) of this rule, PERS shall reduce the amount owed by any lump-sum payment then owed by PERS to that payee. If the payee should subsequently become entitled to any lump sum payment, it shall be applied against the amounts then owed by that payee. PERS, in its discretion, may revise the repayment schedule or continue on the established schedule until the remaining amounts owed are fully repaid.

(5) The following list includes possible methods for PERS to recover an overpayment under an agreement with the payee. These methods are listed in order of preference. Unless otherwise ordered by the Board, PERS Staff is granted the discretion to select the method deemed most likely to effect a full recovery:

(a) A repayment of all amounts owed in a single payment.

(b) A deduction of a percentage or fixed dollar amount, to be agreed upon between the payee and PERS, from future monthly payments for a period not to exceed two years that will fully repay the amounts owed.

(c) A fixed monthly dollar amount to be agreed upon between the payee and PERS that will fully repay the amounts owed.

(d) A deduction of a percentage or fixed dollar amount from future monthly payments, to be agreed upon between the payee and PERS, for a specified period greater than two years that will fully repay the amounts owed if PERS deems that a longer repayment period is warranted by the payee's personal financial circumstances.

(6) If the payee does not agree to one of the recovery methods under section (5) of this rule, PERS shall use one or more of the following methods to effect a full recovery of any overpayment or erroneous payment:

(a) Deducting not more than 10 percent from current and future monthly payments to a payee until the full amounts owed are recovered.

(b) Making an actuarially determined reduction, not to exceed 10 percent, to current and future payments from PERS calculated to repay the full amount of the overpayment or erroneous payment during the period in which monthly payments will be made to the payee.

(c) Seeking recovery of the overpayment or erroneous payment by using any remedy available to the Board under applicable law.

(d) Engaging the services of outside collection agencies.

(7) If a recovery method has to be selected under section (6) and the overpayment is caused solely by the actions of PERS or a participating public employer, PERS will select a method which imposes the least economic hardship on the member while allowing for a reasonably prudent recovery of the overpayment.

(8) The base or original benefit payment used to calculate cost-of-living adjustments, ad hoc increases, or other benefit increases shall not be altered by an actuarial reduction provided for in subsection (6)(b) of this rule.

(9) In the event that PERS determines that an overpayment or erroneous payment was not caused by PERS or by the actions of a participating public employer, PERS may include within the amounts owed by the payee:

(a) All costs incurred by PERS in recovering the overpayment or erroneous payment, including attorney fees, and fees assessed by an outside collection agency; and

(b) Interest in an amount equal to one percent per month on the balance of the overpayment or erroneous payment until that payment is fully recovered.

(10) The Board authorizes the Director, or the Director's designee, to waive:

(a) The interest and costs of collection associated with the recovery of an overpayment or erroneous payment for good cause shown; and

(b) The recovery of any overpayment or erroneous payment if the total amount of overpayments or erroneous payments is less than \$50.

(11) Recovery of an overpayment or erroneous payment shall not be effected if PERS has not initiated recovery of those payments within six years after the date the overpayment or erroneous payment was made. PERS initiates recovery on the date it mails the notification required by ORS 238.715(4).

(12) The recovery of an overpayment or an erroneous payment shall take precedence over other deductions or reductions as set forth in OAR 459-005-0600.

Stat. Auth.:ORS 238.715(9), 238.630 & 238.650
Stats. Implemented: ORS 238.715

Rule Caption: Clarifies the requirements of a court-ordered divorce award.

Adm. Order No.: PERS 11-2013

Filed with Sec. of State: 11-22-2013

Certified to be Effective: 11-22-13

Notice Publication Date: 9-1-2013

Rules Amended: 459-045-0010

Subject: OAR 459-045-0010 was adopted in 1996 to describe how PERS benefits may be divided due to a divorce. The intent of this rule is to further clarify divorce provisions so practitioners can develop court orders that can be administered by PERS and accurately complete related forms that provide PERS with required information.

This rulemaking will clarify the requirements for the division of lump sum benefits and provide additional design requirements for the PERS divorce forms. Sections (3) and (4) were edited to include lump sums as a benefit that may be divided by a qualified domestic relations order.

Rules Coordinator: Daniel Rivas—(503) 603-7713

459-045-0010

Tier One/Tier Two Division of Benefits

(1) A final court order that provides for a division of benefits must use a method described in this rule.

(a) The method must be identified on PERS divorce forms.

(b) The PERS divorce forms must be attached as exhibits to the court order, and incorporated by reference in the court order.

(2) Award of Alternate Payee Account (Non-Retired Member). If a final court order provides an award of an alternate payee account, the court order must provide:

(a) The date of annulment, separation, divorce, or property settlement.

If no date is provided, PERS will use the date the judge signed the court order. The separate account will be established as of December 31 of the calendar year before this date unless:

(A) A prior year is provided in the court order; or

(B) The date is December 31.

(b) That a separate account be established in an alternate payee's name.

(c) The method by which the award is to be calculated. One of the following methods must be used:

(A) A percentage, expressed with up to two decimal points; or

(B) A dollar amount.

(d) Whether an alternate payee is awarded matching employer dollars.

(e) That an alternate payee may elect to receive the award at any time after the member's earliest retirement eligibility.

(3) Award of Payment from Member's Benefit (Non-Retired Member). If a final court order awards an alternate payee a reduction or deduction amount from the service or disability retirement benefit that shall be paid in the future to the member, the court order must provide:

(a) The date of annulment, separation, divorce, or property settlement.

If no date is provided, PERS will use the date the judge signed the court order.

(b) Whether the award is a reduction or deduction from the member's benefit. If the award is a reduction, the court order must provide whether the alternate payee is eligible to elect a separate benefit option at any time after the member reaches earliest retirement eligibility.

(c) The benefit division calculation method that is applied to both the monthly, and if applicable, lump sum award. One of the following calculation methods must be used:

(A) A percentage, expressed with up to two decimal points;

(B) A dollar amount; or

(C) A percentage of the married time ratio. The court order must provide:

(i) The percentage, expressed with up to two decimal points; and

(ii) The years and months of creditable service time accrued by the member during a specified period or while married to the alternate payee.

(d) If there is a specific end date or dollar amount limit to the award, and what that date or limit is.

(e) Whether the award applies to service retirement benefits, disability retirement benefits, or withdrawal benefits.

(f) Whether the member is restricted from withdrawing as a member under ORS 238.265.

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(g) Whether the member must select a specific benefit payment option at retirement.

(h) Whether the member is required to designate the alternate payee as a beneficiary:

- (A) Before retirement; or
- (B) At retirement.

(i) Whether an alternate payee award continues after the death of:

- (A) The member; or
- (B) The alternate payee.

(4) Award of Benefit (Retired Member). If a final court order awards an alternate payee an amount payable from a retired member's service or disability retirement benefit, the court order must provide:

(a) The date of annulment, separation, divorce, or property settlement. If no date is provided, PERS will use the date the judge signed the court order.

(b) Whether an alternate payee award is a reduction or deduction from the member's monthly benefit, and if applicable, lump sum.

(c) The benefit division calculation method that is applied to both the monthly, and if applicable, lump sum award. One of the following calculation methods must be used:

- (A) A percentage, expressed with up to two decimal points; or
- (B) A dollar amount.

(d) If there is a specific end date or dollar amount limit to the award, and what that date or limit is.

(e) Whether the member may or must change their beneficiary designation. If the member's beneficiary designation is changed, the member's monthly benefit must be recalculated.

(f) Whether a member who elected Option 2A or 3A under ORS 238.305(1) is allowed to receive the Option 1 benefit under ORS 238.305(6).

(g) Whether an alternate payee award continues after the death of:

- (A) The member; or
- (B) The alternate payee.

Stat. Auth.: ORS 238.465 & 238.650
Stats. Implemented: ORS 238.465

Hist.: PERS 5-1996, f. & cert. ef. 6-11-96; PERS 21-2005, f. & cert. ef. 11-1-05; PERS 4-2010, f. & cert. ef. 5-28-10; PERS 11-2013, f. & cert. ef. 11-22-13

Rule Caption: Permits a judge member to elect more than one beneficiary under ORS 238.565.

Adm. Order No.: PERS 12-2013

Filed with Sec. of State: 11-22-2013

Certified to be Effective: 11-22-13

Notice Publication Date: 9-1-2013

Rules Amended: 459-040-0060, 459-040-0070

Subject: Senate Bill 771 (2013) became effective on June 26, 2013. Prior to passage of the bill, a judge member was prohibited from electing more than one beneficiary to receive death benefits. This bill permits a judge member to elect more than one beneficiary. These modifications conform the administrative rules to the statutory amendment.

Rules Coordinator: Daniel Rivas—(503) 603-7713

459-040-0060

Judge Member Death Before Retirement

If a judge member dies before retiring, benefits shall be distributed and calculated as follows:

(1) For a surviving spouse:

(a) If the judge member has six or more years of service as a judge and the judge member is not an inactive judge member performing pro tem service under the provisions of ORS 238.545(4), the surviving spouse shall receive a life pension equal to two-thirds of the retirement allowance the judge member would have received under Plan A, had the judge member retired on the date of death.

(b) If the judge member has six or more years of service as a judge and the judge member is an inactive judge member performing pro tem service under the provisions of ORS 238.545(4) at the time of death, the surviving spouse shall receive a life pension equal to two-thirds of the service retirement allowance the judge member would have received under Plan B, had the judge member retired on the date of death.

(c) If the judge member has less than six years of service as a judge, the surviving spouse shall receive a lump sum payment equal to the amount credited to the judge member account in the Fund on the first of the month following the date of death.

(d) If a surviving spouse receiving a life pension under this section dies and the total amount of pension payments received by the surviving spouse is less than the amount that had been credited to the deceased judge member's account as of the date of death of the judge member, the designated beneficiary or beneficiaries of the judge member shall receive a lump sum payment equal to the remainder.

(2) For purposes of computing a surviving spouse's life pension in section (1) of this rule, a judge member who dies before age 60 is deemed to have died at age 60.

(3) If the judge member has six or more years of service as a judge and the judge member has no surviving spouse, the designated beneficiary or beneficiaries shall receive a lump sum payment equal to the amount credited to the judge member account in the Fund on the first of the month following the date of death.

(4) If the judge member has no surviving spouse and designated a beneficiary or beneficiaries at death, a lump sum payment equal to the amount credited to the judge member's account on the date of death shall be paid to the judge member's beneficiary or beneficiaries.

(5) If the judge member has no surviving spouse and no designated beneficiary or beneficiaries at death, a lump sum payment equal to the amount credited to the judge member's account on the date of death shall be paid to the judge member's estate.

(6) If the judge member, under the provisions of ORS 238.565(8), elects to have a portion of the pension payable to a surviving spouse paid to a former spouse, the designated portion shall be paid to the former spouse as a life pension. The portion of the pension not paid to the former spouse shall be paid to the surviving spouse, if any.

(a) The life of the first former spouse designated to receive a pension under ORS 238.565(8) will be the measuring life of the pensions payable to the surviving spouse and to any other former spouse.

(b) Upon the death of the first designated former spouse, the pensions payable to the surviving spouse and to any other former spouse shall cease.

(c) If, at the death of the first designated former spouse, the total amount of the payments received by the surviving spouse and former spouse(s) is less than the amount that had been credited to the deceased judge member's account as of the date of the judge member's death, the judge member's designated beneficiary or beneficiaries shall receive a lump sum payment equal to the remainder.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.565

Hist.: PERS 11-2007, f. & cert. ef. 7-26-07; PERS 12-2013, f. & cert. ef. 11-22-13

459-040-0070

Judge Member Death After Retirement

If a judge member dies after the effective retirement date, benefits shall be distributed and calculated as follows:

(1) Surviving Spouse Standard Two-thirds Benefit. The surviving spouse of a judge member shall receive a life pension equal to two-thirds of the service retirement allowance the judge member is receiving or is entitled to receive on the date of death.

(2) Additional benefit for surviving spouse. The surviving spouse may be entitled to an addition to the pension described in section (1) of this rule if:

(a) The judge member selected a reduced retirement allowance under ORS 238.565(4); and

(b) The surviving spouse is the spouse of record on the effective date of retirement.

(3) No surviving spouse. If the judge member has no surviving spouse and the total amount of retirement allowance received by the retired judge member is less than the amount credited to the judge member account on the judge member's effective retirement date, the designated beneficiary or beneficiaries shall receive a lump sum payment equal to the remainder.

(4) Death of surviving spouse. If a surviving spouse receiving a pension under section (1) of this rule dies and the total amount received as retirement allowance by the retired judge member and as pension by the surviving spouse is less than the amount credited to the judge member account on the effective date of retirement of the judge member, the designated beneficiary or beneficiaries of the judge member shall receive a lump sum payment equal to the remainder.

(5) Default beneficiary. If the judge member has no valid written designation of beneficiary form filed with the PERS Board before the judge member's death, the beneficiary of the judge member shall be the personal representative of the judge member's estate.

(6) Unpaid accrued retirement allowance. Any accrued retirement allowance due a retired judge member that is unpaid at the time of death of the judge member shall be paid as follows:

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- (a) To the surviving spouse of the judge member;
- (b) If there is no surviving spouse of the judge member, to the beneficiary or beneficiaries of the judge member; or
- (c) If there is no surviving spouse or beneficiary of the judge member, in the manner provided for payments under ORS 238.390(2).

(7) If the judge member, under the provisions of ORS 238.565(8), elects to have a portion of the pension payable to a surviving spouse paid to a former spouse, the designated portion shall be paid to the former spouse as a life pension. The portion of the pension not paid to the former spouse shall be paid to the surviving spouse, if any.

(a) The life of the first former spouse designated to receive a pension under ORS 238.565(8) will be the measuring life of the pensions payable to the surviving spouse and to any other former spouse.

(b) Upon the death of the first designated former spouse, the pensions payable to the surviving spouse and to any other former spouse shall cease.

(c) If, at the death of the first designated former spouse, the total amount of the payments received by the retired judge member and the payments received by the surviving spouse and former spouse(s) is less than the amount credited to the deceased judge member's account on the judge member's effective retirement date, the judge member's designated beneficiary or beneficiaries shall receive a lump sum payment equal to the remainder.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.565

Hist.: PERS 11-2007, f. & cert. ef. 7-26-07; PERS 12-2013, f. & cert. ef. 11-22-13

Oregon State Lottery
Chapter 177

Rule Caption: Revises probability of winning tables for the Division 2, 3, and 4 Megabucks prizes.

Adm. Order No.: LOTT 6-2013

Filed with Sec. of State: 11-25-2013

Certified to be Effective: 12-1-13

Notice Publication Date: 10-1-2013

Rules Amended: 177-075-0040

Rules Repealed: 177-075-0040(T)

Subject: The Oregon Lottery has revised the probability of winning tables for the Division 2, 3, and 4 Megabucks prize categories to make them more precise.

Rules Coordinator: Mark W. Hohlt—(503) 540-1417

177-075-0040

Probability of Winning

(1) The following tables set forth the probability of winning and the probable distribution of winners in and among each prize category, based upon the total number of possible combinations of six drawn from a field of 48 numbers. [Table not included. See ED. NOTE.]

(2) If there is no Megabucks Division 2 or 3 prize winner, the Megabucks Plus Kicker Division 2 prize shall be \$3200 and the Division 3 prize shall be \$160.

[ED. NOTE: Tables referenced are available from the agency.]

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

Stats. Implemented: ORS 461.220

Hist.: SLC 11-1985(Temp), f. & ef. 10-24-85; SLC 6-1986, f. & ef. 3-5-86; SLC 12-1986, f. 5-28-86, ef. 6-1-86; LC 10-1989(Temp), f. 4-25-89, cert. ef. 4-30-89; LC 11-1989, f. & cert. ef. 7-6-89; LC 9-1990, f. 7-20-90, cert. ef. 8-5-90; LC 10-1990(Temp), f. & cert. ef. 8-21-90; LC 13-1990, f. & cert. ef. 11-1-90; LC 2-1993, f. & cert. ef. 2-25-93; LC 3-1995, f. & cert. ef. 4-27-95; LOTT 8-2001(Temp), f. & cert. ef. 5-18-01 thru 11-9-01; LOTT 11-2001, f. & cert. ef. 8-7-01; LOTT 3-2013(Temp), f. & cert. ef. 8-29-13 thru 2-14-13; LOTT 6-2013, f. 11-25-13, cert. ef. 12-1-13

Oregon University System
Chapter 580

Rule Caption: Increase the amount of vacation payout to 260 hours for a set period of time

Adm. Order No.: OUS 8-2013(Temp)

Filed with Sec. of State: 11-20-2013

Certified to be Effective: 11-20-2013 thru 3-13-14

Notice Publication Date:

Rules Amended: 580-021-0030

Subject: Pertains to the eligibility, accrual, and use of unclassified employee vacation leave hours.

Rules Coordinator: Marcia M. Stuart—(541) 346-5749

580-021-0030

Vacations

(1) Eligibility. Vacation means absence from work permitting rest and recreation for a specified period of time during which regular compensation continues. Unclassified employees gain vacation privileges only if employed at .50 FTE or more on a 12-month appointment.

(2) Computation. Eligible unclassified employees accrue vacation on a monthly basis, beginning the first of the month following date of hire or on the first of the month if an employee is hired the first working day of the month. Vacation accrues on the last day of the month and is available for use the first day of the next month subject to the restrictions in Section (3) of this rule. A 9-month employee appointed to a 12-month contract may receive credit for the previous 9-month contract, on a pro-rata basis. Eligible employees with a 12-month, 1.0 FTE contract accrue 15 hours of vacation per month; eligible employees on a .50 FTE or more contract accrue vacation in proportion to their FTE. An employee who terminates OUS employment before completing the 6-month wait period receives no vacation, and is not entitled to compensation for vacation accrued. On February 28, 1998, eligible employees shall be credited with vacation leave on a pro-rata basis at a rate of 14.67 hours per month as if monthly accrual had begun on their last vacation anniversary date or, for those employed fewer than 11 months, on their date of hire.

(3) Wait Period and Maximum Balance. Vacation accrual is available to the unclassified employee for use six months after vacation accrual begins. Until September 1, 1999, there will be no maximum on the amount of vacation leave that an employee can accrue. However, effective September 1, 1999, no employee may accrue in excess of 260 hours, and any accrued vacation leave in excess of this cap will be forfeited.

(4) Transfer.

(a) Inter-institutional/Unclassified to Unclassified. If an eligible unclassified employee transfers to another unclassified position within the Department and remains eligible for vacation accrual, the employee shall transfer all accrued vacation leave to the new position. However, if there is a break in service for more than 30 days, all accrued vacation pay will be paid off by the sending institution and the employee will be considered a new hire in the position. Moving from position to position within the same institution shall not be considered a transfer or a break in service for purposes of this rule.

(b) For purposes of this Rule, OHSU shall be considered an institution within the Department whereby an OHSU unclassified employee who "transfers to unclassified position within the Department and remains eligible for vacation accrual," may, subject to approval by the receiving department or institution, transfer all accrued vacation time from OHSU to an institution within the Department; upon such a transfer, the vacation benefits of a former OHSU employee shall be administered in accordance with 580-021-0030.

(c) Classified to Unclassified Appointment. If a classified employee of the Department receives an unclassified appointment within the Department and is eligible for vacation leave, the employee may bring up to 80 hours of accrued vacation leave; the receiving department or institution may accept up to 250 hours maximum. The former classified employee shall receive cash compensation from the sending department or institution for any remaining accrued vacation leave. The former classified employee may use accrued vacation without serving a 6 month wait period.

(5) The accrual of vacation leave is reduced on a pro-rata basis for the period of leave without pay, sabbatical leave, and educational leave. Vacation leave is accrued during other periods of paid leave.

(6) Payment for Accrued Vacation Leave. Unclassified employees are not entitled to payment for unused vacation leave except upon termination of employment or upon transfer within the Department to another unclassified position not eligible for vacation benefits. Unclassified employees who transfer to a classified position within State of Oregon employment are subject to applicable OUS rules or collective bargaining agreements governing payment for accrued vacation. The maximum number of hours that can be paid upon termination or transfer is 180 hours.

(7) Scheduling and Use of Vacation Leaves. Vacation leaves are scheduled with the approval of the employee's supervisor and should be planned cooperatively with the employee. Vacation leave should be scheduled in such a manner as to minimize disruption to the organization. Supervisors must be reasonable in allowing the use of vacation leave and may not unreasonably deny vacation requests where the result would be the forfeiture of accrued vacation. For purposes of calculation, one normal work day is the equivalent of eight hours of vacation leave for a full-time employee.

ADMINISTRATIVE RULES

(8) Record Keeping. Each institution is responsible for maintaining the individual records of vacation accrual and use.

(9) Vacation Donation. The transfer of vacation time, for use by another employee, classified or unclassified, is not permitted.

(10) Vacation Borrowing. Employees are not permitted to borrow against vacation that is not yet accrued. (Section 12, relating to interim provisions for employees moving from Management Service to Unclassified Service, was repealed December 1, 1999.)

(11) Notwithstanding section (6) of this rule, from the period December 1, 2013 through June 30, 2015, unclassified employees of the Office of the Chancellor, upon termination or transfer as described in this rule, may receive cash payment for up to 260 hours of accrued vacation leave.

Stat. Auth.: ORS 240 & 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 11-1984, f. & ef. 11-9-84; HEB 10-1990, f. & cert. ef. 7-26-90; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 4-1996, f. & cert. ef. 10-24-96; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 2-1998, f. & cert. ef. 2-25-98; OSSHE 7-2001(Temp), f. & cert. ef. 12-5-01 thru 5-1-02; OSSHE 2-2002, f. & cert. ef. 5-1-02; OUS 8-2013(Temp), f. & cert. ef. 11-20-13 thru 3-13-14

Oregon University System, Eastern Oregon University Chapter 579

Rule Caption: To amend Eastern Oregon University Student Code of Conduct

Adm. Order No.: EOU 5-2013

Filed with Sec. of State: 12-6-2013

Certified to be Effective: 12-6-13

Notice Publication Date: 11-1-2013

Rules Amended: 579-040-0005, 579-040-0007, 579-040-0010, 579-040-0013, 579-040-0015, 579-040-0030, 579-040-0035, 579-040-0045

Rules Repealed: 579-040-0020

Subject: The revisions to the Eastern Oregon University Student Code of Conduct reflect institutional changes, current verbiage within the conduct filed, as well as current standards of practice as a result of federal mandates related to sexual misconduct.

The suspension of 579-040-0020 is a result of its incorporation of disciplinary hearing process into 579-040-0015

Rules Coordinator: Teresa Carson-Mastrude—(541) 962-3773

579-040-0005

Student Code of Conduct

(1) Eastern Oregon University (EOU) is dedicated to a campus culture that upholds the highest standards of individual, interpersonal and academic excellence. The college experience involves a fusion of the learning process with the development of positive attitudes and standards of behavior. In keeping with EOU's values, any sanctions imposed are for the purposes of reaffirming the standards of the University community, educating students and student organizations about the seriousness of their action(s), promoting civility and positive growth, while maintaining the safety and integrity of the University community.

(2) The Student Code of Conduct applies to all on and off campus students. This Code applies to individual students and student organizations. In addition to growing intellectually and academically, students and student organizations are expected to uphold appropriate standards of behavior, form attitudes of scholarship, take personal responsibility, and respect the rights and privileges of others.

(3) Conduct occurs in the context of a community of scholars dedicated to personal and academic excellence. Joining this community obligates each member to observe the principles of:

(a) Exemplifying personal and academic integrity;

(b) Respecting the dignity, rights and property of all persons;

(c) Opposing bigotry and prejudice by striving to be open to differences, ideas, and opinions, and encouraging community support of these differences;

(d) Demonstrating concern for others, their safety and need for conditions that support their work and development; and

(e) Refraining from and discouraging behaviors that threaten the freedom and respect every individual deserves.

(4) Definitions:

(a) The term "University" means Eastern Oregon University.

(b) For the purposes of the Student Code of Conduct, the term "student" includes all persons taking courses at the University, either full-time or part-time, pursuing undergraduate, graduate, or professional studies. Persons who withdraw after allegedly violating the Student Code of Conduct, who are not officially enrolled for a particular term but who have a continuing relationship with the University, or who have been notified of their acceptance for admission are also considered "students."

(c) The term "faculty" means any person hired by the University to conduct classroom or teaching activities or who is otherwise considered by the University to be a member of its faculty.

(d) The term "University official" includes any person employed by the University, performing assigned administrative or professional responsibilities.

(e) The term "member of the University community" includes any person who is a student, faculty member, University official or any other person employed by the University. A person's status in a particular situation shall be determined by the Senior Hearings Officer.

(f) The term "University premises" includes all land, buildings, facilities, and other property in the possession of owned, used, or controlled by the University.

(g) The term "organization" means any number of persons who have complied with the formal requirements for University recognition or registration.

(h) The term "Campus Hearings Officer" means any person or persons authorized by the Senior Hearings Officer to determine whether a student has violated the Student Code of Conduct and to implement sanctions when a violation is determined to have been committed.

(i) The term "Senior Hearings Officer" is that person designated by the University President to be responsible for the administration of the Student Code of Conduct.

(j) The term "Student Conduct Program Administrator" means a University official authorized by the Senior Hearings Officer to insure procedural fairness for all accused students, is responsible for scheduling conduct hearings and/or establishing records.

(k) The term "Student Conduct Coordinator" means a University official authorized by the Senior Hearings Officer to insure administration of the conduct program within an identified area, to insure procedural fairness for accused students in the identified area, responsible for scheduling conduct hearings and/or establishing and managing records.

(l) The term "Student Hearings Committee" means a specially trained committee of faculty, staff, and students authorized by the Senior Hearings Officer to determine whether a student has violated the Student Code of Conduct and to recommend sanctions when a violation is determined to have been committed.

(m) The term "policy" means the written regulations of the University as found in, but not limited to, the Student Code of Conduct, Room and Dining Contract, the University website, Information Technology Acceptable Use Policy, and Undergraduate/Graduate Catalogs.

(n) The terms related to academic honesty including "cheating, fabrication, facilitation, plagiarism or tampering" are defined in the Academic Honesty Code.

(o) The term "Complainant" refers to any member of the University community who submits a complaint alleging that a student has violated the Student Code of Conduct.

(p) The term "Respondent" means any student accused of violating the Student Code of Conduct.

(q) The term "Findings of Fact" means that the facts of the case are those events, circumstances, incidents, or actions that are found to be true based upon the evidence.

(r) The term "Good Standing" means a student is in good disciplinary standing when there are no pending, outstanding, or ongoing sanctions and/or the student is not on probationary or suspended status with the institution.

(s) The term "Advisor" refers to someone selected to serve as an advisor. Students may consult with their advisor during the hearing process in a manner that does not disrupt the proceedings. The advisor shall not speak on behalf of the student, question witnesses, present information or argue on behalf of the student.

(5) Prohibited Conduct. The following are offenses subject to disciplinary action: The Code of Conduct should be read broadly. It does not define all prohibited conduct in exhaustive terms. The University may initiate disciplinary action and impose sanctions against any student or officially recognized student organization/club which commits any of the following acts proscribed by the State Board of Higher Education and the University:

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(a) Disruption, Obstruction, and/or Interference.

(A) Obstruction or disruption of teaching, research, administration, disciplinary procedures, or other institutional activities, including the institution's public service functions or other authorized activities.

(B) Obstruction or disruption that interferes with the freedom of movement, either pedestrian or vehicular.

(C) Inciting others to engage in any of the conduct or to perform any of the acts prohibited by this or other University policy. Inciting means advocacy or proscribed conduct which calls upon the person or persons addressed for imminent action, and is coupled with a reasonable apprehension of imminent danger to the functions and purposes of the institution, including the safety of its students, faculty, and officials, and the protection of its property.

(b) Weapons and Destructive, Chemical and/or Incendiary Devices. Possession or use of firearms, explosives, dangerous chemicals, or other dangerous weapons or instrumentalities, unless otherwise authorized by law or policy.

(c) Harassment, Discrimination, or other Abusive Behavior.

(A) Physical or written/verbal abuse, threats, intimidation, harassment, coercion, bullying, or other conduct directed at a specific person, which threatens the health and safety of any person or seriously alarms or intimidates another person is prohibited.

(B) Written abuse, intimidation, or harassment through the use of Internet peer-networking sites, weblogs, or other online media which is open to the public is prohibited.

(C) Remarks, actions, or gestures which have the purpose or effect of creating an intimidating, hostile, and/or offensive working, campus living, and/or academic experience due to race, color, sex, religion, age, marital status, national origin, gender identity or expression, the presence of any physical or sensory disability, veteran status, sexual orientation or any other basis protected by applicable local, state or federal law is prohibited.

(d) Failure to Comply.

(A) Failure to comply with directives of University officials, acting in performance of their duties, and/or failure to identify oneself to these persons when requested to do so.

(B) Failure to comply with the conditions of the EOU Room and Dining Contract is prohibited.

(e) Vandalism or Unauthorized Use of Property.

(A) Vandalism, malicious damage or misuse of institutional property, or the property of any other person where such property is located on institutionally-owned or -controlled property, or, regardless of location, is owned by or in the care, custody, or control of the University or a member of the University Community.

(B) Unauthorized entry to or use of institutional facilities, including the buildings and grounds.

(f) Controlled Substances.

(A) Possession or consumption of alcohol beverages by persons under 21 years of age, or furnishing of alcoholic beverages to persons under 21 years is prohibited. Possession or use of alcohol in any campus location or University sponsored or supervised activity, without University approval is prohibited regardless of age. Regulations concerning use of alcoholic beverages by students in University housing units and by recognized student organizations on or off campus are detailed in the Eastern Oregon University Student Drug and Alcohol Policy, the Room and Dining Contract and the Tailgating Policy.

(B) Use of tobacco products in unauthorized locations on campus in violation of state law, University, or public health regulations.

(C) Use, under the influence, possession, cultivation, manufacture, promotion, sale, and/or distribution of narcotics or other controlled substances, except as otherwise authorized by law or policy, is prohibited.

(D) Use and/or possession of prescription drugs of another is prohibited.

(g) Academic Misconduct. Academic Misconduct involves behaviors such as cheating, fabrication, facilitation, plagiarism or tampering in connection with an educational program of the institution.

(h) Deliberate Acts of Dishonesty.

(A) In general, acts of dishonesty are prohibited. Such acts may include, but are not limited to forging, altering, misusing, or mutilating University documents, records, identification, educational materials, or other University property.

(B) Intentionally furnishing false information, including false identification.

(i) Sexual Misconduct. Sexual Misconduct is defined as any sexual contact or sexual behavior that is non-consensual and/or inflicted upon someone who is incapacitated, and/or forced, and is prohibited.

Additionally, Sexual Exploitation, and Sexual Harassment are prohibited. Definitions, as outlined by the Oregon University System, are as follows:

(A) Sexual Contact means the touching of the genitalia, anus, buttocks, breasts or mouth, as well as, any contact for the purpose of sexual gratification.

(B) Sexual Behavior means any action, short of sexual contact, done for purposes of sexual gratification, and may include but is not limited to voyeurism, exposing, masturbation, frottage, and audio/video recording.

(C) Non-consensual means the absence of shared sexual permission. Shared sexual permission is clear, voluntary, non-coerced and clearly indicates a willingness to participate in sexual contact/behavior, whether through affirmative verbal responses or non-verbal communication unmistakable in meaning and given by an adult (age 18 or older). Shared sexual permission to one form of sexual contact/behavior does not operate as permission to any other form of sexual contact/behavior.

(D) Incapacitation is a mental or physical condition that renders a person unable to grant consent. Incapacitation may be a state or condition resulting from the use of alcohol or other drugs, or lack of sleep, sleep, and unconsciousness. Incapacitation may also be the result of a cognitive impairment, such as a developmental disability, brain injury, or mental illness.

(E) Force includes but is not limited to physical force, violence, abuse, threat of force (direct or implied), intimidation, extortion, harassment, coercion, fraud, duress or verbal pressure.

(F) Sexual Exploitation occurs when a person takes non-consensual, unjust or abusive advantage of another in a sexual or intimate context, for his/her own advantage or benefit, or to benefit or advantage of anyone other than the one being exploited, and that behavior does not otherwise constitute non-consensual sexual misconduct. Sexual exploitation includes permitting or facilitating non-consensual viewing, taking of photographs, videotaping, or audio taping of sexual or intimate activity, knowingly inflicting another person with HIV or other sexually transmitted infection, inducing incapacitation of another person with the intent to facilitate sexual misconduct against that person, and/or compelling prostitution.

(G) Sexual Harassment includes unwelcome sexual advances, requests for sexual favors, and other physical conduct of a sexual nature when:

(i) Submission to such conduct is made a term or condition of employment or academic advancement (explicitly or implicitly).

(ii) Submission or rejection to such conduct is used as a basis for employment or academic advancement decisions, or

(iii) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or learning environment; or creating an intimidating, hostile or offensive work, academic, residential living, or any University-related environment.

(j) Stalking. Stalking is a pattern of repeated harassment by unwanted attention and/or contact, and is prohibited. Stalking includes, but is not limited to:

(A) Following or lying in wait for the victim.

(B) Repeated unwanted, intrusive, and frightening contact from the perpetrator by phone, mail, email, etc.

(C) Damaging the victim's property.

(D) Making direct or indirect threats to harm the victim, the victim's children, relatives, friends, or pets.

(E) Repeatedly sending the victim unwanted gifts.

(F) Harassment through the Internet, known as "cyberstalking," "online stalking," or "Internet stalking."

(G) Securing personal information about the victim by accessing public records, using Internet search devices, hiring private investigators, contacting friends, family, work, or neighbors, going through the victim's garbage, following the victim, etc.

(k) Hazing. Hazing, is an act which endangers the mental or physical health or safety of a student, or which destroys or removes public or private property, or which endangers or harms animals, for the purpose of initiation, admission into, affiliation with, or as a condition for continued membership in, a group or organization. The express or implied consent of the complainant will not be a defense. Apathy or acquiescence in the presence of hazing may also be considered violations of this Code.

(l) Disorderly Conduct. Loud, aggressive, abusive, and/or other behavior which disrupts the orderly functioning of the University or disturbs the peace.

(m) Theft. Possession of, attempted or actual theft of, or misappropriation of property, equipment, materials, services, or data of the University, faculty, staff, students or guests.

(n) Unwelcome or Unauthorized Use of Technology.

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(A) Attempted or actual theft or other misuse of computer facilities and resources, including but not limited to any violation of the University Acceptable Use Policy.

(B) The use of any device to make a recording of any person while on University premises without prior knowledge, or without consent when such a recording is likely to cause injury or distress. This includes, but is not limited to, surreptitiously taking pictures of another person in a gym, locker room, or restroom.

(C) Abuse of the Student Conduct System. Abuse of the Student Conduct System, including but not limited to: failure to obey the notice from the Senior Hearings Officer or his/her designee, the Student Conduct Program Administrator or Coordinator, a Campus Hearings Officer, or University official to appear for a meeting or hearing as part of the Student Conduct process; falsification, distortion, or misrepresentation of information before a Campus Hearings Officer or Student Hearings Committee; disruption or interference with the orderly conduct of a conduct proceeding; participation in a conduct proceeding in bad faith; attempting to discourage an individual's proper participation in, or use of, the conduct; attempting to influence the impartiality of a member of a Student Hearings Committee or a Campus Hearings Officer prior to, and/or during the course of the hearing; harassment (verbal or physical) and/or intimidation of a member of a Student Hearings Committee or a Campus Hearings Officer prior to, during, and after a hearing; failure to comply with the sanction(s) imposed under the Student Code of Conduct; influencing or attempting to influence another person to commit an abuse of the Student Conduct process.

(D) Violation of University Policy, Local, State, or Federal Laws

(A) Violation of any University policy, rule, or regulation published or posted in hard copy or available electronically on the University website.

(B) Conviction of any federal or state law or city or local ordinance.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070 & 351.088

Hist.: EOSC 5(Temp), f. 3-31-77, ef. 4-1-77; EOSC 10, f. & ef. 8-15-77; EOSC 5-1992, f. 11-16-92, cert. ef. 1-1-93; EOU 4-2005, f. & cert. ef. 7-7-05; EOU 2-2007, f. & cert. ef. 8-15-07; EOU 3-2013(Temp), f. & cert. ef. 8-6-13 thru 12-31-13; EOU 5-2013, f. & cert. ef. 12-6-13

579-040-0007

Jurisdiction

(1) The provisions of OAR 579-040-0005 apply to all students and activities on University owned or controlled property; during any University-sponsored activity or the activity of a University-sponsored or recognized organization, regardless of location; when the behavior adversely impacts the University Community, or any persons or property on campus or University sites; or the orderly operation of the institution. Activities include, but are not limited to field trips, athletic events, and all co-curricular activities or theatre/music productions.

(2) In general, the off-campus activities of students are viewed as their personal business. When a student is charged by federal, state, or local authorities with a violation of law, the University will not request or agree to special consideration for that individual because of their status as a student. If the alleged offense is also being processed under the Student Code of Conduct, the University may advise off-campus authorities of the existence of the Student Code of Conduct and of how such matters are typically handled within the University community. The University will attempt to cooperate with law enforcement and other agencies in the enforcement of criminal law on campus and in the conditions imposed by criminal courts for the rehabilitation of violators (provided that the conditions do not conflict with campus rules or sanctions). Individual students and other members of the University community, acting in their personal capacities, remain free to interact with governmental representatives as they deem appropriate. When a student violates local, state, or federal laws and/or violates the Student Code of Conduct, regardless of location, the University reserves the option of initiating and carrying out disciplinary action on its own.

(3) The student disciplinary process is fundamentally different from the criminal legal process, with differing purpose, objectives, procedures and standards of proof and potential learning outcomes.

(4) Determinations made or sanctions imposed under the Student Code of Conduct shall not be subject to change because criminal charges arising out of the same facts giving rise to violation of University rules were dismissed, reduced, or resolved in favor of or against the criminal law defendant.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070 & 351.088

Hist.: EOU 4-2005, f. & cert. ef. 7-7-05; EOU 2-2007, f. & cert. ef. 8-15-07; EOU 3-2013(Temp), f. & cert. ef. 8-6-13 thru 12-31-13; EOU 5-2013, f. & cert. ef. 12-6-13

579-040-0010

Student's Rights and Responsibilities

This Code outlines the procedures to be followed by the University.

(1) Respondents charged with violations of University regulations have the following rights in accordance OAR 579-040-0013:

(a) Written notice to include:

(A) Time, location, and/or other relevant information regarding the conduct violation(s);

(B) Reference to the particular section(s) of the Student Code of Conduct that is/are alleged to have been violated;

(C) The information regarding an educational conference to be scheduled no earlier than three days from the date of the notice unless requested by the student; and

(D) Where the Student Code of Conduct and the Hearing Procedures may be found.

(b) The opportunity to provide input about whether a Campus Hearings Officer or the Student Hearings Committee will hear the case;

(c) The right to be accompanied by an advisor when the student is presenting information to the Hearings Officer or Student Hearings Committee or presenting information in any other context to University officials as a part of the student conduct process;

(d) The opportunity to review all information being considered at a conduct hearing;

(e) The opportunity to have witnesses relevant to the case at hand and/or documents in support of the student's defense;

(f) The opportunity to appeal (see Grounds for an Appeal).

(2) Respondents have the following responsibilities:

(a) To appear at the designated time and place for an educational conference or hearing to answer the complaint(s) filed. Failure to appear at the educational conference or hearing will result in the Hearings Officer or Student Hearings Committee issuing a decision based on the information available;

(b) To meet with a Campus Hearings Officer or Coordinator, or her/his designee, to review hearing policies and procedures during an educational conference;

(c) To provide a list of all witnesses who will appear on the student's behalf to the Hearings Officer or Student Hearings Committee at least 48 hours prior to the scheduled conduct hearing.

(d) To maintain civil decorum during the conduct process.

(3) Complainant's Rights

(a) A complainant has the right to have an advisor or advocate accompany them when they are presenting information to the Hearings Officer or Student Hearings Committee or presenting information in any other context to University officials as a part of the student conduct process.

(b) A complainant has the right to request to be permitted to present their side of the story in a separate room from the respondent at the conduct hearing so long as the process, as a whole, does not unduly compromise the respondent's right to have the Hearings Officer or Chair of the Student Hearings Committee ask the complainant questions.

(c) A complainant has a right to submit an impact statement to the Hearings Officer or Chair of the Student Hearings Committee for consideration in the sanctioning phase of the conduct process only. The statement may include a description of how the complainant was impacted by the behavior and may include recommendations for sanctions, penalties, or restitution. The Hearings Officer or Student Hearings Committee, however, is not bound to impose the recommended sanctions.

(d) Where the respondent was alleged to be responsible for conduct which, if proven, would constitute any of the following offenses or attempts to commit the following offenses: arson, assault, burglary, criminal homicide, destruction/damage/vandalism of property, kidnapping, robbery, forcible sex offenses, non-forcible sex offenses (incest or statutory rape), the complainant has a right to be notified of the final results that will include 1) the name of the student, 2) the violation with which the student was charged, 3) whether the student was found "responsible" or "not responsible," and 4) any sanction(s) imposed.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070 & 351.088

Hist.: EOSC 5(Temp), f. 3-31-77, ef. 4-1-77; EOSC 10, f. & ef. 8-15-77; EOSC 5-1992, f. 11-16-92, cert. ef. 1-1-93; EOU 4-2005, f. & cert. ef. 7-7-05; EOU 2-2007, f. & cert. ef. 8-15-07; EOU 3-2013(Temp), f. & cert. ef. 8-6-13 thru 12-31-13; EOU 5-2013, f. & cert. ef. 12-6-13

579-040-0013

Due Process

Procedural fairness is basic to the proper enforcement of all University regulations. No conduct action shall be initiated against students or student organizations until they have been notified in writing of the

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charges against them and their rights under this Code, and given the opportunity to be heard (except in the event of potential harm to the welfare of self or others as indicated in OAR 579-040-0035):

(1) The Senior Hearings Officer, or designee(s), shall insure that the best interests of students and student organizations are served, regardless of whether conduct action is taken.

(2) All University regulations and policies pertaining to student conduct shall be promulgated in such a manner as to furnish adequate notice.

(3) Regulations and conduct sanctions affecting the conduct of students shall be based on general principles of equal treatment.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070 & 351.088

Hist.: EOU 4-2005, f. & cert. ef. 7-7-05; EOU 2-2007, f. & cert. ef. 8-15-07; EOU 3-2013(Temp), f. & cert. ef. 8-6-13 thru 12-31-13; EOU 5-2013, f. & cert. ef. 12-6-13

579-040-0015

Procedures for Complaints and Educational Conferences, Hearings, Potential Sanctions, and other University Actions

(1) The Senior Hearings Officer is responsible for coordination of the University's student conduct program. The Senior Hearings Officer shall designate a Student Conduct Program Administrator who will coordinate the activities of the student conduct process. University housing conduct is administered by the Residence Life staff (see Residence Hall Conduct Policy for further information regarding this process), but such matters will also be referred to the Office of Student Success and Engagement when a student's status at the University must be reviewed or when the conduct is of an egregious nature. The Student Conduct Program Administrator and Coordinator(s) shall be responsible for maintaining conduct records. These records may include a summary of the proceedings, results, and the appointed hearings officer/committee acting on the case.

(2) Conduct proceedings at EOU do not mirror courtroom proceedings. At a conduct hearing, civil and criminal rules of evidence do not apply. Hearings regarding sexual misconduct and/or heard by the Student Hearing Committee may be recorded or transcribed.

(3) Decisions of "responsible" or "not responsible" regarding the charge(s) shall be based on the information presented at the hearing. The Hearings Officer or Student Hearing Committee shall determine whether or not the student has violated the Student Code of Conduct as charged based upon the appropriate standard of proof. The appropriate standard of proof shall be "more likely than not" that the behavior occurred. This means that the information presented supports the finding that it was more likely than not that the violation occurred.

(4) Procedures for Complaints and Educational Conferences

(a) Alleged violations of the Student Code of Conduct may be reported to the Office of Student Success and Engagement by any member of the community.

(b) The Student Conduct Program Administrator or Coordinator in Residence Life (if incident occurs in or within close proximity of the residence halls) will review the information to determine if the University will charge the student with violating the Student Code of Conduct.

(c) If at any time during the course of the process the Senior Hearings Officer's designee(s) determines that either charges are not warranted or that insufficient evidence exists to continue, then the charges may be withdrawn, and the student will be notified in writing.

(d) If the complaint is forwarded for a hearing, the Student Conduct Program Administrator or Coordinator will afford the respondent the opportunity of an educational conference with a campus hearings officer. The hearings officer will review the allegations and charges, the Student Code of Conduct, the hearing options, the student conduct process, possible sanctions, the student's rights and responsibilities as proscribed in OAR 579-040-0010, with the respondent and answer questions.

(e) If the respondent elects to have the case heard by a campus hearings officer, the hearing will proceed at that designated time. If the respondent elects to have the Student Hearings Committee hear the case, it will be referred back to the Student Conduct Program Administrator to arrange for a hearing. A time shall be set for a hearing, not less than five or more than fifteen calendar days after the student has been notified of the complaint. Maximum time limits for scheduling of hearings may be extended at the discretion of the Student Conduct Program Administrator. The Administrator will work with the Hearings Officer or the Student Hearings Committee to arrange hearings and determine the subsequent appropriate institutional response.

(f) All parties may have counsel or an advisor to serve as advisors at their own expense. However, the counsel or advisor shall not speak on behalf of the student, question witnesses, present information or argue on behalf of the student. Hearings options are:

(A) Campus Hearings Officer presiding; or

(B) Student Hearings Committee presiding.

(g) In the event of a sexual misconduct hearing, if the respondent chooses the Campus Hearings Officer option to preside over the case, two hearings officers will be present to hear the case. In addition, the complainant will be notified in writing of the outcome of the hearing, including sanctions and timelines, and any appeals and the resultant outcomes.

(5) Student Conduct Hearings before a Campus Hearings Officer. Conduct Hearings shall not be open to the public. Hearings Officers are charged with:

(a) Making findings of fact;

(b) Determining if the student has violated the Code(s);

(c) Dismissal of the case; and/or

(d) Imposing any sanction listed in OAR 579-040-0015 of this Code.

(6) Student Conduct Hearings before the Student Hearings Committee.

(a) The respondent and the Student Conduct Program Administrator may arrange for witnesses to present pertinent information to the Student Hearings Committee. Witnesses will provide information to and answer questions from the Student Hearings Committee. The Student Hearings Committee is charged with:

(A) Making findings of fact;

(B) Determining if the student has violated the Code(s);

(C) Recommending dismissal of the case; and/or

(D) Recommending any sanction listed in 579-040-0015 of the Student Code of Conduct to the Student Conduct Program Administrator or designee.

(b) The respondent shall appear along with witnesses and other parties requested to be in attendance by the Student Hearings Committee. Questions may be suggested by the respondent and/or Complainant to be answered by each other or by other witnesses at the discretion of the Student Hearings Committee chair.

(c) A secretary may record information presented, accept information, statements, and prepare a summary of the Student Hearings Committee's findings. After the conclusion of the hearing, every effort will be made to issue a written decision in a timely fashion by the Student Conduct Program Administrator.

(d) Regardless of the nature or type of hearing, the respondent will be given an opportunity to provide information. This may include, but is not limited to, pertinent records, documents, written or oral statements. The student will also be given an opportunity to inspect records that have been submitted regarding the specific case.

(e) If a witness cannot appear, the witnesses written or taped statement may be considered. Witnesses will be required to wait outside until their point of participation and asked to leave the hearing after being questioned.

(7) Potential Sanctions. The following sanctions may be rendered as a result of a conduct hearing:

(a) Mandated counseling assessment and/or recommendations for completed treatment.

(b) Restitution: Reimbursement a) by dollar amount, b) by transfer of property, or c) by provision of services to the University or a member of the University community in accordance with the nature of the violation in an amount not to exceed actual expenses, damages, or losses incurred.

(c) Required Educational Activities: Mandatory participation in educational activities and any associated fees.

(d) Warning: Notice to a student that the student's conduct or actions are in violation of the Student Code of Conduct. The continuation of such behavior may result in further action.

(e) Probation: Probation will include observation and review of behavior and demonstrated compliance with the Student Code of Conduct. A student on probation is not in "good standing" with the University. Students on probation, who are found in violation of the Student Code of Conduct again are subject to more severe disciplinary actions.

(f) Loss of Privileges: Denial of specified privileges for a designated period of time, consistent with the violation(s) committed.

(g) Residence Hall Suspension: Separation from the residence halls for a designated period of time, after which the student is eligible to return. Conditions of readmission may be specified.

(h) Residence Hall Expulsion: Permanent separation from the residence halls.

(i) Suspension: Separation from the University for a defined period of time, after which the student is eligible to return. Conditions for readmission may be specified.

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(j) Deferred Sanction: Placement on deferred sanction status. If the student violates University regulations during this period, the deferred sanction(s) will be immediately imposed along with any new sanctions.

(k) Expulsion: Permanent separation from the University.

(l) Revocation of Admission and/or Degree.

(m) Withholding of Degree.

(n) Academic Honesty Code violations: in addition to any of the above sanctions, academic sanctions, such as failing the assignment and/or course, removal from an academic program, or removal from a college may also be imposed.

(8) Other University Actions

(a) Hold on Student Record: The Student Conduct Program Administrator, Student Conduct Coordinator, or designee, may place a hold on the records or registration of any student who fails to fulfill any sanctions issued by the University. The Administrator or Coordinator may take other action necessary for resolution of a case prior to the student's enrollment in a subsequent term, transfer or graduation. All pending conduct matters must be resolved prior to a student's graduation from EOU.

(b) Mediation, voluntary participation in a facilitated discussion with the complainant, may be appropriate in certain cases and may be strongly recommended.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070 & 351.088

Hist.: EOSC 5(Temp), f. 3-31-77, ef. 4-1-77; EOSC 10, f. & ef. 8-15-77; EOSC 5-1992, f. 11-16-92, cert. ef. 1-1-93; EOU 4-2005, f. & cert. ef. 7-7-05; EOU 2-2007, f. & cert. ef. 8-15-07; EOU 3-2013(Temp), f. & cert. ef. 8-6-13 thru 12-31-13; EOU 5-2013, f. & cert. ef. 12-6-13

579-040-0030

Appeals

Following a conduct hearing, the respondent and a student complainant has the right to an appeal. Appeals shall be made to the Dean of Student Success and Engagement within five working days after notice. The appeal shall be in writing, stating the ground(s) for appeal. The Dean may do any of the following:

(1) Review all information presented at the hearing and consult with the campus hearings officer or student hearings committee chair at his/her discretion,

(2) Return the case to the original hearing body for reconsideration,

(3) Alter the findings and/or sanctions imposed by the original hearing body, or

(4) Determine that the original findings and/or sanctions stand.

(a) The Dean will make a decision within five working days after receipt of appeal. The Dean's decision is final. Appeals for violations in the residence halls shall be conducted as identified in the Residence Life Conduct Policy.

(b) Appeals must be based on the issue of substantive or procedural errors which are prejudicial and which were committed during the educational conference, meeting, or hearing.

(5) The specific grounds to be addressed on appeal are:

(a) Were the procedures of the Student Code of Conduct followed?

(b) If a procedural error occurred, were the rights of the respondent/student complainant or organization violated to the extent that the respondent/student complainant or organization did not receive a fair hearing?

(c) Was the hearing conducted in a way that did not permit the respondent/student complainant or organization adequate notice and the opportunity to present its version of the facts?

(d) Was the information presented at the hearing sufficient to justify the decision reached?

(e) Was there relevant information existing at the time of the hearing that would have affected the outcome that was not discovered until after the hearing?

(f) Are sanctions disproportionate to the violation and previous disciplinary history of the student?

(6) Sanctions shall not begin until either the time for appeal has expired without an appeal, or until the appeal process is exhausted. The Dean of Student Success and Engagement, or designee(s) may impose sanctions during the appeal process to ensure the safety and well-being of members of the University community or preservation of University property.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070 & 351.088

Hist.: EOSC 5(Temp), f. 3-31-77, ef. 4-1-77; EOSC 10, f. & ef. 8-15-77; EOSC 5-1992, f. 11-16-92, cert. ef. 1-1-93; EOU 4-2005, f. & cert. ef. 7-7-05; EOU 2-2007, f. & cert. ef. 8-15-07; EOU 3-2013(Temp), f. & cert. ef. 8-6-13 thru 12-31-13; EOU 5-2013, f. & cert. ef. 12-6-13

579-040-0035

Emergency Action

Any interim measure may be taken at any time. Notice of interim measure shall be provided to the student or student organization in writing.

(1) Interim Suspension: The Dean of Student Success and Engagement may initiate a temporary suspension of a student or student organization when it is determined that there is an imminent threat or that a student's presence negatively affects the health, safety or welfare of the University community or a member of the University community.

(2) Restrictions on Activity: The Dean of Student Success and Engagement may restrict a student's or student organization's activities when it is determined that the health, safety or welfare of a student or member of the University community is at risk. Restrictions on activities may include, but are not limited to: registering or attending class; accessing or contacting certain individuals (no contact order); accessing University property, facilities, resources or equipment; participating in University activities, organizations or student activities.

(3) Appeal of Interim Measures: The student or student organization has the opportunity to submit a written request for a hearing regarding the interim measures to the Dean of Student Success and Engagement. If requested, the hearing will be conducted within three business days of the receipt of the written request. The scope of this hearing is limited solely to the interim measures.

(4) Student Enrollment Status: If a student's enrollment status is changed as a result of an interim measure, but the student is subsequently found not responsible for the violation, the University shall correct any record of the change in enrollment status in the student's permanent records and other reports in a manner compliant with State and Federal laws.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070 & 351.088

Hist.: EOSC 5(Temp), f. 3-31-77, ef. 4-1-77; EOSC 10, f. & ef. 8-15-77; EOSC 5-1992, f. 11-16-92, cert. ef. 1-1-93; EOU 4-2005, f. & cert. ef. 7-7-05; EOU 3-2013(Temp), f. & cert. ef. 8-6-13 thru 12-31-13; EOU 5-2013, f. & cert. ef. 12-6-13

579-040-0045

Student Conduct Records

Disciplinary records of students will be destroyed pursuant to the Oregon University System retention schedule governing institutional records. For all complaints, a conduct file will be created and secured by the Office of Student Success and Engagement. Other than expulsion, conduct sanctions shall not be made part of the student's permanent academic record, but shall become part of the student's conduct record.

(1) For those sanctions at the level of Probation the student will be considered not in "good standing" with the University for the duration of the sanction. Multiple sanctions may be imposed where appropriate. Disciplinary Probation shall involve written notice that is to be kept in the student's conduct file.

(2) Disciplinary Suspension shall involve removal of privileges to enroll at the University for a specified period of time and there shall be a written notice that is to be kept in the student's conduct file. There shall also be a Disciplinary Hold placed on the student's electronic record. After the period of suspension has expired and the student has met all proscribed obligations, the Disciplinary Hold will be removed. A student suspended for misconduct and wishing to return to the University after the suspension period must contact the Dean of Student Success and Engagement to discuss returning to the University.

(3) Disciplinary Expulsion shall involve permanent removal of privileges to enroll at the University and there shall be a written notice kept in the student's conduct file. A Disciplinary Hold will be placed on the student's electronic record.

(4) Student conduct records of students who have not yet responded to allegations will remain active. Once they have responded, the records are retained in accordance with the procedures above.

(5) Disciplinary files are treated as "educational records" under the provisions of the Family Education Rights and Privacy Act (FERPA) and may be viewed only by those who "need to know" such information in the context of their official duties, as determined by the Dean of Student Success and Engagement or designee(s). Otherwise, content of the file may be released to others only with consent of the student whose name is on the file.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070 & 351.088

Hist.: EOSC 5(Temp), f. 3-31-77, ef. 4-1-77; EOSC 10, f. & ef. 8-15-77; EOU 4-2005, f. & cert. ef. 7-7-05; EOU 2-2007, f. & cert. ef. 8-15-07; EOU 3-2013(Temp), f. & cert. ef. 8-6-13 thru 12-31-13; EOU 5-2013, f. & cert. ef. 12-6-13

ADMINISTRATIVE RULES

Rule Caption: Modify Parking and Vehicular traffic Regulations at Eastern Oregon University.

Adm. Order No.: EOU 6-2013

Filed with Sec. of State: 12-6-2013

Certified to be Effective: 12-6-13

Notice Publication Date: 11-1-2013

Rules Amended: 579-070-0010, 579-070-0030, 579-070-0035, 579-070-0041, 579-070-0042, 579-070-0045

Subject: Parking and Vehicular Traffic Regulations.

Rules Coordinator: Teresa Carson-Mastrude—(541) 962-3773

579-070-0010

Parking Permits and Fees

(1) EOU parking permits are required at all locations on campus except Community Stadium.

(a) Parking permits must be displayed on the rear view mirror with the permit numbers clearly visible from the front of the vehicle. If this is not possible, then permit must be clearly visible on the driver's side of the vehicle dash with the permit numbers clearly visible. Motorcycle permits must be affixed near the handlebars.

(b) Some general parking spaces on campus are dedicated to student, faculty or staff and are available on a first-come, first-served basis. Students will receive 'Student' permits and may use the spaces dedicated to students, Faculty will receive 'Faculty' permits and may use the spaces dedicated to faculty, and Classified Staff and Administrative Faculty will receive 'Staff' permits and may use spaces dedicated to staff. These spaces are clearly marked by signs. Each General parking permit will be color-coded designating the dedicated spaces that may be used. Faculty and staff of on-campus EOU partners (OSU-Ag, OHSU Nursing, ODFW) will have the same privileges as EOU students, faculty and staff and will receive 'Staff' permits.

(2) General parking permits allow permit holder to park in general parking spaces and in the dedicated spaces mentioned in section 1(b).

(a) Annual general parking permits are valid from July 1–June 30 and will be issued for a fee.

(b) General parking permits valid for one-term only will be issued for a fee.

(c) One-day parking permits may be purchased from the parking permit vending machine for a minimal fee. These permits are good for one day only date of purchase only and holders may park in any general parking space but may not park in a reserved space or in any space dedicated to Faculty or Staff or Students.

(3) Reserved parking permits with a dedicated parking space (Annual/or Academic Year) will be issued for a fee.

(4) Vehicles are allowed to park without a permit in the parking lot of Community Stadium.

(5) Annual motorcycle permits will be issued for a fee and the motorcycle must be parked in a designated motorcycle parking space. The cost of the annual permit will allow the driver to park the motorcycle in an automobile parking space.

(6) Vendor permits may be issued by Facilities Services or Campus Safety for contractors, media personnel and vendors performing work on campus.

Stat. Auth.: ORS 351.070 & 352.360

Stats. Implemented: ORS 351.070 & 352.360

Hist.: EOSC 11, f. & ef. 11-17-77; EOSC 3-1979, f. & ef. 6-27-79; EOSC 1-1982, f. & ef. 6-11-82; EOSC 4-1984, f. & ef. 10-25-84; EOSC 2-1986, f. & ef. 7-28-86; EOSC 2-1991, f. & cert. ef. 6-24-91; EOSC 4-1992, f. & cert. ef. 8-24-92; EOSC 2-1994, f. & cert. ef. 3-7-94; EOSC 5-1994, f. & cert. ef. 9-6-94; EOSC 2-1996, f. 8-15-96, cert. ef. 9-16-96; EOU 5-2005, f. & cert. ef. 9-2-05; EOU 3-2007, f. & cert. ef. 8-15-07; EOU 1-2013, f. & cert. ef. 2-22-13; EOU 6-2013, f. & cert. ef. 12-6-13

579-070-0030

Driving and Parking Regulations on Campus

(1) Government vehicles not assigned a Reserved parking space may only be parked for a period of 24 hours in any lot on campus. Vehicles may be liable for enforcement action for non-compliance.

(2) Any vehicle appearing on campus with a permit listed as lost or stolen or with a counterfeit permit will be booted upon discovery and will be subject to a fine. Possession of a lost, stolen or counterfeit permit may be grounds for criminal charges and/or University disciplinary action.

(3) Vehicles parking in a space posted for disabled persons must display a valid disabled permit, placard or license plate. Students and staff with a state-issued ADA disabled permit are authorized to park in any valid parking space on campus, in addition to parking in a designated ADA space.

(4) Temporary Disabled permits for persons with mobility-type injuries will be issued for up to one week of time without a doctor's note. A doctor's note will be required if the permit is requested to extend past one week. For faculty and staff, the request for a temporary disabled permit shall be submitted to the Security Supervisor by the appropriate Supervisor or Dean. For students, the request for a temporary disabled permit shall be submitted by the Student Health office or the Head Athletics Trainer.

(5) Persons are prohibited from living in vehicles of any kind on EOU property. This policy is in no way intended to restrict visitors, parents and/or special event participants from short term overnight stays in campers or motor homes. However, all such guests must check in with campus security and comply with all safety regulations. Vehicles towing trailers of any kind are not permitted to park on campus.

(6) EOU reserves the right to develop or change permits to meet parking needs.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070 & 352.360

Hist.: EOSC 11, f. & ef. 11-17-77; EOSC 3-1979, f. & ef. 6-27-79; EOSC 1-1982, f. & ef. 6-11-82; EOSC 4-1984, f. & ef. 10-25-84; EOSC 2-1986, f. & ef. 7-28-86; EOSC 4-1992, f. & cert. ef. 8-24-92; EOSC 2-1994, f. & cert. ef. 3-7-94; EOU 5-2005, f. & cert. ef. 9-2-05; EOU 3-2007, f. & cert. ef. 8-15-07; EOU 1-2013, f. & cert. ef. 2-22-13; EOU 1-2013, f. & cert. ef. 2-22-13; EOU 6-2013, f. & cert. ef. 12-6-13

579-070-0035

Citations and Fines

(1) Parking Regulations are enforced Monday–Friday 8 a.m.–5 p.m. and citations and fines will be issued for the following violations:

(a) Parking in a General Parking space without a valid permit or sticker — \$15.

(b) Parking in a Reserved Parking space without a valid Reserved Permit — \$50.

(c) Parking in a designated Handicapped Space without a valid DMV permit — \$100. An EOU parking permit is also required in designated Handicapped spaces.

(d) Parking in a designated loading zone (marked yellow) — \$20.

(e) Parking overtime in any time-limited space — \$20.

(f) Parking in a designated "Fire" zone — \$50.

(g) Parking improperly (backing into spaces, parking against the flow of traffic, parking over the lines) — \$15.

(h) Possession of stolen or altered permit, or misuse of permit — \$100.

(i) Improper display of permit — \$15.

(j) Driving or parking on or over sidewalks/lawns, pedestrian malls — \$20, plus the cost of any/all repairs.

(k) Blocking traffic — \$20.

(l) Parking/chaining bicycle in unauthorized area — \$15.

(m) Boot Fee — \$50.

(n) Parking in a Visitor parking space by an EOU student/faculty/staff member — \$25.

(o) Parking in an incorrect dedicated space — \$15.

(2) Fines for violations can be paid at the Student Accounts Office in Inlow Hall #101. (EOU Business Office, One University Blvd., La Grande OR 97850).

(3) The fine of one \$15 violation may be applied to the purchase of a General or Reserved Parking Permit.

(4) Non Payment of Fines: A student who fails to tender payment in full to the University for any parking violations received, or fails to appeal as specified on or before the date specified in the traffic citation, will have the fine deducted from any credits/refunds and may be subject to vehicle boot or tow.

(a) Students may have their transcripts withheld or may have their registrations canceled or may be denied graduation if any fines or fees under these regulations are unpaid.

(b) A faculty or staff member who receives a parking citation will have the fine posted to the accounts receivable system at the EOU Business Office.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070 & 352.360

Hist.: EOSC 11, f. & ef. 11-17-77; EOSC 3-1979, f. & ef. 6-27-79; EOSC 1-1982, f. & ef. 6-11-82; EOSC 4-1984, f. & ef. 10-25-84; EOSC 2-1986, f. & ef. 7-28-86; EOSC 2-1991, f. & cert. ef. 6-24-91; EOSC 4-1992, f. & cert. ef. 8-24-92; EOSC 2-1994, f. & cert. ef. 3-7-94; EOSC 5-1994, f. & cert. ef. 9-6-94; EOU 5-2005, f. & cert. ef. 9-2-05; EOU 3-2007, f. & cert. ef. 8-15-07; EOU 1-2013, f. & cert. ef. 2-22-13; EOU 6-2013, f. & cert. ef. 12-6-13

579-070-0041

Appeal

(1) A person wishing to appeal a parking citation may do so online at <http://www.eou.edu/facplan/parking-services/> or by submitting a written appeal form that is available from the Student Accounts office, Inlow #101.

ADMINISTRATIVE RULES

An appellant may, but is not required to, appear in person before the Committee. The Parking Appeals Committee will review the appeal and its decision is final.

(2) All appeals must be submitted within 30 days from date of the citation. Appeals submitted after 30 days will not be considered for review. Appeals will be considered by the committee at the next regularly scheduled meeting.

(3) The following types of reasons are not acceptable grounds for appeal:

- (a) Lack of knowledge of the regulations: i.e., new to campus or have not read regulations.
 - (b) Other vehicles were also parked improperly.
 - (c) Disagree with or inability to pay the amount of the fine(s).
 - (d) Lack of available space.
 - (e) Did not read or misunderstood parking signs.
- Stat. Auth.: ORS 351.070
Stats. Implemented: ORS 351.070 & 352.360
Hist.: EOSC 5-1994, f. & cert. ef. 9-6-94; EOU 5-2005, f. & cert. ef. 9-2-05; EOU 3-2007, f. & cert. ef. 8-15-07; EOU 1-2013, f. & cert. ef. 2-22-13; EOU 6-2013, f. & cert. ef. 12-6-13

579-070-0042

Parking Appeals Committee

(1) The Parking Appeals Committee is established to provide an expedient method of handling appeals for parking citations issued by Eastern Oregon University personnel.

(2) The Parking Appeals Committee will consist of two unclassified staff members and two classified staff members appointed by the Vice President of Administration, Finance, and Facilities, two students appointed by the ASEOU Committees Chairperson, one Faculty member, with the Security Supervisor chairing the Committee meetings, voting only as a tie-breaker. A Campus Security/Public Safety officer may serve ex-officio without vote.

(3) Each member of the Parking Appeals Committee will serve for a period of 2 years, and are eligible for reappointment by the Vice President of Finance and Administration. Terms of office will be staggered to help insure continuity and consistency in the appeals review process.

- (4) The Parking Appeals Committee will meet monthly or as needed.
- Stat. Auth.: ORS 351.070
Stats. Implemented: ORS 351.070 & 352.360
Hist.: EOSC 5-1994, f. & cert. ef. 9-6-94; EOU 5-2005, f. & cert. ef. 9-2-05; EOU 3-2007, f. & cert. ef. 8-15-07; EOU 1-2013, f. & cert. ef. 2-22-13; EOU 6-2013, f. & cert. ef. 12-6-13

579-070-0045

Towing/Immobilizing Vehicles

(1) A vehicle may be towed off the campus and impounded and the owner subject to towing and storage fees in addition to designated penalties under the following circumstances:

- (a) A vehicle causing imminent danger to people or University property by parking in fire lanes or too close to fire hydrants.
- (b) A vehicle left parked or standing in an area not normally used for vehicular traffic. This includes parking on a sidewalk or the grass.
- (c) Abandoned or immobilized vehicles left on EOU property more than 72 hours may be removed at the registered owner's expense unless an extension has been granted by the EOU Security. Unlicensed vehicles parked on campus will be considered abandoned and subject to removal at the owner's expense. Expenses include towing and storage fees.

(2) A vehicle may also be immobilized by using a mechanical boot device under the following circumstances:

- (a) Three or more unpaid citations.
- (b) Displaying an altered, stolen or forged permit.
- (3) Release of the vehicle will be made upon payment of the fines or by satisfactory arrangements for payment with the Student Accounts office.

A \$50 boot fee may be assessed in addition to any outstanding fines.

- Stat. Auth.: ORS 351
Stats. Implemented: ORS 351.070 & 352.360
Hist.: EOSC 1-1982, f. & cert. ef. 6-11-82; EOSC 4-1984, f. & cert. ef. 10-25-84; EOSC 2-1986, f. & cert. ef. 7-28-86; EOU 5-2005, f. & cert. ef. 9-2-05; EOU 3-2007, f. & cert. ef. 8-15-07; EOU 1-2013, f. & cert. ef. 2-22-13; EOU 6-2013, f. & cert. ef. 12-6-13

Physical Therapist Licensing Board Chapter 848

Rule Caption: Existing Rules Clarification, Housekeeping, Updated Fee Schedule, Changes for Statutory Updates.

Adm. Order No.: PTLB 2-2013

Filed with Sec. of State: 11-26-2013

Certified to be Effective: 1-1-14

Notice Publication Date: 11-1-2013

Rules Amended: 848-001-0005, 848-005-0020, 848-005-0030, 848-010-0010, 848-010-0015, 848-010-0020, 848-010-0026, 848-010-0033, 848-010-0035, 848-010-0044, 848-015-0030, 848-020-0000, 848-020-0060, 848-040-0105, 848-040-0110, 848-040-0117, 848-040-0147, 848-040-0150, 848-045-0010

Subject: Most of the proposed changes are housekeeping and further clarification of existing rule language. The fee schedule is changing; lowering the fee for mailing lists, raising the fee for wall certificates and photocopy requests and adding a new fee for written application status requests. Rules were also updated to reflect the 2013 Legislative changes with regards to requirements to refer a patient.

Rules Coordinator: James Heider—(971) 673-0203

848-001-0005

Attorney General's Model Rules of Procedure

The following Model Rules of Procedure promulgated by the Attorney General of the State of Oregon, in effect January 01, 2014, are adopted by the Board by reference. These rules apply to rulemaking; OAR 137-001-0005 through 137-001-0080.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or the Physical Therapist Licensing Board.]

- Stat. Auth.: ORS 688.160
Stats. Implemented: ORS 183 & 688.160
Hist.: PT 1, f. 1-3-74, ef. 2-11-74; PT 9, f. & ef. 5-4-76; PT 1-1978, f. 6-19-78, ef. 6-28-78; PT 1-1982, f. & ef. 2-17-82; PT 2-1984, f. & ef. 11-30-84; PT 1-1986, f. & ef. 10-27-86; PT 1-1988, f. & cert. ef. 6-27-88; PT 1-1992, f. & cert. ef. 3-26-92; PT 6-1997, f. & cert. ef. 12-12-97; PTLB 4-2001, f. & cert. ef. 1-4-01; PTLB 1-2004, f. & cert. ef. 12-29-04; PTLB 1-2010, f. 2-16-10, cert. ef. 3-1-10; PTLB 2-2013, f. 11-26-13, cert. ef. 1-1-14

848-005-0020

Board Fees and Refunds

(1) The following fees shall be paid to the Board:

(a) Physical Therapist or Physical Therapist Assistant Examination Application Fee of \$150.00, plus the actual cost to the Board of conducting a nationwide background check.

(b) Physical Therapist or Physical Therapist Assistant Endorsement Application Fee of \$150.00, plus the actual cost to the Board of conducting a nationwide background check.

(c) Physical Therapist Annual License Renewal Fee of \$100.00, plus the actual cost to the Board of conducting a workforce demographics survey as required by ORS 676.410(7).

(d) Physical Therapist Assistant Annual License Renewal Fee of \$65.00, plus the actual cost to the Board of conducting a workforce demographics survey as required by ORS 676.410(7).

(e) Lapsed License Renewal Fee of \$50.00 for renewal applications postmarked or received by the Board after March 31st.

(f) On-line renewal and application convenience fee not to exceed the actual processing costs of an on-line electronic transaction.

(g) Physical Therapist or Physical Therapist Assistant Temporary Permits Fee of \$50.00.

(h) Duplicate License Fee of \$25.00.

(i) Physical Therapist or Physical Therapist Assistant Wall Certificate Fee of \$25.00.

(j) Physical Therapist or Physical Therapist Assistant Verification of Oregon Licensure or Verification of Application Status Letters/Forms Fee of \$25.00.

(k) Non-Sufficient Funds (NSF) Check Fee of \$25.00.

(l) Miscellaneous Fees:

(A) Physical Therapist and/or Physical Therapist Assistant electronic mailing list fee of \$100.00.

(B) Photocopying administrative fee of \$25.00, plus ten cents (\$.10) per copy.

(2) Board refunds of overpayments in any amount of \$25.00 or less will be held by the Board unless the payor requests a refund in writing.

- Stat. Auth.: ORS 182.466(4)
Stats. Implemented: ORS 182.466(4), 688.070(1)(2), 688.080, 688.100 & 688.110
Hist.: PT 6-1996, f. & cert. ef. 9-5-96; PT 3-1997, f. & cert. ef. 6-9-97; PLTB 1-1998, f. & cert. ef. 2-9-98; PTLB 6-1999, f. 11-23-99, cert. ef. 1-1-00; PTLB 4-2000, f. & cert. ef. 12-21-00; Renumbered from 848-010-0110, PTLB 2-2004, f. & cert. ef. 12-29-04; PTLB 3-2005, f. 12-29-05, cert. ef. 1-1-06; PTLB 1-2010, f. 2-16-10, cert. ef. 3-1-10; PTLB 2-2012(Temp), f. 11-30-12, cert. ef. 1-1-13 thru 3-31-13; Administrative correction, 4-22-13; PTLB 2-2013, f. 11-26-13, cert. ef. 1-1-14

ADMINISTRATIVE RULES

848-005-0030

Name, Address and Telephone Number of Record

(1) Every applicant, licensee and temporary permit holder shall keep their legal name on file with the Board. For purposes of this rule, legal name includes a First, Middle and Last name.

(2) Every applicant, licensee and temporary permit holder shall keep their home address on file with the Board. The home address must be a residential address and may not be a post office box number.

(3) Every applicant, licensee and temporary permit holder shall keep a current contact telephone number and both a private and public electronic mail address, if available, on file with the Board.

(4) Every applicant, licensee and temporary permit holder shall keep the name, address and telephone number of their current employer or place of business on file with the Board.

(5) Every applicant, licensee and temporary permit holder shall keep a current designated mailing address on file with the Board.

(6) Whenever an applicant, licensee or temporary permit holder legally changes their name, they shall notify the Board in writing within 30 days of the name change and provide the Board with legal documentation of the name change.

(7) Whenever an applicant, licensee or temporary permit holder changes their home address, their employer or place of business, their contact telephone number, electronic mail address or their mailing address, they shall within 30 days, notify the Board in writing. Written notification may be by regular mail, electronic mail or facsimile.

(8) Unless requested for a public health or state health planning purpose or unless extenuating circumstances exist, the Board will withhold the home address, private electronic mail address and personal telephone number of a licensee.

Stat. Auth.: ORS 182.466(4)

Stats. Implemented: ORS 182.466(4), 688.070(1)(2), 688.080, 688.100 & 688.110

Hist.: PTLB 2-2004, f. & cert. ef. 12-29-04; PTLB 3-2005, f. 12-29-05, cert. ef. 1-1-06; PTLB 1-2010, f. 2-16-10, cert. ef. 3-1-10; PTLB 2-2013, f. 11-26-13, cert. ef. 1-1-14

848-010-0010

Approval of Schools of Physical Therapy

All schools for physical therapists and physical therapist assistants that are accredited by the Commission on Accreditation in Physical Therapy Education (CAPTE), are considered approved schools of physical therapy. A school shall be considered to be an approved school of physical therapy within the meaning of this section if the school was accredited as above at the time the licensure applicant graduated. At its sole discretion, and on a case-by-case basis, the Board may grant licensure to an applicant who has graduated from a school of physical therapy if, at the time of his/her graduation, the school is a candidate for accreditation and subsequently is granted the accreditation.

Stat. Auth.: ORS 688.160

Stats. Implemented: ORS 688.050, 688.055, 688.070 & 688.080

Hist.: PT 2, f. 8-22-74, ef. 9-25-74; PT 11, f. & ef. 12-28-77; PT 1-1979, f. & ef. 2-14-79; PT 1-1989, f. & cert. ef. 8-8-89; PT 4-1997, f. & cert. ef. 8-5-97; PTLB 3-2003, f. & cert. ef. 8-22-03; PTLB 9-2004, f. & cert. ef. 12-29-04; PTLB 2-2013, f. 11-26-13, cert. ef. 1-1-14

848-010-0015

Examinations

(1) Examinations for licensing of physical therapists and of physical therapist assistants shall be provided by an examination service approved by the Board. For purposes of this rule the Board's approved examination shall be the Federation of State Boards of Physical Therapy's (FSBPT) National Physical Therapy Examination (NPTE). The overall passing score shall be based on a formula using the criterion-referenced scoring system. An applicant may sit for the NPTE a maximum of three times in any jurisdiction within a 12-month period, measured from the date of the first examination.

(2) All completed applications for examination, associated fees and required documents must be received and approved by the Board prior to releasing an applicant's eligibility to take the NPTE.

(3) Unless qualified for licensure by endorsement under OAR 848-010-0022, an applicant whose first professional degree in physical therapy was awarded from a foreign physical therapy program that is/was not CAPTE accredited must submit:

(a) A Credentials Evaluation Statement ("the Report") of professional education and training prepared by a Board-approved credentials evaluation agency. The Report must be sent directly from the credentialing agency to the Board. It is the applicant's responsibility to pay the expenses associated with the credentials evaluation.

(A) The Report must provide evidence and documentation that the applicant's education outside a state or territory of the United States is substantially equivalent to the education of a physical therapist who graduated

from an accredited physical therapy education program approved by the Board pursuant to ORS 688.050(2).

(B) To determine substantial equivalency, the approved credentialing evaluation agency shall use the appropriate Course Work Tool ("CWT") adopted by the Federation of State Boards of Physical Therapy. The appropriate CWT means the CWT in place at the time the foreign educated physical therapist earned their first professional degree in physical therapy.

(b) English Language Proficiency

(A) Verification that English is the native language of the country of origin, and the physical therapy program employs English as the language of training; or

(B) Verification that the applicant has achieved a score of not less than 560 on the paper Test of English as a Foreign Language (TOEFL) or a score of not less than 220 on the computer Test of English as a Foreign Language (TOEFL), a score of not less than 50 on the Test of Spoken English (TSE) and a score of not less than 4.5 on the Test of Written English (TWE); or

(C) Verification that the applicant has achieved the following minimum scores for each category of the internet based TOEFL (ibTOEFL) examination: writing, 24; speaking, 26; reading, 21; listening, 18; with an overall score of not less than 89.

(c) If applicant has taken a Board-approved national licensing examination prior to application for licensure in Oregon, a report of applicant's examination scores must be submitted to the Board directly from the Board-approved examination service.

(d) If applicant holds or has held a license in the country in which the applicant received their physical therapy education, the applicant must provide primary source verification of the license.

(e) For purposes of section (3) of this rule, the requirements and criteria considered for credentialing will be "as of" the date the most recent credentialing report was received by the Board from the Board-approved credentialing agency.

(4) The Examination must be given in the English language.

(5) A physical therapist student or physical therapist assistant student may take the National Physical Therapy Examination (NPTE) up to 90 days prior to graduation from a CAPTE accredited program if the program director will certify, in a written format, that the student has successfully completed all didactic educational requirements prior to the examination date and is indeed scheduled to graduate.

(6) The examination will be administered at a location approved by the Board.

(7) Any applicant who has graduated from an approved school of physical therapy and passed a Board-approved examination or a Board-approved equivalent examination more than five years prior to application for licensure in the State of Oregon and who has not been actively licensed in any other state or territory of the United States for a five year period must demonstrate competence to practice physical therapy. If the applicant fails to demonstrate competence, the Board may require the applicant to serve an internship under a restricted license or satisfactorily complete a refresher course approved by the Board, or both, at the discretion of the Board. The Board may also require the applicant to pass an examination approved by the Physical Therapist Licensing Board as provided in OAR 848-010-0015.

Stat. Auth.: ORS 688.160

Stats. Implemented: ORS 688.020, 688.040, 688.050, 688.055, 688.070, 688.090

Hist.: PT 2, f. 8-22-74, ef. 9-25-74; PT 6, f. 12-20-74, ef. 1-11-75; PT 10, f. & ef. 10-21-77; PT 11, f. & ef. 12-28-77; PT 1-1979, f. & ef. 2-14-79; PT 1-1983, f. & ef. 1-5-83; PT 1-1984, f. & ef. 5-3-84; PT 1-1989, f. & cert. ef. 8-8-89; PT 1-1990 (Temp), f. & cert. ef. 7-16-90; PT 2-1990, f. & cert. ef. 10-2-90; PT 1-1996, f. 1-16-96, cert. ef. 2-1-96; PT 2-1996, f. & cert. ef. 9-5-96; PT 1-1997, f. & cert. ef. 2-4-97; PTLB 4-1999, f. 11-23-99, cert. ef. 12-1-99; PTLB 1-2000, f. & cert. ef. 5-4-00; PTLB 3-2003, f. & cert. ef. 8-22-03; PTLB 9-2004, f. & cert. ef. 12-29-04; PTLB 4-2005, f. 12-29-05, cert. ef. 1-1-06; PTLB 1-2007, f. 3-13-07, cert. ef. 4-1-07; PTLB 2-2008, f. 12-16-08, cert. ef. 1-2-09; PTLB 1-2010, f. 2-16-10, cert. ef. 3-1-10; PTLB 1-2012, f. 2-9-12, cert. ef. 3-1-12; PTLB 2-2013, f. 11-26-13, cert. ef. 1-1-14

848-010-0020

Endorsement of Out-of-State Physical Therapists and Physical Therapist Assistants

Physical therapists and physical therapist assistants not licensed in the State of Oregon may be licensed by endorsement if they comply with all of the following:

(1) File a completed application form and pay a non-refundable endorsement application fee.

(2) Are at least 18 years of age.

(3) Are graduates of an approved school for physical therapists or physical therapist assistants as provided in OAR 848-010-0010 and 848-010-0015(3).

(4) At the time of application, applicant holds a valid, unrestricted license in any other state or territory of the United States.

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(5) Have passed the physical therapist or physical therapist assistant examination provided by a Board-approved examination service.

Stat. Auth.: ORS 688.160

Stats. Implemented: ORS 688.080

Hist.: PT 2, f. 8-22-74, ef. 9-25-74; PT 5, f. 12-20-74, ef. 1-11-75; PT 1-1979, f. & ef. 2-14-79; PT 1-1983, f. & ef. 1-5-83; PT 1-1984, f. & ef. 5-3-84; PT 1-1989, f. & cert. ef. 8-8-89; PT 1-1990(Temp), f. & cert. ef. 7-16-90; PT 2-1990, f. & cert. ef. 10-2-90; PT 1-1996, f. 1-16-96, cert. ef. 2-1-96; PT 3-1996, f. & cert. ef. 9-5-96; PTLB 9-2004, f. & cert. ef. 12-29-04; PTLB 4-2005, f. 12-29-05, cert. ef. 1-1-06; PTLB 2-2008, f. 12-16-08, cert. ef. 1-2-09; PTLB 1-2012, f. 2-9-12, cert. ef. 3-1-12; PTLB 2-2013, f. 11-26-13, cert. ef. 1-1-14

848-010-0026

Temporary Permits

(1) The Board may issue a temporary permit to practice as a physical therapist or physical therapist assistant the period specified below to an applicant who meets the requirements of this rule.

(a) A person who has graduated from a CAPTE accredited physical therapist or physical therapist assistant program in a state or territory of the United States and who is applying for the first time to take the licensing examination for Oregon may be issued a temporary permit for a period of 90 calendar days. Such applicant shall:

(A) Submit a completed application for license by examination and pay the required fee;

(B) Submit a completed application for a temporary permit and pay the required fee; and

(C) Submit a Board Certificate of Professional Education providing primary source verification of completion of a CAPTE accredited physical therapist or physical therapist assistant program or an official transcript of completion.

(D) Must have registered and been released to sit for the NPTE.

(b) A person who holds a valid current license to practice in another state or territory of the United States may be issued a temporary permit for a period of 60 calendar days. Such applicant shall:

(A) Provide written primary source verification of current licensure in another state or territory;

(B) Submit a completed application for license by endorsement and pay the required fee;

(C) Submit a completed application for a temporary permit and pay the required fee;

(D) Submit a Board Certificate of Professional Education providing primary source verification of completion of a CAPTE accredited physical therapist or physical therapist assistant program or an official transcript of completion; and

(E) Have passed the physical therapist or physical therapist assistant examination as provided in OAR 848-010-0020(5).

(2) A person who holds a temporary permit must practice under supervision as provided in this rule.

(3) A person who holds a temporary permit issued under subsection (1)(a) of this rule must practice under on-site supervision, which means that at all times a supervising therapist is in the same building and immediately available for consultation. Entries made in the patient record by a temporary permit holder must be authenticated by the permit holder and by a supervising therapist.

(4) A person who holds a temporary permit issued under subsection (1)(b) of this rule must practice under general supervision, which means that at all times a supervising therapist must be readily available for consultation, either in person or by telecommunication.

(5) As used in this rule, "supervising therapist" means an Oregon licensed physical therapist if the permit holder is a physical therapist or a physical therapist assistant. "Supervising therapist" also means an Oregon licensed physical therapist assistant if the permit holder is a physical therapist assistant. A physical therapist assistant may not supervise a physical therapist permit holder.

(6) If a physical therapist assistant is supervising a physical therapist assistant permit holder, a physical therapist must be readily available for consultation, either in person or by telecommunication, as provided in OAR 848-015-0020.

(7) Within five (5) working days of beginning practice the permit holder must submit to the Board a completed "Temporary Permit Letter from Employer" form. The permit holder must notify the Board of any change in employment during the period of the temporary permit by submitting a new "Temporary Permit Letter from Employer" within five (5) working days.

(8) A temporary permit issued under this rule shall terminate automatically by operation of law if the permit holder fails the Board-approved national licensing examination or the person's score on the Board-approved national licensing examination taken for purposes of licensure in another

state or territory does not meet Oregon Board requirements. A permit holder must return the permit certificate to the Board immediately, by a method that provides delivery verification, upon notification that the permit has terminated.

(9) The Board may refuse to issue a temporary permit to an applicant or may revoke a permit after issuance on any of the grounds set out in OAR 848-010-0044 or 848-045-0020. A person whose permit is revoked must return the certificate to the Board immediately by a method that provides delivery verification.

(10) A permit holder whose permit has terminated or has been revoked is not eligible to apply for another permit.

(11) A person who has taken and failed the Board-approved national licensing examination is not eligible to apply for a temporary permit. A person who has failed and has not subsequently passed the national licensing examination in another state, or whose score on the examination taken for purposes of licensure in another state or territory does not meet Oregon Board requirements, is not eligible to apply for a temporary permit.

(12) In its discretion the Board may grant one 60 calendar day extension to a person who holds a temporary permit.

(13) A person who holds a temporary permit issued under this rule is subject to all statutes and rules governing a licensee.

Stat. Auth.: ORS 688.110

Stats. Implemented: ORS 688.110

Hist.: PTLB 3-2000, f. & cert. ef. 12-21-00; PTLB 9-2004, f. & cert. ef. 12-29-04; PTLB 4-2005, f. 12-29-05, cert. ef. 1-1-06; PTLB 2-2008, f. 12-16-08, cert. ef. 1-2-09; PTLB 1-2010, f. 2-16-10, cert. ef. 3-1-10; PTLB 1-2012, f. 2-9-12, cert. ef. 3-1-12; PTLB 2-2013, f. 11-26-13, cert. ef. 1-1-14

848-010-0033

Yearly Renewal Of License Required

(1) All physical therapist and physical therapist assistant licenses expire on March 31 of each calendar year, regardless of the initial issue date. Physical therapists and physical therapist assistants must annually renew their licenses to practice effective April 1 of each year. A license is considered lapsed if a completed renewal application is postmarked or received after March 31. A person whose license has lapsed must immediately stop practicing as a physical therapist or a physical therapist assistant and shall not practice until the license is renewed.

(2) The annual renewal period shall be January 1st through March 31st of each calendar year. The Board will provide renewal notification to all current licensees during the month of January.

(3) If the completed license renewal application is postmarked or actually received by the Board after March 31, the licensee is subject to a lapsed license renewal fee as provided in OAR 848-005-0020(1)(e) in addition to the license renewal fee.

(4) A licensed physical therapist must complete the renewal application process and pay the renewal fee provided in OAR 848-005-0020(1)(c).

(5) A licensed physical therapist assistant must complete the renewal application process and pay the renewal fee provided in OAR 848-005-0020(1)(d).

(6) Each currently licensed physical therapist and physical therapist assistant must complete the continuing competence requirements as provided in Division 35 of these rules by March 31st of each even-numbered year.

Stat. Auth.: ORS 688.110

Stats. Implemented: ORS 688.110

Hist.: PTLB 9-2004, f. & cert. ef. 12-29-04; PTLB 4-2005, f. 12-29-05, cert. ef. 1-1-06; PTLB 1-2007, f. 3-13-07, cert. ef. 4-1-07; PTLB 2-2013, f. 11-26-13, cert. ef. 1-1-14

848-010-0035

Renewal of Lapsed Licenses

(1) Any license that is not renewed before April 1 of each year shall automatically lapse. No person whose license has lapsed shall practice until the license is renewed. Failure to receive a renewal notice shall not excuse any licensee from the requirements of renewal. The Board may renew any lapsed license upon payment of all past unpaid renewal fees, payment of a single lapsed license renewal fee as provided in OAR 848-005-0020(1)(e) and, if applicable, documentation of completion of the continuing competence requirements as provided in OAR 848-035-0020(5). An applicant whose license has lapsed for non-completion of the continuing competence requirements may reinstate the lapsed license upon completion of the requirements for the immediately prior certification period. Continuing competence hours earned after March 31 of the even-numbered year to fulfill the requirements necessary to reinstate the lapsed license shall apply only to the prior certification period.

(2) Any individual reinstating a license that has been lapsed between two to five years must show evidence of completion of a minimum of 24 hours of continuing competency during the 24 months immediately prior to

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the reinstatement date. However, a candidate for reinstatement who holds a current license in another state or jurisdiction which has a requirement for continuing competence or continuing education and who has completed that requirement, shall be exempt from the requirements of this subsection.

(3) In the event that an applicant's Oregon physical therapy license has lapsed for five or more consecutive years, the applicant must demonstrate competence to practice physical therapy. If the applicant fails to demonstrate competence, the Board may require the applicant to serve an internship under a restricted license or satisfactorily complete a refresher course approved by the Board, or both, at the discretion of the Board. The Board may also require the applicant to pass an examination approved by the Physical Therapist Licensing Board as provided in OAR 848-010-0015.

(4) If the applicant holds a current physical therapist or physical therapist assistant license in another state or jurisdiction and the applicant's Oregon license has lapsed for five or more consecutive years, the applicant may apply for a license by endorsement as provided in OAR 848-010-0020.

Stat. Auth.: ORS 688.160

Stats. Implemented: ORS 688.100

Hist.: PT 2, f. 8-22-74, ef. 9-25-74; PT 10, f. & ef. 10-21-77; PT 1-1979, f. & ef. 2-14-79; PT 1-1989, f. & cert. ef. 8-8-89; PT 5-1996, f. & cert. ef. 9-5-96; PTLB 9-2004, f. & cert. ef. 12-29-04; PTLB 4-2005, f. 12-29-05, cert. ef. 1-1-06; PTLB 1-2007, f. 3-13-07, cert. ef. 4-1-07; PTLB 1-2012, f. 2-9-12, cert. ef. 3-1-12; PTLB 2-2013, f. 11-26-13, cert. ef. 1-1-14

848-010-0044

Grounds for Refusal to License an Applicant

After notice and opportunity for hearing as provided in ORS 688.145, the Board may refuse to license, or may limit or restrict the license of an applicant who:

(1) Is not a person of good moral character as provided in OAR 848-045-0020(2)(i);

(2) Willfully made a false statement on the application;

(3) Failed to disclose requested information or provided false or materially misleading information on the application or during the process of applying for a license or temporary permit;

(4) Has practiced physical therapy without a license or has purported to be a therapist in violation of ORS 688.020;

(5) Has a mental, emotional or physical condition which impairs the applicant's ability or competency to practice physical therapy in a manner consistent with the public health and safety;

(6) Has an addiction to or a dependency on alcohol, legend drugs or controlled substances which impairs the applicant's ability or competency to practice physical therapy in a manner consistent with the public health and safety;

(7) Has been disciplined or had an application for licensure refused by another Oregon state licensing board or out-of-state licensing board for an act which if committed in Oregon would be grounds for discipline under ORS 688.140 or OAR 848-045-0020;

(8) Has been convicted of violating any federal law or state law relating to controlled substances, subject to the provisions of ORS 670.280(2); or

(9) Has been convicted of any crime that is a felony or misdemeanor under the laws of any state or of the United States, subject to the provisions of ORS 670.280(2).

Stat. Auth.: ORS 688.160

Stats. Implemented: ORS 688.100

Hist.: PTLB 9-2004, f. & cert. ef. 12-29-04; PTLB 4-2005, f. 12-29-05, cert. ef. 1-1-06; PTLB 2-2008, f. 12-16-08, cert. ef. 1-2-09; PTLB 2-2013, f. 11-26-13, cert. ef. 1-1-14

848-015-0030

Prohibited Acts

(1) A physical therapist assistant shall not:

(a) Perform an initial evaluation.

(b) Perform the required reassessment provided in OAR 848-040-0155. However, a physical therapist assistant may participate with the physical therapist in gathering data to be included in the required reassessment of a patient for whom the assistant has been providing treatment.

(c) Independently make modifications to the plan of care or objective goals. However, an assistant may collaborate with the physical therapist in making modifications or changes to the plan of care or goals based on the assistant's treatment of that patient and the patient's condition, progress or response to the treatment.

(d) Independently make the decision to discharge a patient from therapy. However, a physical therapist assistant may make recommendations regarding discharge to the supervising physical therapist based on the assistant's treatment of the patient.

(e) Perform high velocity manipulation of the spine or peripheral joints.

(2) As provided in ORS 688.020(2), no person shall practice as a physical therapist assistant unless that person is licensed under ORS 688.090.

Stat. Auth.: ORS 688.160 & 688.055

Stats. Implemented: ORS 688.020, 688.040, 688.055, 688.070, 688.080, 688.090

Hist.: PTLB 3-2004, f. & cert. ef. 12-29-04; PTLB 5-2005, f. 12-29-05, cert. ef. 1-1-06; PTLB 2-2008, f. 12-16-08, cert. ef. 1-2-09; PTLB 2-2013, f. 11-26-13, cert. ef. 1-1-14

848-020-0000

Definitions

As used in this division:

(1) "Physical therapist aide" or "aide" means a person who is not licensed as a physical therapist or physical therapist assistant, who aids a physical therapist or physical therapist assistant by performing treatment-related tasks or by performing non-treatment, patient-related tasks. Although they may be providing services to a patient pursuant to direction or instruction from a physical therapist or physical therapist assistant, the following persons are not considered physical therapist aides:

(a) Educational or instructional aides or assistants working in a school setting; or

(b) Nurses aides, restorative aides or personal care assistants. Persons performing facility maintenance, equipment assembly and maintenance, housekeeping, clerical, or other similar tasks are not considered aides.

(2) "Physical therapist" or "physical therapist assistant" includes a person who holds a temporary permit issued under OAR 848-010-0026.

(3) "Treatment-related task" means a physical therapy service rendered directly to a patient.

(4) "Non-treatment, patient-related task" means a task related to preparation of treatment areas, transport of patients, preparation of patients for treatment and other patient-related tasks.

(5) "Supervise" means to provide the amount of personal direction, assistance, advice and instruction necessary to reasonably assure that the supervisee provides the patient competent physical therapy services, given the supervisor's actual knowledge of the supervisee's ability, training and experiences. Additionally, supervision of:

(a) A treatment-related task requires that the supervising physical therapist or physical therapist assistant be in the same building and within sight or earshot of the aide who is performing the treatment-related task, such that the supervising physical therapist or physical therapist assistant is immediately available at all times to provide in person direction, assistance, advice, or instruction to the aide or the patient. A physical therapist may delegate supervision of an aide to a physical therapist assistant;

(b) A non-treatment, patient-related task requires that the supervising physical therapist or physical therapist assistant be in the building where the aide is performing the task.

(6) "Authentication" means the process by which the licensee reviews and validates the accuracy of the record entry. By authenticating a record entry, the licensee certifies that the services described were performed by the authenticating licensee or performed by a person under that licensee's supervision.

Stat. Auth.: ORS 688.160

Stats. Implemented: ORS 688.160 & 688.210

Hist.: PT 3-1994, f. & cert. ef. 7-29-94; PTLB 4-2004, f. & cert. ef. 12-29-04; PTLB 1-2007, f. 3-13-07, cert. ef. 4-1-07; PTLB 2-2013, f. 11-26-13, cert. ef. 1-1-14

848-020-0060

Prohibited Treatment-Related Tasks

A physical therapist or physical therapist assistant shall not permit an aide to perform any of the following treatment-related tasks:

(1) Administer iontophoresis. However, an aide who has been trained to do so may assist with iontophoresis by applying the medication to the electrode so long as a physical therapist or physical therapist assistant administers it to the patient.

(2) Administer phonophoresis. However, an aide may operate the sound head if the physical therapist or physical therapist assistant has applied the medication to the patient, determined the treatment protocols and parameters, as provided in the plan of care, and authorizes the aide to provide the treatment.

(3) Administer electrotherapy. However an aide may perform this task if the physical therapist or physical therapist assistant has examined the patient in person on the day of treatment and determined the electrode placements, treatment protocols and parameters, as provided in the plan of care, and authorizes the aide to provide the treatment.

(4) Administer ultrasound. However an aide may perform this task if the physical therapist or physical therapist assistant has examined the patient in person on the day of treatment and determined the treatment pro-

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ocols and parameters, as provided in the plan of care, and authorizes the aide to provide the treatment.

(5) Administer mechanized or manual traction.

(6) Perform manual stretching with the goal of increasing range of motion, neuro-facilitation or cardiac therapeutic exercise.

(7) Perform soft tissue mobilization or massage (other than effleurage and petrissage). However, an aide who is separately licensed or registered under another Oregon statute to do so may perform these tasks if done under the direction and on-site supervision specified in OAR 848-020-0000(5)(a).

(8) Wound debridement.

(9) Administer tilt table or standing frame. However an aide may perform these tasks if the physical therapist or physical therapist assistant has examined the patient in person on the day of treatment and determined the treatment protocols and parameters, as provided in the plan of care, and authorizes the aide to provide the treatment.

(10) Joint mobilization or manipulation.

(11) Determine or modify a plan of care.

(12) Initiate or administer a physical therapy intervention the first time that intervention is administered or provided to a patient. This prohibition means that a physical therapist or physical therapist assistant must provide or administer the entire specific intervention before delegating that task to an aide.

(13) Independently make entries in a patient record, except for objective information about the treatment provided by the aide. The aide shall sign the record entry as provided in OAR 848-040-0150(2). A physical therapist or physical therapist assistant may also dictate information to an aide for entry into a patient medical record, so long as the physical therapist or physical therapist assistant authenticates such entries.

(14) Instruct a patient or a patient's caregiver in the application of any treatment.

(15) Except as required to respond to an inquiry by the Board or other person authorized to receive the information, answer or discuss any questions regarding a patient's status or treatment with anyone other than the physical therapist or physical therapist assistant.

Stat. Auth.: ORS 688.160

Stats. Implemented: ORS 688.160 & 688.210

Hist.: PT 3-1994, f. & cert. ef. 7-29-94; PTLB 4-2004, f. & cert. ef. 12-29-04; PTLB 6-2005, f. 12-29-05, cert. ef. 1-1-06; PTLB 2-2008, f. 12-16-08, cert. ef. 1-2-09; PTLB 2-2013, f. 11-26-13, cert. ef. 1-1-14

848-040-0105

General Standards for Practice

(1) Licensees shall practice competently. A licensee practices competently when the licensee uses that degree of care, skill and diligence that would be used by a reasonable, careful and prudent licensee under the same or similar circumstances.

(2) A physical therapist must immediately refer a patient to an appropriate medical provider if signs or symptoms are present that require treatment or diagnosis by such provider or for which physical therapy is contraindicated or if treatment for the signs or symptoms is outside the knowledge of the physical therapist or scope of practice of physical therapy.

(3) A licensee shall not delegate to another person any task that the person is not legally authorized to perform or is not qualified by training and experience to perform.

(4) A licensee shall not provide treatment intervention that is not warranted by the patient's condition.

(5) A licensee shall respect the privacy and dignity of the patient in all aspects of practice.

(6) A licensee shall comply with the laws and rules governing the use and disclosure of a patient's protected health information as provided in ORS 192.553-192.581.

(7) A licensee shall comply with the provisions of ORS 688.135(3) by displaying a copy of their current license in their place(s) of employment in a location accessible to public view, or by making a paper or electronic copy readily available upon request, or by displaying an electronic verification of current status from the Board's website.

Stat. Auth.: ORS 688.160

Stats. Implemented: ORS 688.160, 688.010 & 688.210

Hist.: PTLB 6-2004, f. & cert. ef. 12-29-04; PTLB 8-2005, f. 12-29-05, cert. ef. 1-1-06; PTLB 2-2013, f. 11-26-13, cert. ef. 1-1-14

848-040-0110

General Standards for Record Keeping

(1) The licensee who performs the physical therapy service shall prepare a complete and accurate record for every patient, regardless of whether compensation is given or received for the therapy services and regardless

of whether the patient receives treatment pursuant to a referral or is self-referred.

(2) A record shall be prepared on the date a physical therapy service is provided.

(3) The permanent record shall contain information for every physical therapy service provided, the date the service was provided and the date the entry was made in the record. The permanent record of a physical therapy service shall be prepared within seven calendar days of the date the service was provided.

(4) The licensee who performs the physical therapy service shall authenticate the permanent record of the service that was performed. Authentication may be made by written signature or by computer. If authentication is by computer, the licensee shall not permit another person to use the licensee's password to authenticate the entry. Authentication may not be accomplished by the use of initials, except when a record entry identifying an error is authenticated. A rubber stamp may not be used to authenticate any entry in a patient record.

(5) Non-licensees, including physical therapist aides, may prepare physical therapy treatment-related entries for the permanent patient record for authentication by the treating licensee. The requirement for authentication shall not apply to records not related to physical therapy treatment.

(6) Either the permanent record or a record prepared on the date of service shall be readily accessible to a licensee prior to when that licensee provides subsequent treatment to the patient. "Readily accessible" means the authenticating licensee is able to produce the record immediately upon request.

(7) All entries shall be legible and permanent handwritten records shall be in ink.

(8) Abbreviations may be used if they are recognized standard physical therapy abbreviations or are approved for use in the specific practice setting.

(9) When an error in the permanent record is discovered, the error shall be identified and corrected. The erroneous entry shall be crossed out, dated and initialed or otherwise identified as an error in an equivalent written manner by the author of the erroneous entry.

(10) Late entries or additions to entries in the permanent record shall be documented when the omission is discovered with the following written at the beginning of the entry: "late entry for (date)" or "addendum for (date)" and authenticated;

(11) Treatment provided by a student physical therapist (SPT) may be documented either by the SPT or by the supervising therapist. Documentation by a SPT shall be signed by the student and authenticated by a supervising physical therapist.

(12) Treatment provided by a student physical therapist assistant (SPTA) may be documented either by the SPTA or by the supervising therapist or physical therapist assistant. Documentation by a SPTA shall be signed by the student and authenticated by a supervising physical therapist or supervising physical therapist assistant.

(13) Documentation by a person who holds a physical therapist temporary permit issued under OAR 848-010-0026(1)(a) or (1)(c) shall be authenticated by the permit holder and by a supervising physical therapist.

(14) Documentation by a person who holds a physical therapist assistant temporary permit issued under OAR 848-010-0026(1)(a) shall be authenticated by the permit holder and by a supervising physical therapist or supervising physical therapist assistant.

(15) For purposes of the Board's enforcement of these rules, patient records shall be kept for a minimum of seven years measured from the date of the most recent entry.

Stat. Auth.: ORS 688.160

Stats. Implemented: ORS 688.160, 688.010 & 688.210

Hist.: PTLB 6-2004, f. & cert. ef. 12-29-04; PTLB 8-2005, f. 12-29-05, cert. ef. 1-1-06; PTLB 1-2007, f. 3-13-07, cert. ef. 4-1-07; PTLB 2-2013, f. 11-26-13, cert. ef. 1-1-14

848-040-0117

Standards For Authorization To Provide Physical Therapy Services

As a result of legislative changes effective January 1, 2014, a physical therapist is no longer required to limit treatment of a self-referred patient to 60 days before having to refer the patient to a provider identified in ORS 688.132(1).

(1) A physical therapist may initiate and provide physical therapy to a patient who is either self-referred or referred by a "provider of care", defined in ORS 688.132 as a medical doctor, osteopathic physician, chiropractic physician, podiatric physician and surgeon, naturopathic physician, dentist, physician assistant or nurse practitioner, as follows:

(a) The therapist shall treat a self-referred patient in accordance with an initial evaluation and treatment plan prepared by a physical therapist and

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shall treat a patient who is referred by a provider of care pursuant to the written or oral referral or authorization received from the provider. As used in this rule, the term "authorization" includes certification by a provider of care of the physical therapist's plan of care of a Medicare patient.

(b) If the referral or authorization specifies or identifies specific physical therapy interventions, precautions or contraindications for therapy, physical therapy shall not be provided beyond those specifications or limitations without further authorization.

(c) If a patient who is being treated pursuant to a referral or authorization from a provider of care requests treatment for a diagnosis or condition that is different and separate from the diagnosis or condition that is the subject of the referral, the physical therapist may initiate and provide treatment either in accordance with an initial evaluation and treatment plan prepared by a physical therapist or pursuant to an additional written or oral referral or authorization received from a provider listed in this section.

(d) If a referral or authorization specifies the number of treatments or a duration of treatment, the physical therapist may treat the patient for that duration and may extend treatment for a reasonable period of time if necessary for the patient to receive all authorized treatments.

(e) A physical therapist shall immediately refer a patient to a provider of care if the patient exhibits symptoms:

- (A) That require treatment or diagnosis by a provider of medical care;
- (B) For which physical therapy is contraindicated;
- (C) For which the treatment is outside that therapist's knowledge, skill and abilities; or
- (D) For which treatment is outside the scope of practice of physical therapy.

(2) A physical therapist may provide physical therapy treatment to an animal under a referral from a veterinarian licensed under ORS Chapter 686. The referral must be in writing and specify the treatment or therapy to be provided pursuant to 686.040(4). The standard of care and documentation for physical therapy care to an animal shall be as provided for veterinarians under ORS Chapter 686.

(3) Notwithstanding the provisions of this rule, and pursuant to ORS 656.250, a physical therapist shall not provide compensable services to an injured worker governed by ORS Chapter 656 except as allowed by a governing managed care organization contract or as authorized by the worker's attending physician.

Stat. Auth.: ORS 688.160
Stats. Implemented: ORS 688.160, 688.010
Hist.: PTLB 8-2005, f. 12-29-05, cert. ef. 1-1-06; PTLB 1-2007, f. 3-13-07, cert. ef. 4-1-07; PTLB 2-2008, f. 12-16-08, cert. ef. 1-2-09; PTLB 2-2013, f. 11-26-13, cert. ef. 1-1-14; PTLB 2-2013, f. 11-26-13, cert. ef. 1-1-14

848-040-0147

Standards for Treatment by a Student PT or Student PTA

(1) A physical therapist may allow a student physical therapist (SPT) or student physical therapist assistant (SPTA), as defined in OAR 848-040-0100(12), to provide treatment consistent with the individual student's education, experience and skills.

(2) A physical therapist assistant may allow an SPTA to provide treatment consistent with the individual student's education, experience and skills.

(3) At all times, a supervising physical therapist must provide on-site supervision of an SPT or SPTA who provides treatment to a patient.

(4) For purposes of this rule "supervising physical therapist" means the physical therapist who is responsible for that patient's treatment on the day the SPT or SPTA provides treatment.

(5) For purposes of this rule "on-site supervision" means that at all times the supervising physical therapist is in the same building and immediately available to provide in person direction, assistance, advice or instruction to the student.

(6) A physical therapist may delegate supervision of an SPTA to a physical therapist assistant and the provision of subsections (3), (4) and (5) of this rule shall apply to the physical therapist assistant.

(7) Documentation by a student physical therapist (SPT) shall be signed by the student and authenticated by a supervising physical therapist on the same day. Documentation by a student physical therapist assistant (SPTA) shall be signed by the student and authenticated by a supervising physical therapist or supervising physical therapist assistant on the same

day. A SPT's documentation must be completed pursuant to OAR 848-040-0110.

Stat. Auth.: ORS 688.160
Stats. Implemented: ORS 688.160, 688.010
Hist.: PTLB 8-2005, f. 12-29-05, cert. ef. 1-1-06; PTLB 1-2010, f. 2-16-10, cert. ef. 3-1-10; PTLB 2-2013, f. 11-26-13, cert. ef. 1-1-14

848-040-0150

Standards For The Documentation of Treatment Provided

(1) The permanent record of treatment for each patient visit shall include at a minimum:

- (a) Subjective status of patient;
- (b) Specific treatments and education provided;
- (c) Objective data from tests and measurements conducted;
- (d) Assessment of the patient's response to treatment, including but not limited to:
 - (A) Patient status, progression or regression;
 - (B) Changes in objective and measurable findings as they relate to existing goals;
 - (C) Adverse reactions to treatment; and
 - (e) Changes in the plan of care.

(2) When treatment is provided by a physical therapist assistant, the physical therapist assistant shall record and authenticate those services. If the supervising physical therapist records and authenticates treatment provided by the physical therapist assistant, the physical therapist shall document which services were provided that day by the physical therapist assistant. When treatment is provided or assisted by an aide, the aide may only document in the patient records objective information about the treatment provided by the aide. When a supervising physical therapist assistant or supervising physical therapist authenticates treatment provided by an aide, the therapist shall document which services were provided that day by the aide.

Stat. Auth.: ORS 688.160
Stats. Implemented: ORS 688.160, 688.010 & 688.210
Hist.: PTLB 6-2004, f. & cert. ef. 12-29-04; PTLB 1-2007, f. 3-13-07, cert. ef. 4-1-07; PTLB 2-2013, f. 11-26-13, cert. ef. 1-1-14

848-045-0010

Authority and Sanctions

(1) If a licensee practices in a manner detrimental to the public health and safety or engages in illegal, unethical or unprofessional conduct as defined by the statutes and OAR 848-045-0020(2), the Board, after notice and opportunity for hearing as provided in ORS 688.145, may:

- (a) Suspend or revoke a license or temporary permit.
- (b) Impose a civil penalty not to exceed \$5,000, with the penalty for non-compliance with continuing competence requirements to be as provided in the penalty schedule set out in Appendix A of these rules, and the penalty for practicing with a lapsed license to be as provided in the penalty schedule set out in Appendix B of these rules.
- (c) Impose probation with conditions.
- (d) Impose conditions, restrictions or limitations on practice.
- (e) Reprimand the licensee.
- (f) Impose any other appropriate sanction, including assessment of the reasonable costs of a proceeding under ORS 688.145 as a civil penalty. Costs include, but are not limited to, the costs of investigation, attorney fees, hearing officer costs and the costs of discovery.

(2) A disciplinary sanction imposed against a licensee shall be generally consistent with sanctions imposed by the Board against other licensees in substantially similar cases.

(3) If a licensee has a mental, emotional or physical condition which impairs the licensee's ability or competency to practice physical therapy in a manner consistent with the public health and safety, the Board, after notice and opportunity for hearing as provided in ORS 688.145, may suspend or revoke the license or temporary permit, impose probation with conditions, or impose conditions, restrictions or limitations on practice.

(4) As used in this rule, "licensee" includes a temporary permit holder.

Stat. Auth.: ORS 688.140, 688.160 & 688.210
Stats. Implemented: ORS 688.140, 688.145, 688.220 & 688.235
Hist.: PTLB 7-2004, f. & cert. ef. 12-29-04; PTLB 9-2005, f. 12-29-05, cert. ef. 1-1-06; PTLB 1-2012, f. 2-9-12, cert. ef. 3-1-12; PTLB 2-2013, f. 11-26-13, cert. ef. 1-1-14

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291-109-0180	12-13-2013	Amend(T)	1-1-2014	410-180-0380(T)	12-3-2013	Repeal	1-1-2014
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411-028-0040	12-15-2013	Adopt	1-1-2014	438-006-0020	4-1-2014	Amend	1-1-2014
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411-028-0050	12-15-2013	Adopt	1-1-2014	438-006-0036	4-1-2014	Amend	1-1-2014
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629-061-0040	1-1-2014	Repeal	1-1-2014	820-010-0305(T)	12-5-2013	Suspend	1-1-2014
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635-005-0705	12-9-2013	Amend(T)	1-1-2014	845-006-0335	1-1-2014	Amend	1-1-2014
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635-011-0104	12-1-2013	Amend(T)	1-1-2014	845-006-0396	1-1-2014	Amend	1-1-2014
635-011-0104	12-9-2013	Amend	1-1-2014	845-013-0001	1-1-2014	Amend	1-1-2014
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635-023-0095	1-1-2014	Amend(T)	1-1-2014	848-005-0020	1-1-2014	Amend	1-1-2014
635-023-0095(T)	1-1-2014	Suspend	1-1-2014	848-005-0030	1-1-2014	Amend	1-1-2014
734-026-0010	11-25-2013	Amend	1-1-2014	848-010-0010	1-1-2014	Amend	1-1-2014
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804-025-0010	12-12-2013	Amend	1-1-2014	848-040-0110	1-1-2014	Amend	1-1-2014
811-015-0005	11-27-2013	Amend	1-1-2014	848-040-0117	1-1-2014	Amend	1-1-2014
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